

Minutes
Administrative Board of Appeals
February 27, 2012

MEMBERS PRESENT: David Levy, Vice Chair
Jose Lopez
Jim Weaver
Bode Labode
Jama Samiev, Alternate

MEMBERS ABSENT: Ann O'Connor, Chair
Steve Simmonds, Alternate

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Debbie Hightower, Recording Secretary

I. Roll Call

Mr. Levy called the meeting to order at 1:00 pm.

Mr. Denker asked that the board receive as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

Mr. Levy acknowledged the contents of the City's file as Exhibit 1 in each case.

II. Cases

12-2-008

Appeal Omaha Police Department denial of firearm registration: Adam J. Campbell, 10806 North 51st Street 68152

At the Administrative Board of Appeals meeting held on February 27, 2012, Adam J. Campbell appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated that Mr. Campbell's denial for a firearms registration was based on two incidents that were in direct relation to the City Ordinance involving firearms registration, drug offenses and convictions during the previous ten years. Sgt. Volenec stated that these two offenses were in regard to traffic stops. The first incident was April 9, 2003 and the second was on February 1, 2005. In both instances, Mr. Campbell was arrested for possession of marijuana of less than an ounce.

Mr. Campbell stated that over the last several years he had registered several handguns with no problems. He explained that the first time he went to get his handgun purchasers certificate the Douglas County Sheriff said that if he had any other convictions or problems he would be considered a user of marijuana and his handgun purchaser certificate would be denied. Mr. Campbell stated that since that time he has not been in any trouble.

Mr. Weaver asked Sgt. Volenec for additional information regarding Mr. Campbell's letter to the Board in which he stated that both times that he was cited for marijuana possession related to traffic stops "all passengers received tickets for one person's mistake". Sgt. Volenec responded that he could not speak specifically to the claim that all of the occupants in the vehicle were ticketed for one person's mistake because he was not the arresting officer. Sgt. Volenec further stated that the reports indicate that on one occasion there were three individuals in the vehicle when the officer detected the odor of marijuana and alcohol coming from the vehicle and on or about Mr. Campbell. Sgt. Volenec stated that there were two occupants in the car during the second traffic stop incident in 2005.

Mr. Labode asked Mr. Campbell for clarification about the gun being previously registered. Mr. Campbell answered that the gun was given to him as a gift from his sister and that the gun is currently in a pawnshop until it can be registered.

Mr. Weaver referred to Mr. Campbell's letter in which he stated that he has registered several handguns in the past with no problems. Mr. Campbell stated that he has had to sell all of his handguns for financial reasons and that the handgun that he would like to register would be his only handgun.

In response to Mr. Weaver's question as to whether there was any record of Mr. Campbell registering any of the other handguns; Sgt. Volenec stated that there was no record of it in the case file. He explained that the case file only contained records for the recent denial.

Mr. Campbell stated that he kept a few of the registrations for the guns he sold but the others have been destroyed. In response to Mr. Weaver's question as to whether the police department had been notified that those firearms were no longer in his possession, Mr. Campbell stated that he did notify the police department that the guns had been transferred and re-registered.

Sgt. Volenec stated further for the record that the last record of any criminal activity from Mr. Campbell was in August 2006.

Mr. Weaver made a motion to grant the appeal. Seconded by Mr. Samiev.

AYES: Weaver, Lopez, Labode, Samiev, Levy

Motion carried 5-0

12-2-009

Appeal Omaha Police Department denial of firearm registration: Carnell Lambert, 3412 Burdette Street 68111

At the Administrative Board of Appeals meeting held on February 27, 2012, Carnell Lambert appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated that Mr. Lambert's denial of the firearms registration was based on a July 21, 1995 arrest involving carrying a concealed weapon, which was a knife. Sgt. Volenec also stated that there was a traffic stop conducted on the vehicle that Mr. Lambert was in and during a check of the vehicle and the occupants, alcohol and the knife were found.

Mr. Lambert stated that the reason for the possession of his knife was to gain access to his trunk because the lock was broke.

In response to Mr. Levy's question as to whether there was anything else on Mr. Lambert's record besides the charge of carrying a concealed weapon; Sgt. Volenec stated that there was a charge for possession of marijuana less than one ounce from April 1997. He also stated that there were miscellaneous traffic offenses and an open container of liquor conviction from August 2003 which was the last entry regarding criminal activity on Mr. Lambert's record.

In response to Mr. Labode's question about the size of the blade, Sgt. Volenec responded that the narrative in the report did not state the blade size of the weapon. Mr. Lambert stated that the blade of the knife was thin enough to get into the lock of the trunk. Mr. Weaver asked for clarification from Sgt. Volenec as to whether the knife was found in the vehicle or on Mr. Lambert. Sgt. Volenec responded that the knife was concealed between the edge of the seat and the armrest.

Mr. Labode made a motion to grant the appeal. Seconded by Mr. Lopez.

AYES: Weaver, Lopez, Labode, Samiev, Levy

Motion carried 5-0

12-2-010

Appeal Omaha Police Department denial of firearm registration: Nicholas R. Merriman, 2236 North 127th Circle 68164

At the Administrative Board of Appeals meeting held on February 27, 2012, Nicholas R. Merriman appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated that the denial is in reference to a June 12, 2004 incident where Mr. Merriman was attempting to go through the security processes at Eppley Airfield. Sgt. Volenec also stated that a subsequent search of Mr. Merriman's belongings resulted in the location of marijuana that led to his arrest.

Mr. Merriman stated that the reason for his appeal was because, at the time, he was in college and young and stupid. He explained that he has been clean for six years and is expecting a baby shortly. Mr. Merriman further explained that a neighbor was recently robbed and he spends time out of town because of work and would like his wife to be able to protect herself while he is away.

Mr. Weaver asked Sgt. Volenec for any other information regarding Mr. Merriman that might be pertinent to the case. Sgt. Volenec stated that Mr. Merriman received a DUI in 2004 and was found not guilty. There is other traffic convictions, with the last indication of any activity in February 2006. Sgt. Volenec explained that, according to the narrative portion of the report, during the incident at the airport, Mr. Merriman advised the officers that he used marijuana to treat a bipolar disorder; however, Sgt. Volenec stated that he did not find any mental health activity in his background.

In response to Mr. Levy, Sgt. Volenec stated that it would make more sense for the gun to be registered to Mr. Merriman's wife if she is the one who will primarily be using it for personal protection. Mr. Merriman indicated that it would not be a problem but he would like the gun for both of them.

Mr. Weaver asked Mr. Merriman about his statement that he had been clean for six years, and asked for clarification as to whether that included both drugs and alcohol. Mr. Merriman responded that he is drug and alcohol free and cannot drink or do drugs because of a kidney disorder. Mr. Merriman stated he does not attend any type of AA meetings.

Mr. Weaver asked Sgt. Volenec if the appeal was denied, could Mr. Merriman's wife be entitled to the qualifications for registration, if the gun at the Police Department could be transferred to her. Sgt. Volenec responded that the gun could be released and properly registered by Mr. Merriman's wife. He further explained that there would have to be a bill of sale to transfer ownership of the weapon from one individual to another, regardless of the relationship between the two parties.

Mr. Samiev made a motion to grant the appeal. Seconded by Mr. Weaver.

AYES: Lopez, Labode, Samiev, Weaver, Levy

Motion carried: 5-0

12-2-011

Appeal Omaha Police Department denial of firearm registration: Yulonda McCroy, 3019 Lafayette Avenue 68131

At the Administrative Board of Appeals meeting held on February 27, 2012, Yulonda McCroy appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated that Ms. McCroy's denial of a firearms registration was based on a traffic stop conducted on November 30, 1995. During the stop, officers located a 22-caliber pistol that was found in Ms. McCroy's purse, which was located under the passenger seat of the vehicle.

Ms. McCroy stated that the reason for her appeal was because she never owned the firearm that was found in her purse.

In response to Mr. Weaver's question as to whether there were other items on Ms. McCroy's record since the incident in 1995; Sgt. Volenec stated that there was a shoplifting conviction in 1994, several miscellaneous traffic offenses, and an arrest and subsequent fine in January 2010 for possession of marijuana less than an ounce.

In response to Mr. Levy, Sgt. Volenec stated that the 2010 charge for possession of marijuana less than an ounce is a separate basis for the denial of the registration.

Mr. Weaver asked Ms. McCroy if she was suggesting that someone other than herself put the pistol in her purse on the day that she was arrested for carrying a concealed weapon. Ms. McCroy responded that it was never her purse. She explained that the reason it was considered her purse was because some of her belongings were in the purse. Ms. McCroy further explained that when she got out of the car, her purse was left in the car and the person driving the car placed the purse in the car and tried to hide it. Ms. McCroy stated she was in her home when the officer knocked on her door and the reason she was involved was because some of her belongings were in the purse that the gun was found in.

In response to Mr. Samiev, Ms. McCroy stated that the purse did not belong to her.

In response to Mr. Levy, Ms. McCroy answered that the car did not belong to her. She further explained that the police came to her door because the gun was placed in the car under the seat in the purse. Mr. Levy asked for clarification as to whether the purse belonged to her. Ms. McCroy responded that she did not say that the purse did not belong to her, but that the gun did not belong to her. Ms. McCroy explained that she received a \$100 fine, but the person who owned the car was charged for the gun.

Sgt. Volenec stated that according to the narrative portion of the report, Ms. McCroy was in the vehicle when it was stopped and while the officers were conducting background checks on the occupants, Ms. McCroy left the vehicle and entered her house. The officers were conducting a follow up by contacting Ms. McCroy after she left the vehicle.

Mr. Labode asked for clarification of some of the contents in the handwritten statement Ms. McCroy submitted to the Board. He requested that Ms. McCroy read the statement because it was difficult to read. After reading the statement, Ms. McCroy stated that the reason for the appeal is because she was in a very abusive relationship and the person will soon be released from prison. She explained that she is fearful for her and her children's safety. She also explained that she wants to go before a judge to explain what really happened during the incident in question. Mr. Levy explained to Ms. McCroy that the Board would only rule on the appeal of the firearm registration.

Mr. Labode made a motion to grant the appeal. Seconded by Mr. Samiev.

AYES: Labode, Samiev, Levy

NAYES: Weaver, Lopez

Motion carried: 3-2

12-2-013

Appeal Omaha Police Department denial of firearm registration: Daylon J. Stevenson, 6508 Read Street 68152

At the Administrative Board of Appeals meeting held on February 27, 2012, Daylon J. Stevenson appeared before the board.

Sgt. David Volenec, Omaha Police Department, stated that Mr. Stevenson's denial of a firearms registration was based on a conviction for possession of marijuana less than an ounce. The charge originated from a traffic stop that was conducted in May 2007. Sgt. Volenec further stated that a

search of the vehicle uncovered marijuana and a prescription pill bottle belonging to Mr. Stevenson that was located under the rear seat.

Mr. Stevenson stated that he did not recall the incident stated by Sgt. Volenec. He explained that the reason for his denial was for an explosive device that was found in the vehicle and that the marijuana charge was to be dropped. Mr. Stevenson explained that he and a friend, who were hunters, were north on the river in a creek bed sighting in scopes on their 22 long rifles. He and his friend were out of rounds so they put the rifles away and were later pulled over in a traffic stop. He stated that an officer looked in the rifle, pulled out a piece of brass and found two more rounds in the rifle. The officer then charged him with an explosive device. He stated the he was told at the police station that the explosive device charge was the reason for his denial. Mr. Stevenson stated that the marijuana that was found belonged to the person he was with. He further stated that the reason he would like to own a hand pistol is because he is a business owner in North Omaha and at times he deals with large amounts of cash. Mr. Stevenson expressed his desire to eventually obtain his CCW.

In response to Mr. Stevenson's statement regarding the firearm, Sgt. Volenec stated that, according to the supplemental report, one of the officers located several firearm magazines inside the vehicle. He stated that Mr. Stevenson indicated that there was a firearm inside the vehicle when asked by the officers. The officers found a 22-caliber pistol inside the vehicle so there was an additional charge of unlawful transportation of a firearm in addition to the possession of marijuana less than an ounce. Sgt. Volenec stated that this incident occurred in March 2007.

Mr. Stevenson explained that since 2007 he has opened up his own business and stayed out of trouble.

In response to Mr. Levy, Sgt. Volenec stated the improper transport was a misdemeanor.

In response to Mr. Samiev, Mr. Stevenson stated that he does auto repair. Mr. Samiev requested clarification about the marijuana. Mr. Stevenson explained that at the time he had an addiction to marijuana. Mr. Stevenson stated that he did not want to own a firearm, but needs one because of the large amounts of cash that he deals with at times.

Mr. Labode asked for clarification from Mr. Stevenson as to whether he owned any guns. Mr. Stevenson stated that he owns shotguns.

In response to Mr. Levy, Sgt. Volenec stated that Mr. Stevenson received the ticket for the unlawful transportation of the firearm. Sgt. Volenec explained that if there were conflicting stories by the occupants of the vehicle and if the weapon was inside the passenger compartment and accessible to both occupants, then both occupants could be cited.

Mr. Weaver asked Mr. Stevenson if the details helped him with his recollection of the incident. Mr. Stevenson responded that they did but he stated that the gun he was being charged with did not belong to him.

Mr. Weaver stated that he was concerned with the inconsistencies with Mr. Stevenson's recollections of the past and expressed concern about the possible impairment of Mr. Stevenson's memory. Based on Mr. Stevenson's admitted drug use, Mr. Weaver made the motion to deny the appeal. Seconded by Mr. Lopez.

AYES: Weaver, Lopez, Levy

NAYES: Samiev, Labode

Motion denied: 3-2

12-2-012

Appeal a Potentially Dangerous Dog declaration issued by the Nebraska Humane Society: Dr. John Kelley, 12317 Parker Circle 68154

At the Administrative Board of Appeals meeting held on February 27, 2012, Dr. John Kelley and James Kelley appeared before the board in support of the appeal.

Mark Langan, Nebraska Humane Society (NHS), 8929 Fort Street, appeared before the board with victim, Jim Kittelson, 1905 North 123 Street. Mr. Langan submitted the NHS Investigative Report (Exhibit 2). He stated that NHS enforces the Potentially Dangerous Dog Ordinance, 6-162, which states that a dangerous dog is defined as one that meets one or more of the following conditions: any animal that when unprovoked, inflicts an injury on a human being that does not require medical treatment; injures a domestic animal; chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or any specific animal with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals. He further stated that once a dog is declared potentially dangerous, the owner must: 1) spay or neuter the dog and microchip the dog within 30 days; 2) purchase a potentially dangerous dog license; 3) provide proof of a \$100,000 public liability insurance policy; 4) attend a responsible pet ownership class and dog behavior class; and 5) harness and muzzle the dog when it leaves the owner's property under the control of a person 19 years or older and the dog must be on a leash no longer than 6 feet. Mr. Langan explained that the purpose of the meeting was not to determine if Dr. Kelley had to give up his dog, but to determine if his dog met the definition of a Potentially Dangerous Dog as defined in the City Ordinance.

Mr. Langan stated that on January 19, 2012, NHS was contacted by the Omaha Police regarding an incident at 12317 Parker Circle. Upon their arrival, NHS met with Jim Kittelson who reported that he was walking his Shih tzu past 12317 Parker Circle when two German shepherds came out into the yard. Mr. Kittelson stated that one of the shepherds, later determined to be Shea, attacked his Shih tzu causing injury to the dog.

Mr. Langan stated that citations were issued to Dr. Kelley for his two dogs, Shea and Zorra, and both dogs were designated to be Potentially Dangerous Dogs. Mr. Langan submitted photos of the incident, which showed the injuries to the Shih tzu and the injuries sustained by Mr. Kittelson during the incident (Exhibit 3).

Mr. Langan stated that Dr. Kelley filed an appeal hearing with NHS during which an appeal was granted to Zorra because they could not verify that she was actually the dog that bit Mr. Kittelson. Mr. Langan explained that they denied the appeal on Shea based on the investigation, Mr. Kittelson's statements, corroborating evidence of the injury to Mr. Kittelson's dog, and vet records that showed that the dog lost sight. He stated that it is the opinion of NHS that Shea is a Potentially Dangerous Dog and that their appearance before the Administrative Board is to determine if Shea should be required to abide by the Potentially Dangerous Dog requirements.

Mr. Kittelson stated that on the day of the incident, he was walking his dog past Dr. Kelley's home when he heard the garage door open and saw the two dogs emerge from the garage and come at him and his dog. He stated that he got down to protect his dog, but there was nothing that he could do. Mr. Kittelson explained that he tried to pick up his dog but he was already injured. He stated that he could not tell which dog was behind him, but that the darker of the two dogs was the one that attacked his dog.

Mr. James Kelley, 8213 Molokai Drive, Papillion, Nebraska, indicated that he is Dr. John Kelley's son and attorney. He stated that the garage door did open and Shea did leave the garage but Zorra never left the garage. He explained that Dr. Kelley told the dogs that they were going to go for a ride but he did not latch the interior door completely. Dr. Kelley first noticed that the dogs were out of the house when Zorra was by his side as the garage door was rising. He stated that Mr. Kittelson was on the drive, 14 feet within the property and his dog was in the grassy public area. Shea was the only dog that exited the garage. Mr. Kelley further explained that there was no attack but that it could have been a simple collision. Mr. Kelley stated that both dogs are kind loving and are the types of dogs you can take to a retirement home. He indicated that he believes there was also a trespass involved.

Dr. Kelley interjected and stated that when he saw what had happened, he asked Mr. Kittelson if he was all right but Mr. Kittelson went ballistic and threatened his life. Dr. Kelley stated that Shea is a 90-pound Schutzhund trained dog and if she attacked Mr. Kittelson's dog, she would have killed it.

Mr. Kittelson stated that the dogs were unprovoked and he believes he and his dog were attacked. He submitted a letter from his veterinarian at the Pet Clinic (Exhibit 4) and a diagnosis from the Veterinary Eye Specialists of Nebraska (Exhibit 5) regarding the loss of vision to his dog.

In response to Mr. Levy, Mr. Langan stated that Officer Whitver, Nebraska Humane Society, took the photos approximately two hours after the incident.

In response to Mr. Weaver, Dr. Kelley stated that his dogs are Schutzhund trained which is a German training of dogs for tracking, obedience and searching for someone just as a police dog does and also for search and destroy, if necessary. The dogs never fight unless a person attacks them. Dr. Kelley confirmed that he did not hear anything and did not see the attack or collision.

Mr. Samiev asked Mr. Langan if scratches and bites are a problem with the skin. Mr. Langan answered that the Humane Society sees a wide variety of scratches and bites and some break through the clothing and some do not. Some of the scratches are teeth scratching or claws scratching but it is more likely a tooth because it is one singular scratch. A dog can come in at different angles and just one tooth can do the scratching. Mr. Langan stated that they could not verify how Mr. Kittelson obtained his injuries.

Mr. Samiev questioned if the clothing could corroborate the stories and would show a bite mark that would have penetrated through the clothing. Mr. Kittelson stated that he was wearing loose running pants and his underwear did have blood on them. He explained that he could not see behind him and did not know what was going on but in response to Mr. Samiev, he was absolutely sure that there were two dogs attacking him.

Mr. Samiev asked Mr. Langan what happens if there is actually an attack on a 10-pound dog by a 90-pound dog. Mr. Langan responded that there are many situations where big dogs have attacked small dogs and in some cases the small dog is killed but in the majority of cases, the small dog sustains injuries and does not die.

Mr. Labode indicated that he has owned a shepard and that it should never be out of one's sight because it is like a loaded weapon. He expressed concern and was thankful that there was not more damage to the dog.

Mr. Labode moved to deny the appeal. Seconded by Mr. Levy.

Mr. Weaver questioned if there is any latitude, as far as the Humane Society is concerned, regarding the five requirements, specifically the neutering requirement of the owner if the dog is declared Potentially Dangerous. Mr. Langan stated that, based on the City Ordinance, the dog behavior class is the only requirement at the discretion of the Humane Society but all other requirements are mandated by City Ordinance.

In response to Mr. Levy, Ms. Horvath answered that the ordinance is a nullified provision of the City Council and specifically requires that the dog be neutered.

Dr. Kelley stated that he was told by Dawn Thrapp, Behavior Specialist with the Nebraska Humane Society that there was no need for his dogs to go through their training.

Mr. Weaver expressed sympathy based on the emotions that are involved in the case. Mr. Kittelson reminded the board that his dog is blind in one eye for life. He also indicated that he has had dogs for 43 years of his life and has trained them as well.

Mr. Langan reminded the board that the purpose of the Potentially Dangerous Dog Ordinance is to put the owner on notice and if another incident happens then the owner will be declared a Reckless Owner and will have to forfeit their dogs.

Mr. Labode pointed out that it has been proven that an intact dog has a tendency to be more aggressive.

Mr. Levy called for the roll.

AYES: Weaver, Labode, Lopez, Levy

NAYES: Samiev

Motion denied: 4-1

III. Approval of Minutes from January 30, 2012

Mr. Labode made a motion to approve the minutes from the January 30, 2012 meeting. Seconded by Mr. Lopez.

AYES: Lopez, Labode, Weaver, Levy

ABSTAIN: Samiev

Motion carried 4-0-1.

IV. Adjournment

It was the consensus of the board to adjourn the meeting at 2:25 p.m.

Debbie Hightower, Planning Department
Recording Secretary