



Troy D. Berry  
Sheriff

# Office of the Sheriff

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Kevin B. Karpinski, Esq.  
Karpinski, Cornbrooks & Karp, P.A.  
Sun Trust Building  
120 East Baltimore Street, Suite 150  
Baltimore, MD 21202-1617

Re: IA #22-048 PFC [REDACTED]

Dear Mr. Karpinski:

The Sheriff's Office has received and reviewed the Administrative Charging Committee's ("ACC") disposition of the above internal affairs investigation. The investigation was forwarded to the ACC on January 11, 2023. We received the Disposition on April 12, 2023, and the notification of charges on June 13, 2023. As required by law, the Sheriff offered the ACC's discipline to PFC [REDACTED]. PFC [REDACTED] has declined the offered discipline. The County Attorney and the Police Accountability Board have been notified of the need for a trial board.

I am directed to advise the ACC of the position the Sheriff's Office will take at the hearing before the trial board.

The ACC has charged PFC [REDACTED] with violating AOM 1-136, "Performance of Duty." After providing some background information, the ACC's charge is:

PFC [REDACTED] was field training POI [REDACTED] at the time. Notwithstanding obvious signs that Mr. [REDACTED] had been operating his vehicle under some level of impairment, he failed to take any investigatory steps to confirm whether Mr. [REDACTED] was operating a vehicle under the influence of alcohol. As the Field Training Officer, PFC [REDACTED] should have required that an investigation be done in order to ascertain whether Mr. [REDACTED] was under the influence at the time he was operating his vehicle. (emphasis added)

The ACC's charge is not supported by the evidence; in fact, the evidence is contrary to the ACC's charge. In the charging document, the ACC acknowledges, "POI [REDACTED] asked Mr. [REDACTED] whether he would submit to SFST's. Mr. [REDACTED] declined to do so." A police officer does not have the authority to compel a person to submit to field sobriety tests. Field sobriety tests are the standard tools used when conducting an investigation into a violation of §21-902 of the Transportation Article.

The ACC's conclusion that the officers failed to conduct *any* investigation is inconsistent with the ACC's fact finding.

To the extent the ACC's charge can be viewed as PFC [REDACTED] should have directed *additional* investigative steps, the ACC does not indicate what those steps would have been. There is no evidence that either officer had a Preliminary Breath Test device, for example, and no indication that Mr. [REDACTED] would have consented to that test. There was no further investigation to be done.

While the charging document accuses PFC [REDACTED] of not ensuring investigatory steps were taken, the ACC's Disposition took issue with PFC [REDACTED]'s failure to direct POI [REDACTED] to arrest Mr. [REDACTED]. Specifically, the ACC found:

PFC [REDACTED] was field training POI [REDACTED] at the time of this investigation. The ACC believes that, by a preponderance of the evidence, PFC [REDACTED] violated AOM Chapter 1, Section 136, "Performance of Duty." While *the ACC agrees that officers have a level of discretion in determining whether to effectuate arrests*, PFC [REDACTED] was field training Officer [REDACTED] at the time. There was evidence that Mr. [REDACTED] was under the influence of alcohol while operating his vehicle. PFC [REDACTED] had an opportunity to step in and inform POI [REDACTED] that Mr. [REDACTED] *should be arrested* for driving under the influence. He failed to do so and the ACC believes that he violated the Sheriff's Office policy on performance of duty. (emphasis added)

The ACC did not identify any section of the AOM that imposes upon supervisors a "duty" to direct new officers to make on-scene, warrantless arrests for driving under the influence. The ACC's conclusion that there was a duty to direct an arrest conflicts with AOM 1-102 which expressly gives officers discretion to make decisions, including about when to make an arrest.

The ACC acknowledges that officers have discretion, but would *require* arrests when an arrest would be a useful training tool. This reasoning is contrary to the mission of the Sheriff's Office to serve and protect the community. Adopting the ACC's position would mean that a citizen's liberty is dependent on the status of the officer. A citizen dealing with a veteran officer may go about her business, but a citizen dealing with a new officer must go to the Detention Center.

For these reasons, the Sheriff's Office does not intend to present evidence in this case to the trial board.

Sincerely,

  
Jerome R. Spencer  
General Counsel