

STATE OF NEW YORK - SUPREME COURT
APPELLATE DIVISION - THIRD DEPARTMENT

JASON W. LONGTON, JR.,

Petitioner,

-against-

VILLAGE OF CORINTH and
VILLAGE OF CORINTH BOARD OF TRUSTEES,
and ROBERT KANE, as Chief of Police for the Village of Corinth
and JAMES BOWEN in his official capacity as Sheriff of Saratoga
County and SARATOGA COUNTY,

Respondents.

PETITIONER'S REPLY BRIEF

Docket No. 504768

INTRODUCTION

This Reply Brief is submitted by petitioner Jason W. Longton, Jr. ("Longton") in response to the Brief submitted by respondents (the "Village").

In its Brief, the Village attempts to paint Officer Longton as a "rogue cop" and argues that the order to Longton to "stay away" from Trevor Downie was a lawful and legitimate act designed to insulate the Village and Longton from a harassment lawsuit by Downie. The Village also claims that it never intended to shield Downie from a police investigation, but rather it merely acted to reassign the investigation to others. The Village also argues that its investigation of Downie was thwarted solely because witnesses would not file a criminal complaint, and absent a criminal complaint, it could not proceed. Finally, the Village argues that because it at

all times acted reasonably, its termination of Officer Longton was justified because his contumacious insubordination undermined police discipline.

These arguments by the Village are ultimately undone because they ignore the facts and the reality of what actually happened.

Downie's Criminal Acts

There is no real dispute, indeed the Hearing Officer correctly found, that "there is undisputed, credible testimony that at the relevant time, Trevor Downie did commit acts which constituted crimes against one or more of his female employees." (R75)

The Village's Notice of the Criminal Acts

There can be no real dispute that Chief Kane, Mayor Winslow and Trustee Lescault knew that there were multiple claims of inappropriate, perhaps criminal, acts by Downie at the time they met with Longton and at least by the time they acted to suspend Longton. The Village's assertions to the contrary at pages 17-18 of their Brief ignore the record facts.

Chief Kane had a sworn statement from Melinda Marcotte that recounted that Downie was groping her and other employees (R243-45, 247-48, 1848-1850, 1853), had a series of oral reports from Longton that multiple employees, including minors, had been groped (R626-28, 687-89, 1848-50), and had an oral report from the mother of one minor about Downie's inappropriate touching of her daughter (R293-94, 551-52, 692, 1610).

Mayor Winslow also admitted that he knew that there were complaints of Downie's inappropriate touching at the time he met with Longton.

Q. At some point in time, at the time that you were meeting at the police department, you were aware that there were allegations made that Mr. Downie was molesting minor employees of Jack's.

A. Correct. I did not know any specifics, until the day that the police chief called me down to the station.

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Q. And you knew that there was an allegation that Trevor Downie was touching inappropriately a minor female at Jack's other than Ms. Marcotte, right?

A. Yes. I understood it be another person, yes.

(Mayor Brad Winslow, R176, lines 4-10 through R179, lines 4-7).

Village Trustee Lescault also knew about the inappropriate acts at the time she met with Longton as revealed by the following:

Q. So you were going to have a special meeting with Trevor Downie – you and the Mayor and the Chief were going to have a special meeting with Trevor Downie to smooth over the waters because of allegations of sexual harassment? Is that what the purpose of the meeting was?

A. I believe so.

Q. So, at that point in time, when you were meeting with – when you were planning on going to this meeting, you were aware that there were allegations of sexual harassment against Mr. Downie?

A. Yes.

(R273 lines 15-24 through R274, lines 1-2) and

Q. Okay. At that time [August 26, 2004] did you know whether or not there had been any allegations made against Trevor Downie.

A. I believe there was allegations, but I don't believe there was – there had been a complaint signed. I believe there had been some allegations, but no formal complaint.

(R267-268).

Longton's Interaction with Downie

The suggestion at page 4 of the Village's Brief that Longton was a "rogue cop" is also inconsistent with the facts. To the contrary, Longton was simply doing his job when:

- he stopped Downie based on a citizen complaint of suspected drunk driving (R685-87);

- he followed Chief Kane's direction to meet with Downie at his restaurant (R697-98, 1890);
- he routinely kept Chief Kane advised of the reports from employees that Downie was groping female employees, some of whom were minors (R626-28, 687-89, 1848-50); and
- he preserved the evidence when one of those employees told him she wanted to give a voluntary written statement (R232, 631, 632, 707, 1848-50, 1883-84).

The Village now distorts the record by suggesting that Longton acted inappropriately when he met with Downie (see Village's Brief, p.4). In fact, Officer Coffman, a disinterested witness who accompanied Longton to the meeting with Downie, made clear, both when he testified and in his contemporaneous report, that Longton was "professional" and Downie was abusive (R1890, Respondents' Ex. A and R329-331).

Downie's Acts to Stop Any Investigation

Downie, like many others who have something to hide, took steps to stop the investigation. He did so by making baseless charges that Longton was harassing him. He did that by calling the Mayor to ask him to intervene rather than filing a written complaint. Rather than following the required procedure of investigating the civilian complaint using the established civilian complaint procedure to determine if there was any validity to Downie's charges, the Mayor, Chief Kane and Village Trustee Lescault instead told Longton to stay away from Downie at the unprecedented meeting on August 26, 2004.

Longton's State of Mind

At the time of the extraordinary August 26, 2004 meeting with the Chief, Mayor and Village Trustee, Longton had the good faith belief that the Village was seeking to shield Downie from a criminal investigation.

As of August 26, 2004 at 3:00 p.m. Longton knew the following:

- 1) A 15-year-old female had reported to Longton that she had been touched inappropriately by Downie at the same time as Downie was making suggestive sexual comments (R690-91).
- 2) Chief Kane had logged in the complaint to him about the 15-year-old with a blotter entry that directed the mother to call the State Department of Labor, an agency that has no jurisdiction to investigate sex crimes with minors or sexual harassment of adults. The blotter entry said nothing about any other investigation by the Police Department or otherwise (R1610).
- 3) Longton had received a verbal report from Michelle Harris that a second employee had reported she had been repeatedly sexually groped, and had witnessed other minor female employees being touched inappropriately (R626-28, 687-89).
- 4) Longton had personally witnessed Downie on two separate occasions become visibly angry during routine interactions with police and on both occasions invoking his position as a prominent local business owner (R322-23, 560, 698-700, 1890).
- 5) The Mayor, Village Trustee Lescault and Chief Kane had an extraordinary meeting with Downie at his place of business for the express purpose of discussing Longton's routine traffic stop of Downie (R170, 274, 279-80, 500-01, 530-31).
- 6) The Mayor of the Village was the Real Estate Broker of record in the sale of "Jack's Place" to Downie for which he received a \$19,250 fee (R148-49).
- 7) Chief Kane reported to Longton that the Mayor has an unusual relationship with Downie wherein Downie apparently had influence with him (R693-94, 696, 721).
- 8) Chief Kane suggested to Longton that he cease all work on the investigation, reporting "We can't take these people on" (R693-94, 696, 721).
- 9) Chief Kane, the Mayor and Trustee had an unprecedented meeting with Longton where each ordered him to stay away from Downie (R159-60, 267-68, 365, 369, 481-82 696, 704, 721-22).

Longton's Acts

Contrary to the Village's assertions, Longton actually did stay away from Downie. All he did was take a voluntary statement from Melinda Marcotte when he was approached by an intermediary for Marcotte after the August 26th meeting. Lest there be any doubts, at the

hearing, Marcotte explicitly testified that her statement was entirely voluntary, Longton did not pressure her, she understood fully that Michelle Harris was not a Police Department employee and her statement was completely accurate (R232, 707, 1848-50, 1883-84).

The following day, Downie again called Mayor Winslow to complain that Longton was at Marcotte's home the prior evening (R163, 164). One would think that by this point, the Mayor would come to understand that Downie was going to extraordinary lengths to direct attention from his own conduct. Yet, the Village immediately geared up to investigate, suspend and terminate Longton while essentially shutting down any meaningful investigation of Downie.

The Village's Acts to Shield Downie

After the Village terminated Longton, it abandoned any investigation of Downie, even though it knew at the time there was credible evidence that Downie was molesting employees, at least two of which were minors.

One year later, a civilian intervened with Downie. Downie committed suicide.

From the date of Longton's suspension until a civilian finally intervened with Downie directly to stop Downie from groping employees, Chief Kane's "investigation" consisted of his daily trip to Jack's Place to eat breakfast.

The following testimony of Chief Kane demonstrates that the Village did not conduct an investigation of Downie:

Q. And what did you [Chief Kane] do at Jack's as part of your investigation?

A. We would sit there and have breakfast, interact with the citizens inside, interact with the waitress staff.

Q. What waitresses did you ask questions to?

A. We didn't.

Q. Did you – what steps did you take, other than eating breakfast at Jack's, what steps did you take to do an investigation as to what's going on at Jack's Place?

A. We would ask the waitress staff, how are you today. Is there anything going on? And at that time, I would think they would have the opportunity to say to us, hey, can I talk to you in the back, or, hey, there's something going on, but –

Q. Did you do anything else?

A. I observed Trevor Downie's wife working there, I observed Stacy Crandall's daughter's wife grandmother actually working there...

* * *

A. So, no—

* * *

Q. And you didn't go to them and ask them?

A. We did not ask questions.

* * *

Q. Chief, did you ever interview any employees at Jack's Place?

A. No.

Q. Did you ever question Trevor Downie about his conduct?

A. No.

Q. And you never contacted the Child Abuse Hotline?

A. That's correct.

(R486-87, 492-494).

Even the Officer purportedly assigned to investigate Downie acknowledged that he essentially did nothing to investigate the claims other than unsuccessfully offer to meet with the mother of one of the victims (R597-616). Even though Officer Somma had actual notice that

there were multiple witnesses and multiple victims, he simply informed the Chief that he could not get a statement and the Chief instructed him to stop his investigation (R599).

The Village asserts that it actually continued the investigation by calling another police department and speaking with the District Attorney (see Village's Brief, pp.16-17). While that may or may not be true, it is not the same as actually investigating by questioning witnesses.

In fact, the Chief made every attempt to marginalize any allegation asserted against Downie. This is demonstrated by the following indisputable evidence:

- (1) evidence that the Chief wrongly advised Stacey Crandall to contact an agency that had no jurisdiction over sexual touching cases for minors or adults (R1610);
- (2) evidence that the Chief advised Officer Longton to cease his investigation because of Downie's strong influential relationship with the Village Mayor and Trustee (R693-94, 696, 721);
- (3) evidence that the Chief participated in the destruction of a voluntary statement confirming Downie's sexual misconduct towards several female employees, including minors, at Jack's Place (R243-45, 247-48, 1853);
- (4) evidence that the Chief violated the Department's Police Manual and its procedures for handling sexual contact cases and for continuing an investigation (R243-45, 247-48, 254, 474-75, 485-88, 493, 584, 597-602, 615-16, 731, 1204-06, 1233, 1236, 1848-50, 1853, 2453); and
- (5) evidence that the Chief instructed Officer Somma to stop his investigation once Somma determined he could not obtain a statement from one of the minor victims (R599 and 596-614 generally).

The Village's Purported Rationale

The Village claims that it was justified in ordering Longton to stay away from Downie because:

- 1) Downie threatened to sue the Village because Longton was out to get him; and
- 2) One of Downie's victims was the daughter of Longton's romantic interest at the time.

As such, someone else needed to investigate Downie.

As an initial matter, the Village itself admitted at the hearing that its sole motivation was the complaints by Downie. The fact that one victim was the daughter of a friend of Longton came up long after the event and was not a factor in the Village's acts on August 26, 2004 (R163, 270, 267).

Even the stated reason that Downie complained about Longton is pretextual. We know this because 1) once Longton was suspended, the Village essentially abandoned the investigation of Downie; and 2) the Village never took seriously Downie's complaints about Longton. To the contrary, the Department ignored its own rules for how to investigate a citizen complaint and took no steps to even inquire into the bona fides of Downie's baseless and factually unsupportable claims.

The real reason for the Village's order to Longton was to protect Downie. We know this because: 1) the involvement of the Mayor and a Village Trustee in any kind of police/civilian complaint was unprecedented; and 2) once Longton was suspended, no effective investigation occurred of Downie.

History has shown that Officer Longton was correct, the Village's acts ended an investigation and Downie continued to molest minors for an additional year after the Village officials had actual notice of Downie's inappropriate and unlawful acts (R160, 161, 174-76, 267-68, 294-95, 298, 470-71, 578-79, 687-89, 696-97, 711-12, 1610, 1885).

Nothing in the Village's Brief adequately explains these troubling facts.

Under these facts, it is clear that Longton legitimately believed he was given an illegal order, and it is an abuse of discretion to terminate a Police Officer whose sole goal was to do his job and protect the public.

CONCLUSION

**PETITIONER'S APPLICATION SHOULD BE GRANTED, THE DECISION
TO TERMINATE LONGTON ANNULLED, AND LONGTON SHOULD
BE REINSTATED AND MADE WHOLE.**

DATED: Albany, New York
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Respectfully submitted,

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