

Rutland City Police Commission
November 14, 2022

Present: Chairman Sean Sargeant, Commissioners Tony Romeo, Luther Brown, Alis Headlam and Peg Flory.

Also attending: *Chief Kilcullen, Commanders Sam Delpha and Greg Sheldon, Crime Analyst Nathan Thibodeau, CRO Matt Prouty, Alderman Barbagallo, Mayor Allaire and *Patricia Garcia.

Call to order by Chairman Sargeant at 6:02pm.

Approval of Minutes

Commissioner Flory moved to approve the minutes of October 10, 2022. Commissioner Brown seconded. Motion carried 5-0. Chairman Sargeant said he will alert Mary-Kaye that the minutes are ready to post.

Public Comment

Chairman Sargeant apologized for his behavior at the last meeting saying he will do better going forward. In regard to Mr. Ley's complaint, Chairman Sargeant sent a draft memo to the Police Commission reporting that on Oct. 25 Commander Delpha and he reviewed the Ley video and internal police reports for the incident on Chaffee Street in Rutland on or about August 4. The review was to develop an opinion of the RPD's response to the initial call for service and subsequent communication with Mr. Ley. It was found that Officer Tavares was not in compliance with RPD directive 22-7 in that he did not deploy his watch guard dash camera upon arriving the scene. Commander Delpha will communicate the result to the Commander of Patrol and Shift Sargeant as a reminder to all patrol shifts that Directive 22-7 during this time as body camera technology is rolled out to all frontline personnel. It was also found that all other activity by the RPC in connection with this incident was in line with all stated policies and procedures. Commander Delpha packaged and submitted all materials to the office of the Rutland County State's Attorney's for review and possible criminal charges related to this incident. Chairman Sargeant will sign the opinion and provide it for inclusion in these minutes. Chairman Sargeant did receive a response from the State's Attorney that, in summary, says based upon the information submitted including the video he cannot progress to charges as only one of the two required elements for criminal assault was met. Chairman Sargeant said the State's Attorney's response will also be included in the minutes. Commissioner Flory asked if Mr. Ley knows that the opinion and video had been forwarded to the State's Attorney. Chairman Sargeant said Mr. Ley does not know. Commissioner Flory suggested sending Mr. Ley a copy of the minutes with the two documents attached. Chairman Sargeant said he would.

Chairman Sargeant discussed seeing the contents of an apartment on Terrill Street last Friday emptied into the travel portion of the street and he alerted the Chief who

contacted Officer Rosario. Commander Sheldon said the materials have been removed and that two unregistered vehicles were also towed.

Commissioner Romeo said the RPD did a great job securing the neighborhood the night of the shooting and that he has received positive feedback from the community stating that the police were organized within minutes of the incident and the neighbors felt safe.

Commissioner Romeo suggested that the RPD change the picture on its Facebook page from Center Street or Downtown to a better representation of the department.

*Chief Kilcullen arrived.

Chief Kilcullen received an email from a resident regarding Sgt. Plemmons saying he went out of his way for her two granddaughters on Halloween Night making it more special. Chief Kilcullen also recognized Officer Tim Rice who assisted with the traffic backup on Bellevue Avenue on Halloween. Chief Kilcullen said the Mayor received an email from a resident on Geno Avenue expressing thanks from the neighbors for the professionalism of the officers during an arrest made on Geno Avenue.

Chief Kilcullen discussed the gratefulness of the neighbors after an incident on Cleveland Avenue and on Monday Alderman Gillam also expressed his appreciation for the officers regarding the same incident.

Commanders' Report

Commander Sheldon reported that Officer Rosario has been attending Treatment Core Training and gave a well-received speech at Turning Point last month. Officer Rosario also spoke at the Project Vision last Thursday with other members of the Treatment Core. There will be a vicious dog hearing tomorrow night. The Project Vision Steering Committee also meets tomorrow to talk about the structure of Project Vision moving forward. Commander Sheldon added that Officer St. John completed his FTO and his ghost ride and he starts on his own tonight.

Commander Delpha said since the last meeting one applicant in background was lost, but two new applicants were gained. Two candidates are ready for the full time academy and up to 6 are currently in the process for the full time class. Commander Delpha said they are seeing a higher quality of candidates, not just higher numbers. The part time class has been listed for March for anyone not in background by the Dec. 9 cutoff for the full time class. BCI has been busy with the homicide on top of the background investigations.

CRO Matt Prouty discussed his first four months in the position saying it has been interesting and not what he had expected. The calls for service have been complicated and he has not received as many calls from dispatch as anticipated. He sat in on a

Community Policing Subcommittee meeting this morning and will be asking Commander Sheldon to put something together through the bigger VISION piece where a meeting of providers can get together to formally build a team of service providers. There are specific needs that need to be met. Chairman Sargeant asked CRO Prouty to discuss a conversation they had during a ride-a-long regarding the concept that the position results in calls for service that don't happen. CRO Prouty explained that it is hard to measure where, had we not been involved, there will be cases that result in police involvement and they will be complicated before providers become involved. There is value there, but he does not know how to capture that value. Commissioner Flory asked if the public knows this service is available. CRO Prouty said no, adding some of things coming to him need police enforcement. Commissioner Headlam asked how to schedule a ride-a-long? Chief Kilcullen said there is paperwork to be completed. Commander Sheldon said he would email Commissioner Headlam the form tomorrow.

*Patricia Garcia arrived.

Ms. Garcia asked to speak to the Commission despite having missed the public comment section of the meeting. She reported that a cat she had been caring for had been killed and she wanted to know what could be done about it. She also discussed finding a machete in the bushes where she lives and suggested closing down the drug houses on Baxter street because things are getting worse. Ms. Garcia also warned the Commission about her suspicions regarding Stephen Box's intentions in Rutland. Chairman Sargeant said he shares Ms. Garcia's frustration and discussed the bail standards. Commissioner Flory added that the bail language was added on to another bill. He recommended she reach out to William Notte who sits on the Judiciary Committee until January at the VT State House. Commissioner Headlam asked if ACO Tim Jones was involved. Chief Kilcullen said the cat's death had not been reported and the body has not been found.

Mapping Update

Nate Thibodeau presented the mapping update. He reported that the call volume for October 10,485, a 12% increase from last year. He said the 5-year average calls for service generally are reduced by 4%, but this year's calls have increased by 11% in the month of October. The surface data, which condenses 120 initial call code types into 12 categories, showed the largest call types being Non-Criminal Incident at 25%, followed by Traffic 14%. Chief Kilcullen said the NCI calls are the ones CRO Prouty should be responding to and it is necessary to find out when those are occurring, because the Mayor has added a second CRO position in the FY24 budget. Commissioner Romeo asked if there is a training for the dispatchers to learn which calls should go to the CRO. Chief Kilcullen said it's important to look at when they are coming in and which of the NCI calls where he should be responding. Commissioner Flory asked of the 25%, did some go to Matt. Chief Kilcullen said yes. Commissioner Headlam asked if there is a way to get dispatch to note how many of the NCI calls go to Matt and could that information be included in the stats? Nate said he would be listed as the primary officer

that responded and the data will be added to the mapping update after the position is clarified. Commissioner Flory asked if the intention is to eventually be able to report the number of calls the CRO is receiving. Nate said yes. Commissioner Romeo asked if Nate could provide that information to the Commission in the next month or two? Chief Kilcullen said he will work with Nate to provide the information. Commissioner Headlam said this information is the argument for the CRO position and demonstrates accountability while the purpose of the position was to relieve the officers. She added that the statistics could lead to future funding. Commissioner Brown asked if there was a narrative attached to the calls. Chief Kilcullen discussed the problems with the new records management system due to the amount of classification codes. Nate said it's growing problems as things are still being added to the new system.

Nate continued with the October 2022 comparison saying: Homicide in 2021 was 1, 5 year average 0 and 1 in 2022. Robbery 2021- 15, five-year avg.-7, 2022-18, Aggravated Assault 2021 -36, five-year avg.-40 2022-53, Burglary 2021 – 83, five-year avg.- 61, 2022-41. He continued with robbery information 2022-18, last year 15, in October there was spike in the beginning of the month. Location type mainly convenience stores. The ID rate is 75% and 100% of POI are known users. Larceny automobile 2021-36 five-year avg.- 17 2022-71, larceny from motor vehicle 2021-105 five-year avg.- 66 2022-255, (this does not include catalytic converters) larceny from buildings 2021-36 five-year avg.- 38 2022 - 147. Retail theft 2021- 105 five-year avg.- 101 2022-311. Commissioner Flory asked if there was data on how many of the larcenies were prosecuted. Chief Kilcullen said no, with courts being shut down for two years due to COVID, nothing was being adjudicated. He added that the Federal partners have been taking on some cases despite being short-staffed. Nate added that back in July, while the person arrested for car thefts was incarcerated, the thefts declined. Chief Kilcullen added that those committing thefts in retail establishments that have been trespassed, can go back to those same stores and steal without incurring additional more than two misdemeanors and it never becomes a burglary or a felony.

Nate continued with Guns, Drugs and Money saying that the year to date drug overdose comparison is currently at 86 with a spike last month of 8 overdoses and 3 fatalities. The highest age rate is 28-37. Nate said he is trying to collect more information with Rutland County by searching how an officer might put it into an account. Commissioner Romeo asked about heroine being cut with a drug to euthanize animals. Chief Kilcullen said there has been some of that from the trends reported by HITDA. Nate continued saying BCI has completed 6 operations this year that led to the arrest of 25 individuals, 37 ounces of drugs seized, \$37,500 cash and 4 guns off the street. Commissioner Headlam asked how the seized money is used. Chief Kilcullen said it is split depending on who is involved in the investigation. Commissioner Romeo asked how the money is used. Chief Kilcullen said it can be used for most any law enforcement purpose, there are guidelines. Ms. Garcia asked about ghost guns. Chief Kilcullen said they have seen guns with the serial number defaced, but a ghost gun is made up of untraceable parts. Nate said six guns were reported stolen in October. Chairman Sargeant asked if the

Aldermen and Mayor were still receiving the monthly report. Nate said it needs to be updated due to the new system.

Budget Report

Chief Kilcullen said he submitted the FY24 budget to the Mayor last month that included an upgrade to six dash cameras, funds to lease cars for BCI, purchase a shed for storage and to fund the second CRO position. The Public Safety Committee meeting has been scheduled for 5:30 pm on Nov. 28. Chief Kilcullen said as far as this year's budget, at 33% of the fiscal year, expenses are at 31.25%.

Chief's Report

Chief Kilcullen presented the required State's policy to adopt, at a minimum, the elements of the body camera policy, with the idea that when nuances are identified going forward, they will be entered into the policy. This has been reviewed by the City Attorney. Commissioner Flory moved to authorize the Chair to sign the policy. Commissioner Romeo seconded. Commissioner Flory asked if the policy could be expanded upon and was told it could be. Commissioner Headlam asked if the Chief had any concerns. Chief Kilcullen said no. Motion was approved 5-0.

Chief Kilcullen continued with his report saying on Oct. 12 there was a meeting with Sen. Sanders and a recruitment food truck mixer that evening. He discussed the school's workshop Portrait of a Student that he and the Mayor are attending, the Halloween Parade on Oct. 29 was well attended, Nov. 9 there was a Parking Committee meeting to discuss the mobile app, new parking meter heads and eliminating kiosks and there will be business before the Board of Finance to discuss new cruisers. On Nov. 15 Officer LaGuardia, SRO, put together Coffee with Kids which involves making breakfast for the officers and a vicious dog hearing that night. On Nov 18 is the PBA appreciation night at Stonehedge Indoor Golf. In November, December and January employees are participating in a grow a beard fundraiser for Camp Ta-Kum-Ta. Officer St. John completed field training and ghost ride. FTO Carapezza continues at the Level 3 Academy graduates in December. The trained dispatcher from the State Police accepted the final offer and will be starting on Nov. 27, the City Annual Report can be picked up, the new uniforms and firearms were distributed last week with most of the department has gone through the firearms training. There is progress on the heat pump for dispatch with the cost being \$10-15,000 and the controls for the heating system's initial phase will be \$55,000.

Trainings

Completed – Patrol Rifle Training

Completed – Drug Investigation Training

Completed - CPR/First Aid Training

Completed – Homeland Security Training.

Completed - Team 2 Training, response to those in mental health crisis

Completed – VT School Safety Training

Completed - Use of Force and Tactics in November with some attending Dec. 1
Completed – Two Officers attended a Basic Self-Defense Instructor Training
Completed – A records clerk was training in Child Passenger Safety Seats
Upcoming - Officer Rosario will attend Recovery Court Conference with members of the
Rutland County Treatment Core Team in Danvers, Mass.
Upcoming - Advanced Roadside Impaired Driving Training (ARIDE) for all officers.

Commissioner Headlam suggested attending Treatment Court and graduation as a good experience. She also asked for an update to the handicap access to the police station. Chief Kilcullen said the door popper has been installed.

Mayor Allaire said hats off to the RPD for all the work done regarding the Cleveland Avenue incident with communication and actions for the public.

Adjournment

Commissioner Flory moved to adjourn. Commissioner Headlam seconded. Motion passed 5-0.

Meeting called to a close at 7:33 pm.

Submitted by: Barbara Spaulding

cc: Chief Brian Kilcullen
Mayor David Allaire
Police Commission
City Clerk Henry Heck
Board of Aldermen
Union President Rick Caravaggio

Sean A. Sargeant
77 Grove Street, Suite G100
Rutland, VT 05701
October 30, 2022

Rutland City Police Commission
% Rutland City Police Department
108 Wales Street
Rutland, VT 05701

Copy: Police Chief Kilcullen; Mayor David Allaire; Commander Delpha

RE: Incident Review: Richard Ley; On or About August 4, 2022

On October 25, 2022 Commander Delpha and I reviewed the 'Ley' video and internal police reports related to an incident that occurred on Chaffee Street in Rutland, Vermont on or about August 4, 2022; please refer to the addenda to the Police Commission minutes of 9/12/2022 and 10/10/2022. This review was to develop an opinion of the Rutland City Police Department's response to the initial call for service and subsequent communication with Mr. Ley.

After review of the video and documents it was found that Officer Tavares was not in compliance with Rutland City Police Directive 22-7 in that he did not deploy his 'Watchguard' dash-camera upon arriving at the scene. Commander Delpha will communicate this result to the Commander of Patrol and the Shift Sergeant as a reminder to all patrol shifts of Directive 22-7 during this time as body camera technology is rolled out to all front-line personnel.

After review of the video and documents it was found that all other activity of the Rutland City Police Department in connection with this incident was in-line with stated policies and procedures.

Commander Delpha packaged and submitted all materials to the Office of the Rutland County States' Attorney for a review of possible criminal charges related to this incident.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Sean A. Sargeant", with a long horizontal flourish extending to the right.

Sean A. Sargeant
Chair, Rutland City Police Commission

STATE OF VERMONT
RUTLAND COUNTY
OFFICE OF THE STATE'S ATTORNEY

Ian C. Sullivan
STATE'S ATTORNEY

Nicholas R. Battey
Kayley N. Olson
Daron L. Raleigh
L. Raymond Sun
DEPUTY STATE'S ATTORNEYS



Sierra Boutin
Alessandra Gaiotti
VICTIM ADVOCATES

Anna Ackley
Jennifer Griggs
Alicia Howland
ADMINISTRATIVE STAFF

November 11, 2022

Commander Samson Delpha
Rutland City Police Department
80 Wales Street
Rutland, Vermont, 05701
(via email to samson.delpha@vermont.gov)

Re: Case review of 22RL007042

Commander Delpha,

I trust this email finds you well. I write in response to your request to review a potential case for prosecution. This review is limited to the specific question of whether the Rutland County State's Attorney's Office (RCSAO) would file a criminal assault charge. Necessarily, this review is limited to the available evidence.¹ Based on my review of the evidence, RCSAO would not file a criminal assault charge. I will explain further below.

I will start with an overall conclusion: Mr. Ley was hurt in this event. That fact is not lost on me. He should not have been hurt. That said, not every injury gives rise to a criminal prosecution.

In relevant portion, Vermont law holds a person guilty of simple assault when they "attempt[] to cause or purposely, knowingly, or recklessly causes bodily injury to another[.]" 13 V.S.A. § 1023(a)(1). Essentially, the definition of the crime of simple assault breaks down into the action (i.e., causes bodily injury) and a guilty mind (i.e., does so recklessly). Unless both a guilty mind and the act are both present at the same time, one cannot prove a criminal offense.² At this point, defining the standard of proof in criminal cases is important. To secure a conviction, the government must prove each element of the offense

¹ RCSAO is in receipt of (1) a 7-page Valcour printout, (2) Mr. Ley's 5-page sworn written statement, and (3) a video (duration 2:48) taken by Mr. Ley of the events in question. The analysis and conclusion contained within this letter may be impacted by new evidence. Should new evidence become available, please do not hesitate to provide information about the new evidence.

² Put another way, a guilty mind without an accompanying criminal act is no crime. One can have a guilty mind (e.g., wanting to hurt another person), but without action to realize those guilty thoughts, no crime has occurred. The converse is also true. Action that causes harm is not a crime unless it is accompanied by a guilty mind. If one unexpectedly suffers a stroke while driving down the road and as a result crashes their car into a pedestrian, the driver of the car has been involved in a tragedy but not a crime. They did not have the guilty mind necessary to make the action of crashing the car a crime, even though the pedestrian undoubtedly suffered harm in that scenario.

beyond a reasonable doubt. Any doubt based on reason results in an acquittal. To charge a case, I believe the government must have a basis to believe that a crime occurred and that we can prove it beyond a reasonable doubt.

From my perspective, the existence of bodily injury is not the question in this case. Mr. Ley was hurt. That injury was caused by contact with another person.

Whether there is sufficient evidence to establish a guilty mind is the critical question in deciding whether to charge this case. Here, both Mr. Ley and the man sitting on the ground were viewing the world while looking through their electronic devices. Mr. Ley was approaching the seated man while video recording. The seated man stood while looking through his electronic device. The collision ensued. From the available facts, there is simply no basis to believe that the seated man was intentionally trying to hurt Mr. Ley.³ That rules out an attempt or a knowing commission of the act.

That leaves open the possibility of a reckless act. A reckless act occurs when someone's intent acknowledges the substantial unjustified risk of harm in taking a specific action but does it anyways. Failing to exercise the caution of an ordinarily cautious person is not enough to prove recklessness. Similarly, if all we can prove is an accident, then we have not proved recklessness.

Here, it appears as though the seated man stood while Mr. Ley was approaching him. This caused the collision. Both the seated man and Mr. Ley chose to move toward each other. Both chose to view the world through their electronic devices. By doing so they limited their field of vision and reaction time. I do not believe that standing up under these circumstances involved a substantial unjustified risk of harm. The resulting collision, under the available facts, is not the product of reckless behavior under a proof beyond a reasonable doubt standard.

For the above-described reasons, RCSAO would not file a criminal assault charge based on the available information.

If you wish to discuss this matter further, please do not hesitate to contact me.

By: 
Ian C. Sullivan
Acting State's Attorney

Cc: Chief Brian Kilcullen
Rutland City Police Department

Chairman Sean Sargent
Rutland City Police Commission

³ Some actions convey the intentionality of an assault. For example, clenching one's hand to form a fist and throwing a punch is strong circumstantial evidence of an intent to assault and cause injury. Standing up is not an inherently assaultive action.