

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

ALISSA N. SPARROW,

Respondent.

No. 14-1769 PO

DECISION

Alissa N. Sparrow is subject to discipline because she committed several criminal offenses. Also, on our own motion, we correct the caption of this case.

Procedure

On November 10, 2014, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Sparrow. On November 26, 2014, Sparrow was served with the complaint and our notice of complaint/notice of hearing by certified mail. She did not file an answer. In his complaint, the Director misspelled Sparrow’s first name as “Allissa.” Due to the Director’s error, we opened the case with the same misspelling of Sparrow’s first name. Based on Sparrow’s signature on her certified mail receipt of the complaint, on our own motion, we correct the caption of this case.

On December 30, 2014, the Director served his first request for admissions on Sparrow, to which she provided no answers. On March 3, 2015, the Director filed a motion for summary decision. We gave Sparrow until March 19, 2015, to respond, but she did not respond.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.¹ Parties may establish facts, or raise a dispute as to such facts, by admissible evidence.² Sparrow did not respond to the motion for summary decision and therefore did not raise any issue as to the facts stated by the Director in the motion.³

To establish facts in support of summary decision, the Director relies on his request for admissions and Sparrow's failure to respond to them. Under the law, a respondent's failure to answer a request for admissions results in the admission of each matter contained therein.⁴ The matters admitted under Rule 59.01 bind the party to whom the requests were addressed and eliminate the need for further proof of the matters admitted.⁵ Such deemed admissions can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law."⁶ That rule applies to all parties, including those acting *pro se*.⁷

Accordingly, the following findings of fact are undisputed.

¹ 1 CSR 15-3.446(6)(A). All references to CSR are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² 1 CSR 15-3.446(6)(B).

³ *Id.*

⁴ Missouri Supreme Court Rule 59.01(a). Section 536.073 and our Regulation 1 CSR 15-3.420(1) apply Rule 59.01 to this case. Statutory references are to RSMo 2000 unless otherwise noted.

⁵ *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985), *quoted in Dynamic Computer Solutions, Inc. v. Midwest Marketing Ins. Agency*, 91 S.W.3d 708, 715 (Mo. App. W.D. 2002).

⁶ *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986).

⁷ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983); *see Welty v. State Bd. of Chiropractic Examiners*, 759 S.W.2d 295, 299 (Mo. App. W.D. 1988) (applying the rule to a pro se party in a proceeding before this Commission).

Findings of Fact

1. Sparrow holds a peace officer license issued by the Director that was current and active at all relevant times.
2. On February 2, 2013, Sparrow threw an unopened can of beer at another woman, striking the victim in the arm.
3. On May 9, 2013, Sparrow and others were sitting on a public bench and later moved to a location in front of the Post Office in Canton, Missouri.
4. The group was loudly arguing and using profanity, and when asked by a police officer to be quiet, failed to follow the instruction.
5. Also on May 9, 2013, Sparrow unlawfully handled a loaded firearm while intoxicated on four separate occasions.
6. On May 9, 2013 and July 6, 2013, Sparrow knowingly possessed a firearm while intoxicated.
7. On March 3, 2014, Sparrow entered a plea of guilty to unlawful use of a firearm by an intoxicated person for the incident that occurred on July 6, 2013, and she was placed on supervised probation for one year.
8. On April 4, 2014, Sparrow mishandled a firearm while intoxicated and discharged it, sustaining a gunshot wound to her right foot.
9. On May 18, 2014, Sparrow mishandled a firearm while intoxicated and discharged it, sustaining a gunshot wound to her left shoulder.
10. Both shooting incidents, on April 4, 2014 and May 18, 2014, took place at Sparrow's apartment complex, which was occupied by her and other residents at the time.

Conclusions of Law

We have jurisdiction to hear the Director's complaint.⁸ The Director has the burden of proving by a preponderance of the evidence that Sparrow has committed an act for which the law allows discipline.⁹

The Director argues that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Section 556.016 defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a **"crime"**. Crimes are classified as felonies and misdemeanors.

By not responding to the request for admissions, Sparrow admitted certain facts about her conduct and that those facts authorize discipline of her license. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.¹⁰ Therefore, we independently assess whether the facts admitted and established by the admissible certified court records allow discipline under the law cited. The Director has based his complaint on the alleged commission of three criminal offenses by Sparrow, occurring on five separate occasions.

First, the Director argues that Sparrow committed the crime of assault in the third degree in violation of § 565.070, which provides:

⁸ Section 590.080.2, RSMo Supp. 2013.

⁹ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

¹⁰ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988).

1. A person commits the crime of assault in the third degree if:

* * *

(5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative[.]

2. Except as provided in subsections 3 and 4 of this section, assault in the third degree is a class A misdemeanor.

We agree that the admitted facts of the incident on February 2, 2013 in which Sparrow hurled a full can of beer at another woman and struck her satisfy the elements of a Class A misdemeanor of assault in the third degree.

Second, the Director argues Sparrow committed the offense of peace disturbance in violation of § 574.010,¹¹ which states:

1. A person commits the crime of peace disturbance if:

(1) He unreasonably and knowingly disturbs or alarms another person or persons by:

(a) Loud noise; or

(b) Offensive language addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient; or

(c) Threatening to commit a felonious act against another person under circumstances which are likely to cause a reasonable person to fear that such a threat may be carried out; or

(d) Fighting; or

(e) Creating a noxious or offensive odor[.]

¹¹ The Director erroneously indicated in the complaint that peace disturbance was a violation of § 570.010; however, he did correctly list all elements of the crime as codified under § 574.010. Given that Sparrow has not responded so as to raise any issue regarding the facts or the law, we find it to be a harmless error under these circumstances because Sparrow was on notice of the correct charge.

* * *

2. Peace disturbance is a class B misdemeanor[.]

We agree that the admitted fact that she threw a beer can at another woman constituted a peace disturbance, a proposition admitted by Sparrow when she failed to answer the request for admissions, and we agree that engaging in loud fights with cursing and refusing an officer's request to be quiet constituted the crime of peace disturbance on May 9, 2013.

Third, the Director contends that Sparrow repeatedly committed the criminal offense of unlawful use of a weapon in violation of § 571.030, which states:

1. A person commits the crime of unlawful use of weapons if he or she knowingly:

* * *

(3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft or motor vehicle as defined in section 302.010, RSMo, or any building or structure used for the assembling of people; [or]¹²

* * *

(5) Has a firearm or projectile weapon readily capable of lethal use on his or her person, while he or she is intoxicated, and handles or otherwise uses such firearm or projectile weapon in either a negligent or unlawful manner or discharges such firearm or projectile weapon unless acting in self-defense[.]

* * *

8. [7.]¹³ Unlawful use of weapons is a class D felony unless committed pursuant to subdivision (6), (7), or (8) of subsection 1 of this section, in which cases it is a class B misdemeanor, or subdivision (5) or (10) of subsection 1 of this section, in which case it is a class A misdemeanor if the firearm is unloaded and a class D felony if the firearm is loaded, or subdivision (9) of subsection 1 of this section, in which case it is a class B felony, except that if the violation of subdivision (9) of subsection 1 of this

¹² RSMo Supp. 2013. Effective August 28, 2013, this subsection was amended to add the word "or." In all other respects, the provision was identical at all times relevant herein.

¹³ *Id.* Effective August 28, 2013, this section was renumbered from 7 to 8. In all other respects, the provision was identical at all times relevant herein.

section results in injury or death to another person, it is a class A felony[.]

In failing to respond to the complaint, the request for admissions and the motion for summary decision, Sparrow has admitted to repeated incidents of mishandling a firearm while intoxicated. She admitted doing so on May 9, 2013 and July 6, 2013. The second of these resulted in a felony charge, and Sparrow's eventual plea of guilty to a misdemeanor crime of unlawful use of a weapon. The last two incidents admitted by Sparrow took place on April 4, 2014 and May 18, 2014 and she was shot as a result of both of them. Sparrow has left us no choice but to find she committed these four offenses.

Sparrow is subject to discipline under § 590.080.1(2) for committing the criminal offenses of third degree assault, peace disturbance, and unlawful use of a weapon.

Summary

There is cause to discipline Sparrow's license under § 590.080.1(2). We cancel the hearing.

SO ORDERED on April 21, 2015.

\s\ Sreenivasa Rao Dandamudi _____
SREENIVASA RAO DANDAMUDI
Commissioner