

LOS ANGELES POLICE COMMISSION

Review Of Christopher Dorner's Termination



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTUAL ANALYSIS1

 A. Department’s Reliance on Witness Accounts of the Arrest.....1

 B. The Department’s Theory Regarding Dorner’s Motive for Making False Assertions2

 C. Unresolved Issues Regarding the Training Officer’s Credibility3

 D. The Board of Rights Decision and Dorner’s Credibility3

III. ANALYSIS OF THE PROCESS4

IV. CONCLUSION4

**OFFICE OF THE INSPECTOR GENERAL
REVIEW OF
CHRISTOPHER DORNER'S TERMINATION**

I. Introduction

The Board of Police Commissioners requested the Office of Inspector General (OIG) to review the Los Angeles Police Department's (Department) assessment of former Los Angeles Police Officer Christopher Dorner's Board of Rights hearing and his resulting termination from the Department and to determine whether the process presented any procedural or due process concerns that affected the outcome of the hearing.

In order to perform this examination, the OIG requested and reviewed all files, documents, and transcripts related to this case. Specifically, the OIG reviewed: 1) all files involving Dorner as a complainant, witness, or subject of an investigation; and 2) all files, transcripts, and evidence related to Dorner's Board of Rights hearing.

II. Factual Analysis

On August 10, 2007, Dorner alleged that his training officer intentionally kicked an unarmed man in the shoulder and head during an arrest that occurred on July 28, 2007. As a result of conducting the subsequent misconduct investigation, the Department believed that Dorner's allegation was falsely made and initiated a personnel complaint against Dorner.

After the investigation was completed, the Chief of Police determined that Dorner made a false allegation against the training officer and referred Dorner to a Board of Rights for termination. On January 2, 2009, a Board of Rights determined that Dorner had made a false allegation against another officer and required his termination from the Department.

In 2013, the Department examined the Board of Rights process to determine whether Dorner's termination was justified. In that review, the Department examined the records related to this incident. Although the OIG ultimately concurs with the Department's conclusions in this matter, the OIG found the following issues with Board of Rights proceedings:

A. Department's Reliance on Witness Accounts of the Arrest

Dorner claimed that he and his training officer were outside a hotel attempting to control a combative suspect when they ended up in a low planter containing bushes. According to Dorner, while they were in the planter attempting to secure the suspect's second hand and arm for handcuffing, the training officer kicked the suspect. The training officer agreed that she fully entered the planter to assist Dorner, but insisted that no such kicks occurred.

In its review, the Department indicates that there were four witnesses that saw the entire episode and testified that they never saw the training officer kick the suspect. After reviewing the files and transcripts from the Board of Rights proceedings, the OIG believes that none of these

witnesses saw the entire episode and that they may not have seen the relevant portions of the incident in the planter.

Three witnesses to this incident were hotel employees who were at least fifteen feet from the incident. These three witnesses recalled a struggle between the officers and the suspect near the planter. These witnesses, however, never saw the training officer fully enter into the planter and therefore they were unable to offer testimony about what actions, if any, the training officer took while she was in the planter.

The remaining witness was a police officer from another agency. This officer stated that he arrived on the scene only moments before Dorner and his training officer were able to secure the suspect with handcuffs. This police officer stated that he did not see the training officer kick the suspect during this incident. Like the hotel employees, this officer only witnessed a portion of the incident and therefore could not conclusively prove whether or not any kicking occurred.

The OIG notes that, even without these witnesses to support the training officer's position, there appears to be little to no corroborating evidence that any kicking actually occurred. Notwithstanding Dorner's accusation, the suspect who allegedly suffered the kicks was unable to articulate whether he was kicked and there was no forensic or other evidence to demonstrate that any kicking occurred.

B. The Department's Theory Regarding Dorner's Motive for Making False Assertions

The Department's report indicates that Dorner's motive for fabricating his allegations against the training officer stemmed from an unsatisfactory performance review that Dorner was to receive from his training officer. Because Dorner was on probationary status as an officer, such a review would likely have resulted in his termination.

In its review, the Department states that the training officer had advised Dorner of this potential rating, that several witnesses were aware that this adverse rating would likely occur, and that Dorner himself was aware that such a rating would result in his termination. The OIG notes the following inconsistencies in the record:

The training officer testified that Dorner's work was substandard and that she warned him that he would be receiving an unsatisfactory performance review in the future. The training officer testified, however, that she told no other person of her intent to adversely rate Dorner. She acknowledged that her supervisor would have wanted to know about any unsatisfactory ratings on a probationary officer, but she did not tell her supervisor anything about her intended action.

One of Dorner's watch commanders also testified during the Board of Rights hearing. The watch commander had reviewed the training officer's evaluations of Dorner and believed he was progressing acceptably. In fact, the watch commander did not have any information that would indicate that Dorner's performance was unsatisfactory.

The OIG's review of Dorner's performance rating sheets, which were offered as evidence at the Board of Rights, did not reveal any substantial problems or concerns with Dorner's performance nor did the ratings corroborate the training officer's testimony about Dorner's progress.

Dorner testified that he was aware that unsatisfactory ratings could affect his probationary status. Although Dorner was never specifically asked whether the training officer threatened him with an unsatisfactory rating, his testimony indicated that he was not concerned about receiving such a rating. He testified that he occasionally received "needs improvement" ratings from his training officers on particular areas, but that the bulk of his performance reviews were favorable.

In its review, the Department indicates that there were witnesses who had knowledge of the training officer's intent to adversely rate. These witnesses were not presented during the Board of Rights hearing and more importantly, their testimony would potentially have conflicted with the training officer's statement that she told only Dorner about the impending adverse rating.

C. Unresolved Issues Regarding the Training Officer's Credibility

Dorner accused the training officer of writing the portion of the arrest report that discussed the use of force and specifically omitted any reference to kicking the suspect. During the complaint investigation, the training officer denied writing any portion of the arrest report. At the Board of Rights hearing, however, the training officer testified that she did sit at a computer and edit portions of the report because Dorner failed to understand how important it was to be very "specific and detailed" when recounting each and every action during the reported use of force. The training officer was never questioned during the Board of Rights about the potential disparity between her initial statement during the complaint investigation and her later testimony during the hearing.

In the Use of Force portion of the arrest report, the training officer reported that she approached the arrestee in the planter during the struggle and took control of the arrestee's "head and neck." However, in her subsequent statements during the misconduct investigation and at the Board of Rights, the training officer said that she approached the arrestee to gain control of his arm, with no mention at all of the head and neck. The training officer was never asked during the Board of Rights to address which account of her actions was accurate, and why the accounts differed.

D. The Board of Rights Decision and Dorner's Credibility

There appear to be no percipient witnesses or physical evidence to corroborate Dorner's accusation that the training officer kicked the suspect in the shoulder and head during the arrest. Without such evidence, the determination of whether the suspect was kicked ultimately rested on whether the Board of Rights found Dorner or his training officer to be more credible. After reviewing the complaint investigation and the Board of Rights transcripts, the OIG believes that Dorner's credibility was severely compromised.

The Department identifies five opportunities that Dorner had to report the kicks before he finally did so on August 10, 2007. According to the Department's review, when questioned at the Board of Rights regarding why he failed to report at any of these opportunities, Dorner offered at

least seven different reasons for his non-reporting. The OIG concurs with the Department's opinion that Dorner's inability to clearly and consistently articulate why he failed to promptly report the kicks damaged his credibility.

Also, in giving reasons for not reporting, Dorner claimed that several of his supervisory and management officers had personal relationships with his training officer. Dorner said he feared that those personal relationships would lead to retaliation against him if he reported the kicks. During the Board of Rights, Dorner offered no evidence to support his claims of such relationships, nor any direct or circumstantial evidence to provide a basis for his fear.

III. Analysis of the Process

As previously discussed, the OIG reviewed all the documents, records, and transcripts related to Dorner's Board of Rights hearing. In examining the record, the OIG noted that there were no significant issues with the process. The OIG found no evidence to suggest that the Department did not provide all relevant and potentially exculpatory evidence to Dorner and his attorney. Dorner and his attorney were given every opportunity to present evidence and cross-examine witnesses. Further, Dorner was afforded the opportunity to present his entire case to the Department and then have an outside entity, namely the court system, review the matter for fairness.

Finally, the OIG did not find any evidence suggesting that the Department's investigation of Dorner's allegations against the training officer or the decision to refer to matter for a Board of Rights hearing were motivated or affected by racial bias. Similarly, there is no evidence of racial bias in the Board of Rights' proceedings or decisions in this case.

IV. Conclusion

Dorner appealed his termination to the Superior and Appellate Court, both of whom upheld the termination. The Superior Court ruled that the evidence presented at the Board of Rights failed to prove whether or not the alleged kicks occurred. Further, the Court ruled that the determination ultimately rested on whether the Board of Rights found Dorner or his training officer to be more credible. The Court said the determination that Dorner was not credible was properly within the Board of Rights' purview.

The OIG agrees with the Superior Court that the witness testimony and physical evidence failed to prove whether or not the training officer kicked the arrestee, and that the ultimate finding depended upon weighing the credibility of the training officer and Dorner. The OIG further agrees with the Superior Court that based upon the information developed in the Board of Rights, the Board of Rights' findings were not improper.

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