

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

1999 N. AMIDON, SUITE 350 • WICHITA, KANSAS 67203
Tel (316) 832-9906 • Fax (316) 832-9679

In the Matter of)	
)	
Raymond Pickering)	Case No. 2018-0102
Certification No. 29981)	
)	

ORDER

Now, on this 31st day of July 2020 the above-referenced matter comes for consideration by the Kansas Commission on Peace Officers' Standards and Training (the Commission). Pursuant to the Kansas Administrative Procedure Act, the Commission delegated its authority as the Presiding Officer to the Hearing Panel. The Hearing Panel is comprised of the following Commissioners: Herman Jones, Superintendent of the Kansas Highway Patrol; Kirk D. Thompson, Director of the Kansas Bureau of Investigation, and Kelly Herzet, Sheriff of Butler County Sheriff's Office.

On August 3, 2019, the Commission suspended the law enforcement certification issued to Raymond Picking for one year. The suspension was based on the Hearing Panel's conclusion that his conduct violated K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(a)(29) (conduct constituted the misdemeanor crime of criminal trespass). Michelle Meier, the Commission's litigation counsel, advised the Hearing Panel that the one-year suspension will expire on August 3, 2020, and that the Commission has not received any new allegations concerning Mr. Pickering. Therefore, Ms. Meier requests an order lifting the suspension and reinstating Mr. Pickering's law enforcement certification effective August 3, 2020. Mr. Pickering concurs with her request.

Based upon the above, the suspension of the law enforcement certification issued to Raymond Pickering will be lifted and Raymond Pickering's certification as a law enforcement officer will be reinstated effective August 3, 2020.

IT IS SO ORDERED.

Kansas Commission on Peace Officers'
Standards and Training



Kelly Herzet, Commissioner

NOTICE OF ADMINISTRATIVE RELIEF

The above Order is a final order. Pursuant to K.S.A. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

The person who may receive service of a petition for reconsideration or a petition for stay of effectiveness, if applicable, on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for judicial review on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of August 2020, a copy of the above Order was deposited in the United States mail, first-class postage prepaid, and addressed to: Raymond Pickering [REDACTED]

I further certify that on the same day a copy of the above Order was personally delivered to:

Michelle R. Meier
Litigation Counsel
Kansas Commission on Peace
Officers' Standards and Training
1999 N. Amidon, Suite 350
Wichita, KS 67203



Staff, Kansas Commission on Peace Officers'
Standards and Training

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In the Matter of)	
)	
Raymond Pickering)	Case No. 2018-0102
Certification No. 29981)	
)	

ORDER

Now, on this 24th day of May 2019 the above-referenced matter comes for hearing by the Kansas Commission on Peace Officers' Standards and Training (the Commission). Pursuant to the Kansas Administrative Procedure Act, the Commission has delegated its authority to serve as the Presiding Officer in the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Richard Powell, Undersheriff of Sedgwick County Sheriff's Office; Herman Jones, Sheriff of Shawnee County Sheriff's Office; and Kirk D. Thompson, Director of the Kansas Bureau of Investigation.

Raymond Pickering appeared in person, pro se. The Commission was represented by its litigation counsel, Special Assistant Attorney General Michelle Meier.

Based upon its records and the evidence presented at the hearing, the Commission makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Commission granted a full-time law enforcement certification to Raymond Pickering (Pickering) on September 1, 2017. He was employed as a full-time law enforcement officer with the Topeka Police Department (TPD) until December 11, 2017.

2. On February 6, 2019, the Commission's Investigative Committee served Pickering with a Summary Order of Revocation. The Investigative Committee revoked Pickering's certification as a law enforcement officer after concluding he had committed several violations of the Kansas Law Enforcement Training Act (KLETA). Specifically, the Investigative Committee found that on November 13 and 15, 2017, Pickering had violated K.S.A. 74-5616(b)(1) (failing to meet and maintain the certification requirement of good moral character sufficient to warrant the public trust) and K.S.A. 74-5616(b)(5) as defined in K.A.R. 106-2-2a(a)(4), (29), (39), and (50) (engaging in conduct which, if charged as a crime, would constitute the misdemeanor crimes of criminal restraint, criminal trespass,

intimidation of a witness of victim, and disorderly conduct).

3. Pickering requested a hearing on the Summary Proceeding Order. The hearing was scheduled for May 24, 2019. Pickering appeared pro se. As set forth below, both parties presented evidence by witness testimony and Exhibits 1 through 12.

4. Pickering and his wife, Elizabeth, were experiencing marital issues and Elizabeth and their two children went to stay with Elizabeth's mother, Jeanie Glatts (Glatts). On November 12, 2017, at about 1:00 p.m., Pickering went to Glatts' residence to talk to Elizabeth. Glatts told Pickering that Elizabeth was not there and he could not be there without Elizabeth's written consent, such as in a text. When Pickering attempted to enter the residence, Glatts told him to leave and she would call the police if he came back. Pickering commented he would respond if she called the police and left the residence. Prior to this incident, Pickering was welcome at Glatts' residence.

5. On November 13, 2017, Pickering sent to Elizabeth the following texts.

I talked with my parents tonight and I learned what I need to do. Right now I just want kids['] schedules worked out between just us in person and picking them up.

However, this isn't just your way or your mom[']s way[.] I'm the father of them and I have every right to have schedules worked out that we both can agree on. You don't just make up the schedule, we both have to agree on it because my work hours change.

In reference to her sarcastic remark she gave me yesterday about calling the police? Um . . . I am the police. . . . : P

Oh come on no reply to that? Lol

Immediately below the text was picture of Pickering in his TPD uniform. The picture was followed by the message: "I can't be like this to your mom? 'You called who on me?' Lmao."

6. Elizabeth showed the above text messages and picture to Glatts. Glatts felt threatened and wanted to call the police, but Elizabeth and her foster brother persuaded her not to do so.

7. Later that day Elizabeth was returning to Glatts' residence after purchasing a mattress. She turned into the alley so that she could park behind Glatts' residence. Elizabeth was driving southbound when she saw Pickering's northbound vehicle in the alley. Because the alley was narrow, Elizabeth moved her vehicle onto a backyard adjacent to the alley so that Pickering could drive around her. Pickering stopped his vehicle next to Elizabeth's vehicle. Elizabeth's vehicle was positioned about one foot from Pickering's vehicle. Pickering wanted to get out of the vehicles and talk but Elizabeth declined. Elizabeth locked her doors and rolled her window down because she did not want "a junkie

to 'jump her' in the alley" and she did not know Pickering's mental state. She spoke to Pickering through the window.

8. Elizabeth told Pickering she was not comfortable talking in her vehicle during the night because someone could come and take their 15-month-old son who was in the backseat of her vehicle. Elizabeth initially believed it would take only three or four minutes to talk with Pickering. She told Pickering she was not comfortable being in someone's backyard and she would talk to him after she got inside. Raymond responded he wanted to talk there. After talking with him for about ten minutes, Elizabeth told Pickering she wanted to go, but he replied he still had questions for her. Pickering requested two or three more minutes and she agreed, but asked him what else he had to say that had not already been said. Elizabeth told him she wanted to go and get the mattress inside. Pickering again stated he wanted to talk and asked for two more minutes. Elizabeth said she had already given him more time and asked him to let her go. Pickering responded, "Okay, as long as you promise to call me, I'll let you go ahead and go." She agreed and Pickering left. Upon returning home, Elizabeth became upset as the encounter was unnerving.

9. On November 15, 2017, Pickering telephoned Elizabeth. When she did not answer, he went to Glatts' residence. Elizabeth was there but Glatts told her to leave because Glatts was afraid Pickering might harm Elizabeth if he became upset. Elizabeth went to her vehicle. Glatts spoke with Pickering through surveillance equipment on her porch. Glatts told Pickering he could not come in. Pickering said ok and asked if he could talk with Elizabeth. Glatts told him Elizabeth did not want to talk and asked him to leave.

10. Pickering then asked Glatts if he could talk with her for a couple of minutes. Glatts agreed but told him she was not coming outside. He then asked if Elizabeth was there and if he could speak to her. Glatts said Elizabeth was there but he could not talk to her. He asked if he could talk to someone in person. Glatts told him he could not and asked him to leave. She explained others were in the house and asked him to leave. Pickering did not leave and he and Glatts began a conversation. Pickering stated he wanted to see his kids and wanted to know what was going on. Glatts responded Elizabeth got upset when anyone asked what was going on and he should text Elizabeth. Glatts told Pickering to leave Elizabeth alone. Pickering responded that did not make sense and left the porch. Glatts had called her foster son and asked him to come over. When he arrived, he spoke with Pickering. Glatts had also called 911, but Pickering left before an officer arrived.

11. Pickering was at Glatts' residence for approximately eleven minutes. As he spoke with Glatts, Pickering did not use profanity, resort to name calling, raise his voice, make verbal threats, or engage in threatening gestures. Most of the time he had his hands in pockets, sat on a bench on the porch, or walked around in front of the porch. No gun or weapon was visible. Pickering remained calm and polite while he was at Glatts' residence.

12. Sergeant Scott Scurlock (Scurlock) with the TPD responded to Glatts' call. He spoke with Glatts and reviewed the video recording of Pickering on her porch. Glatts advised she had previously told Pickering not to come the residence without Elizabeth's consent and, in response, he had sent texts to Elizabeth stating he would respond if the police were called.

13. Scurlock also talked with Elizabeth. She told him about the incident in the alley as discussed above. Elizabeth thought it lasted about 15 to 20 minutes. Elizabeth told him Pickering "kind of" forced her into the yard to the west of the alley." She believed she could not get around his vehicle because a pole was behind her vehicle and a tree was in front of her vehicle. She thought if she tried to leave, Pickering would block her car. Elizabeth was not comfortable talking in the alley because she felt someone could come and take her son from her. When Scurlock asked if she was scared of someone coming to her vehicle or Pickering, Elizabeth said both. Elizabeth knew Pickering was trying to deal with the stress and had a gun either on him or in the back of the car. She did not want her mother to hear a "bang" and come outside with her other son. She was also concerned about her son in her car if anything happened. Toward the end of the interview, Elizabeth became upset.

14. Scurlock later talked to Pickering. Pickering acknowledged Glatts had told him not to come to her residence unless Elizabeth agreed he could be there. He told Scurlock the texts were a joke. Pickering admitted he later returned to Glatts' residence and was told to leave but he did not do so.

15. When asked about the incident in the alley, Pickering stated Elizabeth told him she wanted to leave and he said he was not going to hold her up but wanted to talk to her. He estimated they were in the alley about 10 to 15 minutes. When asked if Elizabeth had enough room to get around him, Pickering thought about it and stated, "She probably didn't, I should have moved." He acknowledged it would have been difficult for Elizabeth to move her car, but he never told Elizabeth she was being held nor did he try to do that. Scurlock advised him that Elizabeth believed she was trapped because he kept asking for two more minutes to talk. Pickering acknowledged that it was a tight fit and he could see how Elizabeth could have felt trapped. Scurlock asked Pickering if he made any requirements to Elizabeth before he left. Pickering said no, but then stated he had asked Elizabeth to call him.

16. A certified copy of the Journal Entry filed in the District Court of Shawnee County, Kansas, was admitted into evidence. It showed on May 18, 2018, Pickering entered a plea of no contest to misdemeanor charges of criminal trespass and disorderly conduct. The misdemeanor charges of criminal restraint and intimidation of a witness were dismissed.

17. At the hearing in this matter, Elizabeth testified she went to live with her mother because she and Pickering were having marital issues. She asked Pickering not to involve their families, but he contacted both families. She asked him to give her space, but he kept contacting her. When they were in the alley, she told Pickering several times she wanted to leave and talk later but he kept talking to her. If they had been on better terms, she would have brushed it off but she thought he was threatening. Elizabeth and Pickering have a divorce case pending.

18. Glatts also testified at the hearing. After Elizabeth showed her Pickering's texts, Glatts felt threatened and got out her gun, but did not load it. Elizabeth called her when she was stopped in the alley. Elizabeth said she was scared because Pickering had her blocked in the alley. Glatts got her grandson and went to the alley. When Pickering

came to her house again, Glatts saw him on the video surveillance. Elizabeth did not want to talk to him. Glatts told Pickering to leave several times but he wanted to see Elizabeth. Glatts was afraid of Pickering because she knew he had gotten off work and had a gun.

19. Michael Oliver (Oliver) is an Investigator for the Commission. The TPD notified the Commission that Pickering's employment had been terminated due to a pending criminal case against Pickering. An investigation was opened and assigned to him. After the criminal case had concluded, Oliver interviewed Pickering. Pickering stated he was concerned about the situation with Elizabeth and their children. He acknowledged that he had been told not to go to Glatts' residence unless he had prior consent. Pickering also acknowledged he went to Glatts' residence on November 15 and remained on the porch after being told to leave. Regarding the incident in the alley, Pickering said there was sufficient room for Elizabeth to move her vehicle, which was inconsistent with his statement to Scurlock. Oliver also obtained Google images of the alley and a screenshot taken from Scurlock's vehicle at the location in the alley. Oliver believed these images showed Elizabeth was blocked due to the obstructions behind and in front of her vehicle and Pickering's vehicle to the side.

20. Oliver believed Pickering had committed criminal trespass on November 15 because he refused to leave Glatts' premises after being repeatedly told to do so. Oliver believed Pickering had committed criminal restraint on November 13 because Elizabeth was trapped in her vehicle as there was not enough room to get around Pickering's vehicle in the alley. Oliver believed Pickering committed criminal intimidation of a witness because Pickering continually insisted that Elizabeth talk to him, badgered her for an agreement, and would not give her time to make a decision. The texts and photograph of Pickering in his uniform factored into his decision about intimidation of a witness.

21. Pickering testified at the hearing. He explained Elizabeth began an affair while he was attending the law enforcement training academy. This caused him to have trust issues and make poor decisions. He did not think Glatts was serious about calling the police when he was at her residence on November 12. Pickering sent the texts and photograph of himself to Elizabeth as a joke. Elizabeth had told him Glatts would not call the police. Pickering understood he was wrong on November 15 for not leaving Glatts' residence when she told him to leave. He should not have persisted in asking to talk with Elizabeth. He was upset because Elizabeth had not been cooperating with visitation or wanting to talk about their marital issues. Since these incidents, Pickering now has scheduled visitation with his children and works as a correction officer in Kansas City.

Conclusions of Law

22. Administrative proceedings to suspend or revoke the certification of a law enforcement officer are conducted pursuant to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501, *et seq.* K.S.A. 74-5616(c). Under the KAPA, the Commission's Investigative Committee issued a Summary Order of Revocation that concluded Pickering had committed several violations of the KLETA and revoked his law enforcement officer certification. Pickering requested a hearing on the order. The Commission has jurisdiction over Pickering and this matter.

Conduct Constituting a Misdemeanor Crime

23. The Commission is authorized to suspend, condition, or revoke the certification of a law enforcement officer who engages in conduct which, if charged as a crime, would constitute a misdemeanor crime that reflects on the honesty, trustworthiness, integrity, or competence of a law enforcement officer as defined by the Commission in a regulation. K.S.A. 74-5616(b)(5). Such criminal conduct is defined in K.A.R. 106-2-2a. A certified copy of the "journal entry documenting conviction of a misdemeanor crime is prima facie evidence of having engaged in such conduct." K.A.R. 106-2-2a(c).

Criminal Trespass

24. Another misdemeanor identified as conduct that, if charged as a crime, would reflect on a law enforcement officer's honesty, trustworthiness, integrity, or competence is criminal trespass as defined in K.S.A. 2011 Supp. 21-5808 and amendments thereto. K.A.R. 106-2-2a(a)(29). In pertinent part, the definition of criminal trespass means entering or remaining upon any structure "by a person who knows such person is not authorized or privileged to do so" and "such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person." K.S.A. 2018 Supp. 21-5408(a)(1)(A).

25. On November 12, 2017, Pickering went to Glatts' residence. She told Pickering not to return unless Elizabeth had told her in writing Pickering could be there. Pickering returned to Glatts' residence on November 15, 2017, because Elizabeth had not returned his phone call. Glatts told him Elizabeth was not there and he was to leave her property. At this point, Pickering knew he was not authorized to be there. Rather than heed this warning, Pickering questioned Glatts. After answering his questions, Glatts told him to leave again. Pickering did not leave and continued to talk to Glatts until he apparently realized his efforts were futile and left.

26. The certified journal entry is also prima facie evidence of Pickering having engaged in conduct that constituted criminal trespass. More important, at the hearing, Pickering admitted he should have left Glatts' residence when told to do so instead of persistently trying to talk to Elizabeth.

27. Based on the totality of the evidence, the Commission concludes that Pickering's conduct on November 15, 2017, constituted the misdemeanor crime of criminal trespass, thereby violating K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(a)(29).

Disorderly Conduct

28. Disorderly conduct as defined in K.S.A. 2011 Supp. 21-6203 and amendments there is also included as a misdemeanor crime that violates K.S.A. 74-5616(b)(5). K.A.R. 106-2-2a(a)(50). Disorderly conduct is defined, in pertinent part, as a person engaging in:

one or more following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(1) Brawling or fighting;

. . . or

(3) using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others. K.S.A. 2018 Supp. 21-6203(a).

“Fighting words’ means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.” K.S.A. 2018 Supp. 21-6203(c).

29. The Summary Order of Revocation did not specify which conduct on November 13 or 15, 2017, constituted the offense of disorderly conduct. The video recording of Pickering at Glatts’ residence on November 15 did not show Pickering engaged in brawling or fighting, he did not use fighting words, and he did not engage in noisy conduct tending to reasonably arouse alarm, anger, or resentment. During the entirety of the eleven-minute recording, Pickering was calm and polite and did not behave aggressively. Although he was persistent in wanting to talk to Elizabeth, Glatts continued to converse with him and agreed she would talk with him through the intercom. As such, the evidence does not support a determination that Pickering engaged in disorderly conduct on November 15.

30. On November 13, 2017, Pickering spoke with Elizabeth while they were in their vehicles in the alley. Elizabeth never indicated to Scurlock or at the hearing that Pickering engaged in brawling or fighting in the alley. Nor did she describe his conversation as using fighting words or his conduct as being noisy. Although she may have been alarmed during the stop in the alley, it was not caused by Pickering engaging in noisy conduct. As such, the evidence does not support a determination that Pickering engaged in disorderly conduct on November 13.

31. The certified journal entry is prima facie evidence of Pickering having engaged in disorderly conduct. However, the evidence contradicted the conviction of the misdemeanor crime of disorderly conduct. Thus, the certified copy of the conviction of disorderly conduct was not sufficient to show Pickering engaged in such conduct. *See State v. Kriss*, 232 Kan. 301, 305 (1982) (prima facie evidence is evidence, which *if not explained or contradicted*, is sufficient to sustain a judgment in favor of the issue that it supports).

32. Based on the totality of the evidence, the Commission determines that the evidence failed to show Pickering engaged in conduct on either November 13 or 15, 2017, that constituted the crime of disorderly conduct. Thus, the Commission concludes Pickering did not violate K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(a)(50).

Criminal Restraint

33. One of the misdemeanor crimes identified as conduct that, if charged as a crime, would reflect on a law enforcement officer’s honesty, trustworthiness, integrity, or competence is criminal restraint as defined in K.S.A. 2011 Supp. 21-5411 and amendments

thereto. K.A.R. 106-2-2a(a)(4). The definition of criminal restraint is “knowingly and without legal authority restraining another person so as to interfere substantially with such person’s liberty.” K.S.A. 2018 Supp. 21-5411(a).

34. An essential element of every crime in the criminal code is a culpable mental state unless otherwise provided. K.S.A. 2018 Supp. 21-5202(b). “A culpable mental state may be established by proof that the conduct of the accused person was committed ‘intentionally,’ ‘knowingly’ or ‘recklessly.’” K.S.A. 2018 Supp. 21-5202(b).

A person acts ‘knowingly,’ or ‘with knowledge,’ with respect to the nature of such person’s conduct or to circumstances surrounding such person’s conduct when such person is aware of the nature of such person’s conduct or that the circumstances exist. A person acts ‘knowingly,’ or ‘with knowledge,’ with respect to a result of such person’s conduct when such person is aware that such person’s conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as ‘knowingly,’ ‘known,’ or ‘with knowledge’ are general intent crimes. K.S.A. 2018 Supp. 21-5202(i).

35. Criminal restraint is a lesser-included offense of kidnapping. The gravamen of both crimes is the restraint or confinement of the victim. Because kidnapping requires the perpetrator to effect the restraint or confinement by force, threat, or deception with the specific intent to accomplish a particular illegal purpose, it is simply graded higher than criminal restraint. *State v. Ramirez*, 299 Kan. 224, 231 (2014).

36. Again, the Summary Order of Revocation stated on November 13, and 15, 2017, Pickering engaged in conduct that constituted criminal restraint. However, neither of the incidents at Glatts’ residence involved Pickering restraining Glatts or Elizabeth. Thus, the criminal restraint offense is directed at the incident in the alley on November 13, 2017.

37. There was no evidence Pickering was acting in his capacity as an officer with the TPD when he and Elizabeth stopped in the alley. As such, the only question is whether Pickering knowingly restrained Elizabeth so as to interfere substantially with her liberty.

38. Oliver testified Pickering told him there was sufficient room in the alley for Elizabeth to move her vehicle, which was inconsistent with his statement to Scurlock. However, Scurlock’s affidavit, which was admitted into evidence, stated:

I asked [Pickering] if Elizabeth ever stated she wanted to leave. [Pickering] asked, “From the alleyway?” I told him yes. [Pickering] said, that Elizabeth said she was going to go and [Pickering] said he wasn’t going to hold her up. [Pickering] said he just wanted to talk. [Pickering] said they were talking through the windows and never left their vehicles. *I asked [Pickering] if Elizabeth had enough room to get around him. [Pickering] thought about it and said, “She probably didn’t, I should have moved.” [Pickering] said it would have been a tight fit for her to try to move around. [Pickering] said he never*

told Elizabeth that she was being held or never told her that he was blocking her in and that he never tried to do that. [Pickering] said that he was just trying to talk to her and after that he said, "Alright, I'll let you go, and I'll leave, I'm gone."

I asked [Pickering] if he thought Elizabeth would think she was trapped in there. [Pickering] said he didn't think she was and asked if that's what Elizabeth was saying. I told him it was and that Elizabeth had told me that he kept saying he wanted two more minutes. [Pickering] said that he asked for two more minutes and Elizabeth talked for a few more minutes and he left. I asked [Pickering] if he made any requirements of Elizabeth before she left and [Pickering] said no, but quickly changed it to he had asked Elizabeth to please call him. [Pickering] said that he has never demanded anything that he has always just asked.

I again asked [Pickering] if Elizabeth could have felt trapped in the alleyway. [Pickering] said with the alley being a tight fit, that he could see where she could have felt that. (Emphasis added.)

39. The element of whether Pickering *knowingly restrained* Elizabeth is based upon his knowledge at the time of incident, not at a later time. The above interview shows Pickering did not believe Elizabeth was trapped in the alley and he did not realize while they were in the alley that Elizabeth felt she was being restrained or blocked from moving her vehicle. Pickering's statements to Scurlock show Pickering understood this after Scurlock asked him if Elizabeth had room to move her vehicle. Pickering's mental state while they were in the alley was frustration because Elizabeth did not want to talk to him. In short, there was a lack of evidence showing Pickering knew he was substantially restraining Elizabeth's liberty during the time they were in the alley.

40. Additionally, Elizabeth told Scurlock that Pickering "*kind of* forced her into the yard to the west of the alley." (Emphasis added.) She did not elaborate on how he did this; there was no claim he used his vehicle to force her to move to the yard adjacent to the alley or he verbally told her to do so. Rather, the evidence shows the two vehicles met head on and one vehicle had to either back up or move to the side to allow the other vehicle passage. Elizabeth on her own volition chose to move her vehicle without any demand from Pickering. Thus, Pickering did not restrain Elizabeth by making her move her vehicle.

41. Pickering did repeatedly ask Elizabeth to speak with him; and she agreed to do so on at least one occasion. However, Elizabeth never told Scurlock or testified that Pickering made threatening statements to her, raised his voice, used profanity, or engaged in intimidating or threatening behavior to keep her in the alley. Although she told Scurlock she believed Pickering would block her if she attempted to leave, Elizabeth made no attempt to do so and Pickering's statements indicate he did not intend to block her from her leaving. Similarly, no evidence indicated Pickering had a violent or threatening past to support Elizabeth's belief. Thus, it is mere speculation what would have happened had Elizabeth attempted to drive around the pole, tree, or Pickering's vehicle.

42. Both Pickering and Elizabeth agreed the only demand Pickering made was that she agree to call him. This demand was made at the end of their conversation and he left. In short, there was a lack of evidence showing that the incident in the alley constituted criminal restraint, a lesser included offense of kidnapping.

43. The certified journal entry of Pickering's conviction of misdemeanor criminal restraint is prima facie evidence of Pickering having engaged in criminal restraint. But, that prima facie evidence was not sufficient to show Pickering engaged in such conduct when it was contradicted by the evidence presented at the hearing.

44. Based upon the totality of the evidence, the Commission determines the evidence failed to show that Pickering had the requisite culpable mental state to knowingly restrain Elizabeth. The Commission also determines the evidence failed to show Pickering substantially restrained or confined Elizabeth as to interfere substantially with her liberty. Thus, the Commission concludes Pickering did not violate K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(a)(4).

Intimidation of a Witness or Victim

45. One of the misdemeanors identified as conduct that, if charged as a crime, would reflect on a law enforcement officer's honesty, trustworthiness, integrity, or competence is intimidation of a witness or victim as defined in K.S.A. 2011 Supp. 21-5909 and amendments thereto. K.A.R. 106-2-2a(a)(39).

46. The misdemeanor crime of intimidation of a witness or victim is defined, in pertinent part, as:

[P]reventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or

(2) any witness, victim or person acting on behalf of a victim from:

(A) Making any report of the victimization of a victim to any law enforcement officer. K.S.A. 2018 Supp. 21-5909(a).

47. Intent is the highest culpable mental state. K.S.A. 2018 Supp. 21-5202(b)(1). Intent is defined as follows.

A person acts "intentionally," or "with intent," with respect to the nature of such person's conduct or to a result of such person's conduct when it is such person's conscious objective or desire to engage in the conduct or cause the result. All crimes defined in this code in which the mental culpability required

is expressed as “intentionally” or “with intent” are specific intent crimes. A crime may provide that any other culpability requirement is a specific intent. K.S.A. 2018 Supp. 21-5202(h).

48. Because the Summary Order of Revocation stated on November 13 and 15, 2017, Pickering engaged in conduct that constituted intimidation of a witness or victim, the three incidents on those dates are reviewed. Regarding the texts and photograph sent on November 13, 2017, Glatts said she felt threatened after Elizabeth showed them to her. Although Glatts wanted to call the police, it was Elizabeth and her foster brother who dissuaded Glatts’ from doing so, not Pickering. Additionally, Pickering sent the texts and photograph to Elizabeth, not Glatts, and no evidence showed Pickering knew Elizabeth would show the texts and photograph to Glatts or that Glatts would be offended or threatened by them. Pickering claimed he sent the texts and photograph to Elizabeth as a sarcastic joke. Elizabeth never contradicted Pickering’s claim. Thus, the evidence does not show Pickering’s intent was to vex, annoy, harm or injure Glatts or Elizabeth or to thwart or interfere with the orderly administration of justice.

49. Regarding the incident in the alley on November 13, 2017, paragraphs numbered 33 through 44 are incorporated herein. As discussed in those paragraphs, Pickering did not have the lesser culpable mental state of knowingly restraining Elizabeth so as to interfere substantially with her liberty when he stopped his vehicle next to Elizabeth’s vehicle in the alley to talk to her. No evidence was presented about their discussion in the alleyway. As such, it would be speculation to conclude Pickering attempted to prevent or dissuade her with the intent to vex, annoy, harm or injure her or another person or with the intent to thwart or interfere in any manner with the orderly administration of justice. In other words, the evidence failed to show Pickering had the higher culpable mental state of specific intent.

50. Regarding the incident at Glatts’ residence on November 15, 2017, Pickering knew he was not authorized to remain at Glatts’ residence after she told him to leave. After being told to leave, he never tried to persuade or dissuade Glatts from calling the police to report a crime. Rather, he wanted information from Elizabeth about seeing his children and resolving their marital issues because she was ignoring his texts and phone calls. There was no pending litigation or threat of litigation. There was scant, if any evidence, showing Pickering’s intent was to vex, annoy, harm or injure in any way either Glatts or Elizabeth or to thwart or interfere with the orderly administration of justice.

51. Based upon the totality of the evidence, the Commission determines the evidence of the incidents on November 13, and 15, 2017, whether considered separately or collectively, failed to show Pickering prevented or dissuaded or attempted to prevent or dissuade with the requisite culpable mental state to intentionally vex, annoy, harm or injure in any way Glatts or Elizabeth or to intentionally thwart or interfere in any manner with the orderly administration of justice. Thus, the Commission concludes that Pickering did not violate K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(a)(39).

Good Moral Character

52. K.S.A. 74-5616(b)(1) authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who fails to meet and maintain the requirements for certification as set forth in K.S.A. 74-5605 and amendments thereto. One requirement for certification as a law enforcement officer is the person must possess good moral character sufficient to warrant the public trust. K.S.A. 74-5605(b)(5).

53. K.A.R. 16-2-4(a) defines the term "good moral character" to include the following personal traits or qualities:

- (1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6.

The required oath for certification as a law enforcement officer is:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve.
K.A.R. 106-3-6.

54. Any single incident or event is sufficient to show that an officer has failed to maintain good moral character sufficient to warrant the public trust. K.A.R. 106-2-4(b).

55. As discussed above, Pickering's conduct on November 13 and 15, 2017, did not constitute the criminal offenses of disorderly conduct, criminal restraint, intimidation of a witness of victim. However, Pickering's conduct on November 15, 2017, constituted the misdemeanor offense of criminal trespass, thereby violating K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(c). Pickering admitted to Scurlock and at the hearing that he should have left Glatts' residence when she told him to leave. Even though Pickering did not commit criminal restraint, Pickering was able to understand Elizabeth's concern when questioned by Scurlock. Pickering has admitted his wrongdoing and taken responsibility for his conduct in November 2017. Additionally, there was no evidence that he made any false statements to Scurlock during the investigation of the incidents on November 13 and 15, 2017.

56. The Commission determines that Pickering's conduct on November 15, 2017, that constituted the misdemeanor offense of criminal trespass was not sufficient to show he has failed to meet and maintain the certification requirement of good moral character sufficient to warrant the public trust. Although this conduct resulted in a criminal conviction, it does not appear to reflect on the totality of his character.

57. Based upon the totality of the evidence, the Commission concludes that the evidence was not sufficient to show Pickering violated K.S.A. 74-5616(b)(1) by failing to meet and maintain the certification requirement of good moral character sufficient to warrant the public trust as set forth in K.S.A. 74-5605(b)(5).

Sanction

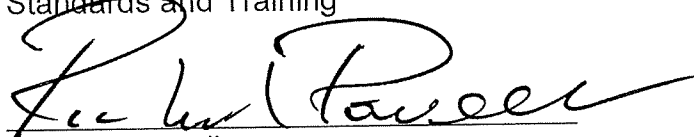
58. The Commission has concluded that the facts show Pickering's conduct on November 15, 2017, constituted the misdemeanor offense of criminal trespass, thereby violating K.S.A. 74-5616(b)(5) as set forth in K.A.R. 106-2-2a(c). The remaining is the sanction to be imposed for this violation. Pickering has not been disciplined before and held his certification for only two and one-half months when the incidents occurred. No further incidents have occurred.

59. All of the incidents in November 2017 resulted from Pickering's frustration in not being able to communicate with Elizabeth about their marriage and children. While talking with Scurlock, Pickering came to realize how Elizabeth may have a different viewpoint about being in the alley and how he erred in not leaving Glatts' residence when told to do so. Pickering acknowledged at the hearing he should have handled his domestic situation better and made wiser decisions. They are now in court proceedings to resolve those issues. He is currently employed but not as a certified law enforcement officer.

60. Based upon the above facts, analysis, and conclusions, the Commission determines that the law enforcement officer certification issued to Raymond Pickering should be suspended for a one-year period. The suspension shall begin thirty (30) days after the date entered in the Certificate of Service below and terminate one (1) year later.

IT IS SO ORDERED.

Kansas Commission on Peace Officers'
Standards and Training



Richard Powell
Commissioner and Chair of Hearing Panel

NOTICE OF ADMINISTRATIVE RELIEF

The above Order is a final order. Pursuant to K.S.A. 2018 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2018 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

The person who may receive service of a petition for reconsideration or a petition for stay of effectiveness, if applicable, on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for judicial review on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of July 2019, a copy of the above Order, Notice of Administrative Relief, an Notice of Judicial Relief were deposited in the United States mail, first-class postage prepaid, and addressed to: Raymond Pickering, [REDACTED]

I further certify that on the same day a copy of the above Order and Notices were personally delivered to:

Michelle R. Meier
Special Assistant Attorney General
Kanas Commission on Peace
Officers' Standards and Training
1999 N. Amidon, Suite 350
Wichita, KS 67203


Staff, Kansas Commission on Peace Officers'
Standards and Training