

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

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**In the Matter of the Appeal of Amy M. Stolowski  
Personnel Order 2015-60**

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Hearing Dates:       November 16, 2015  
                          November 19, 2015  
                          November 24, 2015  
                          December 01, 2015

Hearing Locations:   City Hall

Commissioners:       Marisabel Cabrera  
                          Michael O’Hear  
                          Ann Wilson

Appearances:         Robin A. Pederson, Milwaukee Assistant City Attorney  
                          For the Milwaukee Police Department

Jennifer Hellmer, Cermele & Matthews, S.C.  
For Appellant Amy M. Stolowski

**PROCEDURAL HISTORY**

The Chief of Police, Edward A. Flynn, charged Detective Amy M. Stolowski in Personnel Order 2015-60, dated May 28, 2015, with the following violations of Milwaukee Police Department Rules & Procedures:

1. Core Value 1.00—Competence, referencing Guiding Principle 1.04: Failure to investigate and prepare reports in a prompt and thorough manner.

Detective Stolowski, the Appellant in this matter, filed an appeal with the Milwaukee Fire & Police Commission from the order of the Chief of Police and a hearing was held.

**SUMMARY OF HEARING PROCEEDINGS**

The hearing was conducted on November 16, 19, 24 and December 1, 2015. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Sergeant Thomas Hines, Milwaukee Police Department  
Captain James Shepard, Milwaukee Police Department  
Lieutenant Justin Carloni, Milwaukee Police Department  
Lieutenant Heather Wurth, Milwaukee Police Department  
Detective Jon Charles, Milwaukee Police Department  
Chief Edward Flynn, Milwaukee Police Department

For the Appellant: Officer Michael Driscoll, Milwaukee Police Department  
Officer Jose Viera, Milwaukee Police Department  
Officer Danilo Cardenas, Milwaukee Police Department  
Detective Victor Centeno, Milwaukee Police Department  
Detective Sarah Blomme, Milwaukee Police Department  
Assistant District Attorney Jesica Ballenger, Milwaukee County  
District Attorney's Office  
Detective Amy M. Stolowski, Milwaukee Police Department  
Shaun Lauda, Milwaukee Police Association  
Detective Rodney Gonzales, Milwaukee Police Department

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Ms. Stolowski has been a law enforcement officer with the Milwaukee Police Department for twelve years and was assigned to the Sensitive Crimes Division ("SCD") in October 2006. She was promoted from Police Officer to Detective on January 21, 2014, and was transferred to the North Investigation Division until she was reassigned to the SCD September 2014 to investigate sexual assault and abuse crimes. (Exhibit 3.) As a detective in the SDC, she served as the lead investigator on cases that were assigned to her.
2. On September 2, 2014, Detective Amy Stolowski and Officer Aleia Avant investigated a sexual assault. (Exhibit 4.) DNA evidence was recovered from the scene including a used condom which was submitted to the Wisconsin Regional Crime Laboratory ("WCRL"). (Exhibit 15.)
3. On October 14, 2014, Detective Jon Charles received DNA test results from the WCRL showing two DNA matches for two items of evidence collected during the investigation. (Exhibits 5 and 15.) From the victim's vaginal swabs, a male DNA profile matched to a previously convicted offender (later determined to be a consensual partner, see paragraph 5, *infra*) and from the condom swab, a DNA profile matched to a Mr. Robert Brown. (Id.) At the time of the DNA match, Mr. Brown had no prior record for sexual assaults.
4. Detective Jon Charles forwarded the WCRL results to Detective Stolowski after documenting the information. (Exhibit 15.) Captain Shepard testified that the protocol at the time was to have DNA results routed through a supervisor and hand-delivered person-

to-person to the detective. According to multiple witnesses at the hearing, however, at the time the October 14, 2014 WCRL report was generated, the procedure to notify a detective of a DNA match was to place the report on the detective's desk. There was no method to confirm when a detective in fact became aware of the report. This protocol has since been changed to allow notification electronically.

5. On October 25, 2014, Detective Stolowski filed a supplemental report indicating she received the DNA hit identifying Mr. Brown as a match for the sexual assault. (Exhibit C.) The following day, Detective Stolowski presented the victim with a photo array including Mr. Brown. No visual identification was made. (Id.) Detective Stolowski also collected DNA elimination evidence from the victim's consensual sexual partner, the other DNA match described in WCRL's October 14, 2014 report.
6. On October 29, 2014, Detective Stolowski requested a Temporary Felony Warrant ("TFW") for Mr. Brown and reentered the TFW on November 1, 4 and 7, 2014. (Exhibit 9.) On November 10, 2014, the TFW for Mr. Brown was purged from the system as the retention period had been reached and Detective Stolowski entered a Suspect Alert Card for Mr. Brown. (Exhibit 10.) She testified that thereafter she waited two weeks to reach out to the victim to schedule a charging conference with the District Attorney.
7. Testimony received indicated that Officer Avant filed a supplemental report on December 8, 2014, stating she had contacted the victim at Detective Stolowski's request and per the victim's availability, scheduled a charging conference with the District Attorney on December 11, 2014. (Exhibits 3 and E.)
8. Based upon this record, there does not appear to have been a consistent policy or procedure in place at the point in time at issue, as to when detectives should prepare a case for review with the District Attorney's office. Captain James Shepard, SCD's commanding officer at the time, testified Detective Stolowski should have taken the case to the district attorney for review and issuance of a J-warrant within 24-48 hours of obtaining the DNA match. He stated the reason for this is that when a Stranger Sexual Assault is involved, law enforcement must move quickly because there is a higher risk of further victimization and J-warrants are given priority over all other warrants by the Fugitive Apprehension Unit ("FAU").
9. During his interview with Internal Affairs, Captain Shepard indicated, however, that he would give a detective a week to present a matter to the District Attorney after a DNA match. (Exhibit 3.) Additional members assigned to the SCD differed in their testimony as to what was the expected time period in which to present such a case to the District Attorney for review. Lieutenant Justin Carloni testified that the case should be presented in 7-10 days; Detective Victor Centeno testified it was up to the investigator; and Officer Danilo Cardenas testified that cases are presented at the end of the investigation, which varies case-by-case.
10. Furthermore, according to Officer Jose Viera of the FAU, the unit does not have any priority system regarding different types of warrants. While the record reflects that J-warrants are the gold standard (e.g., it allows extradition across state lines), the FAU

tends to focus on Temporary Felony Wants first because these are “fresher,” meaning that the incident occurred more recently and the suspect may still be in the vicinity not knowing he or she is wanted, and/or it may be possible to find fruits of the crime because the scene is still viable.

11. On December 11, 2014, the case was presented to Assistant District Attorney (ADA) Jesica Ballenger, who charged Mr. Brown with first degree Sexual Assault, Armed Robbery and Kidnapping, and issued a J-warrant. (Exhibit 11.) Mr. Brown was arrested on December 15, 2014, and during an in-custody interview confessed to being the assailant in other sexual assaults that occurred on or after October 14, 2014, the date WCRL reported a DNA match to Mr. Brown in connection with the sexual assault Detective Stolowski was investigating. (Exhibits 12 and 14.)
12. It is significant that ADA Ballenger testified that additional evidence is required even where a DNA match is made in a sexual assault case in order to issue charges. ADA Ballenger explained that the main defense in such cases is that the sex was consensual or that the victim is a prostitute, so that a photo array, elimination DNA, and a statement by the suspect is necessary to counter these defenses. Despite not having Mr. Brown’s statement, ADA Ballenger explained she was able to issue charges against Mr. Brown, presumably as of November 10, 2014, because Detective Stolowski had the DNA match, had performed the photo array, finalized the elimination DNA, and the victim was cooperative. This testimony supported the investigatory procedures that Detective Stolowski followed.

### CONCLUSIONS OF LAW

13. This appeal is governed by the seven just cause standards set forth in Wis. Stat. § 62.50(17)(b). In a disciplinary appeal, our hearing is divided into two phases. In “Phase I”, we determine whether a Department rule has been violated. If we find a rule violation, then we conduct a “Phase II” hearing to determine what discipline to impose.
14. The Commission must find by a preponderance of the evidence that there is just cause to sustain the charges. Preponderance of the evidence means “more likely than not,” rather than just possible. *See, e.g., U.S. v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003). The Department bears the burden of proof as to each of these standards. We conclude that standards one through five (Wis. Stat. § 62.50(17)(b)1-5) are satisfied by a preponderance of the evidence with respect to the charge against Detective Stolowski. We further find that the preponderance of the evidence supports that the “good of the service” requires that Detective Stolowski be suspended without pay for a period not to exceed 20 days. (Wis. Stat. § 62.50(17)(b)6-7).

### PHASE I

15. The first just cause standard asks, “whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct.” It is unclear as to when precisely Detective Stolowski became aware of the DNA match made by the

WRCL on October 14, 2014. Based on Detective Stolowski's own reporting, we do know that she was aware of the DNA match as of October 25, 2014. Thereafter, until November 10, 2014, she continued to investigate and move the case forward according to the Sensitive Crimes Division's practices and what in her experience the District Attorney requires to charge a case. On this record, we do not find that Detective Stolowski knew or should have known that she needed to have taken the matter to the District Attorney's office sooner than November 10, 2014, as the evidence shows she was attempting to follow the strategic prerequisites as set forth by the District Attorney's Office. There is no indication that had a J-warrant been secured earlier in the investigation, Mr. Brown would have been apprehended any sooner, as the record reflects that J-warrants are not necessarily given priority over other warrants.

16. However, after requesting a Suspect Alert Card on November 10, 2014, Detective Stolowski inexplicably waited two weeks before attempting to contact the victim for a charging conference with the District Attorney, despite having already secured all evidentiary items preferred by the District Attorney save for the suspect's confession. Detective Stolowski indicated she was waiting to see if Mr. Brown was apprehended so that she could interview him and attempt to extract a confession. Still, it was unforeseeable as to when Mr. Brown would be arrested and Detective Stolowski could have continued to await Mr. Brown's arrest after a charging conference with the District Attorney.
17. Detective Stolowski also explained that she was assigned additional cases during this time. However, she also testified that it takes an hour more or less to put together the necessary package of documents for the liaison officer to take to the District Attorney for charging. As such, we do find this delay unreasonable and Detective Stolowski should have expected consequences as a result of having unnecessarily stalled movement in an investigation for fourteen consecutive days. Therefore, the first standard is satisfied.
18. The second just cause standard asks, "whether the rule or order the subordinate allegedly violated is reasonable." Guiding Principle 1.04 in relevant part states, "Investigations shall be conducted and reports shall be prepared in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law." We have no trouble concluding that this principle is reasonable. The Sensitive Crimes Division investigates some of the most heinous crimes that may be committed. Prompt and thorough investigations are therefore critical. We conclude that the Department has satisfied the second standard by a preponderance of the evidence.
19. The third just cause standard asks, "whether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order." Sergeant Hines and Lieutenant Wurth testified at length regarding the efforts made to investigate this case. This is also reflected in Exhibits 3 and E. We conclude that the Department has satisfied the third standard by a preponderance of the evidence.

20. The fourth just cause standard asks, “whether the effort was fair and objective.” According to the record, on December 30, 2014, the Internal Affairs Division began an investigation regarding Detective Stolowski and Officer Avant. Subsequently, Captain Shepard sent an email to Sergeant Gutierrez directing him to initiate an internal investigation regarding Detective Stolowski concerning the charging of Mr. Brown.
21. Sergeant Hines testified, and his report states, that he reviewed emails, SharePoint entries, CAD files, incident reports, PI-21 interviews of Sergeant Gutierrez, Detective Stolowski and Officer Avant. He also spoke to Captain Shepard. From the record, we see a thorough investigation and no evidence pointing to any animus directed against Detective Stolowski. We conclude that the Department has satisfied the fourth standard by a preponderance of the evidence.
22. The fifth just cause standard asks, “whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.” Aside from the date Detective Stolowski became aware of the DNA match, the timeline in this case is straight forward and well documented. By Detective Stolowski’s own admission, she did not attempt to contact the victim for a charging conference with the District Attorney until approximately November 24, 2014. We conclude that the Department has satisfied the fifth standard by a preponderance of the evidence.

## PHASE II

23. Having found a rule violation and that the first five just cause standards are satisfied by a preponderance of the evidence, we turn to Phase II and the question of discipline. As stated in Wis. Stat. §62.50(17)(a), and echoed in Section 14 of our Trial Procedures, “If the board or panel determines that the charges are sustained, the board shall at once determine whether the good of the service requires that the accused be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank.” In making this “good of service” decision, we take into account the sixth and seventh just cause standards.
24. The sixth just cause standard asks “whether the Chief is applying the rule or order fairly and without discrimination against the subordinate.” We find that a thorough investigation was undertaken by the Department in this matter and that there is no evidence of animus against Detective Stolowski. The testimony of Sergeant Hines, Lieutenant Wurth and Captain Shepard and the notes on the Discipline Review Summary (Exhibit 20) establish the considerations, both aggravating and mitigating, that were presented for the Chief’s consideration, and there seems nothing unfair or improper about any of them. Furthermore, Chief Flynn testified that when he considered discipline for Detective Stolowski, he decided not to discharge her because her supervisors thought she had value to the Department and could be remediated. Specifically, Chief Flynn testified that he believed that the investigation revealed that Stolowski failed a basic responsibility of being a detective and that an appropriate sanction for that violation was a demotion and not discharge based upon the degree of harm.

25. In evaluating the sixth just cause standard, we may look to “comparables,” that is, the discipline imposed in earlier cases which are similar to the case under review. When other disciplinary examples were provided of officers failing to file reports in a prompt and timely fashion, it was pointed out that the charges were similar, but the offenses were not. Chief Flynn testified that it was his belief that the degree of harm in this case outweighed progressive discipline, and that Stranger Sexual Assaults are very rare. Exs. 21 & L. We conclude that while there are no true comparables for the violation at issue in this case, the sixth just cause standard has been met, although we disagree with the discipline imposed. See paras. 26 and 27, *infra*.
26. The seventh and final just cause standard asks, “whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate’s record of service with the department.” To delay an investigation may be a very serious violation, especially in a case like this one, where the underlying offense (armed stranger rape) was both horrific and likely to be repeated. Indeed, it is possible that Detective Stolowski’s delay in seeking a charging conference with the District Attorney after November 10, 2014, may have allowed an additional rape to occur, although the record was not entirely clear as to whether going to the DA sooner would necessarily have resulted in a quicker arrest of the rapist. One way or another, the real and significant risk of additional, unnecessary victimization makes Detective Stolowski’s inaction a serious violation. We do not, however, believe that the violation warrants a demotion in light of all of the other circumstances of this case. We note that Chief Flynn determined his recommended penalty assuming that Detective Stolowski failed to act on the DNA match as of October 14, 2014. However, the record reflects that after the likely date she became aware of the evidence, October 25, 2014, she immediately took the appropriate steps as a detective and prepared the case for charging. Her delay after November 10, 2014 deserved discipline, but not a demotion.
27. When we balance the serious violation versus good record of service, we do so with an eye to the ultimate question: “whether,” in the words of Wis. Stat. § 62.50(17)(a), “the good of the service requires that the accused be demoted to a lower rank.” We may also look at the member’s character, work record, and the impact of the misconduct on the complainant, department, and community. Detective Stolowski’s work ethic, case-load, and work record does not support a demotion based upon our earlier findings. Significant to our decision is that Detective Stolowski continued working at the SCD after the charges and demotion in this case, and was asked to train other members at SCD. She would not have been entrusted with doing so if she did not have a good record of service and was a competent detective.
28. In sum, we conclude that the seven just causes are satisfied by a preponderance of the evidence. We conclude that Detective Stolowski caused a delay in processing the case after November 10, 2014, and that for the good of the service, she should be suspended without pay for a period not exceeding 20 days for the charge we have sustained.

**DECISION**

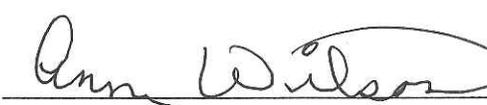
The charge is sustained, but the discipline is modified from demotion to 20 days of suspension without pay.

  
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Commissioner Marisabel Cabrera

3/3/16  
Date

  
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Commissioner Michael O'Hear

3/3/16  
Date

  
\_\_\_\_\_  
Commissioner Ann Wilson

3/3/16  
Date