

**BOARD OF FIRE & POLICE COMMISSIONERS
CITY OF MILWAUKEE**

In the Matter of the Appeal of:

City of Milwaukee Police Officer Michael A. Budziszewski,
Personnel Order 2024-22,

and

DECISION

City of Milwaukee Police Officer Shaundae McIntosh,
Personnel Order 2024-24,

Appellants.

These appeals were joined for trial by the agreement of the parties regarding the Personnel Orders identified in the above caption. A trial was conducted on May 23, 2024 before Commissioners Miriam Horwitz (Chair), Ruben Burgos, and Bree Spencer. Dennis P. Moroney served in the capacity of Hearing Examiner.

Appearing for the City of Milwaukee and its Police Chief, Jeffrey B. Norman (hereinafter "Chief"), was Assistant City Attorney Katherine Headley. Appearing for both Appellants was the law firm of Crivello, Nichols & Hall, S.C., by Attorney Steven McGaver and Attorney Brianna Meyer. There were no other appearances.

The matters involved in these appeals as to each officer concern matters of competence specifically referencing Guiding Principle 1.04 - are set forth in the body of this Decision. Factually, the officers, while partners for the City of Milwaukee Police Department (hereinafter "MPD") District #7, were dispatched to an alleged battery complaint at 9025 W. Hampton Avenue, Milwaukee, Wisconsin, as noted on Exhibit 1, the CAD report, on July 11, 2022 at 21:42 hours.

Upon arrival on scene, the officers were wearing their bodycams as viewed in Exhibits 2 and 4. The alleged victim was a Bobbie Lou Schoeffling (hereinafter "Victim"), and the reporting person was an unidentified female. The officers were advised of threats to kill the victim by a boyfriend named Nicholas Howell (hereinafter "Howell"). The victim indicated that Howell had not battered her on the present night but had done so on previous occasions. Howell allegedly had shot up her residence in the past and had broken several doors in the victim's upper duplex residence. She claimed to have over 100 pictures on her phone of injuries received as a result of Howell battering her. The officers did not view any of the injury photos or go into the upper duplex to view possible damages to same.

The interview itself took place in a driveway in front of the victim's residence. Present during the interview was the unidentified female friend of the victim who initiated the call to MPD. The victim's two children and one child of the unidentified woman were in the unidentified woman's car at the time of the interviews taking place. The victim and all others on scene were not separated by the officers for purposes of the interviews that took place. None of the children were interviewed, and the unidentified friend of the victim remained with the officers and the victim for the entire time the officers were on scene.

While at the scene, the officers asked the victim about the relationship that she had with Howell. The victim indicated that Howell was her boyfriend, but they were not married and that she and Howell were not living together. However, a bag of clothing belonging to Mr. Howell was in the residence, but no further inquiry was made. The officers believed that their questions were the ones required by MPD for possible domestic violence involvement.

The victim did not want to provide the name of Nicholas Howell or the place he resides at or hangs out at due to fear. After convincing the victim to name Nicholas Howell, the officers

determined that there was a felony VOP (violation of probation or parole) which required his apprehension. The officers expressed concern for the victim's safety, but she did not want to pursue Howell because of his threats to kill her. The unidentified woman at the scene agreed to have the victim and her children come to her house for safety. The officers gave the victim a contact card which included information about restraining orders and the Sojourner Truth House for safe housing.

Upon leaving the interview scene, the officers remained in the immediate area of the victim's upper duplex in the event Howell came over in his vehicle, a red Ford, but this did not occur. The officers indicated that they could not go out of their District to find Howell but would advise MPD officers in Howell's residential area (near Palmer and Chambers Streets), however, this was not done.

The officers did obtain a photo of Howell, but this was not shown to the victim to identify. The officers could have issued a disorderly conduct citation based upon what was reported but did not. The officers did not write a report about the interaction involved in this call. The officers concluded this was not a domestic violence case because the victim and Howell were neither married nor had lived together presently or in the past. They never asked her if they had children in common. The officers here did not do further investigation of other possible crimes that might have been involved in this situation.

PHASE I

The Commissioners hearing the case unanimously determined that the officers, both of them, had violated the Core Value 1.00 – Competence:

We are prudent stewards of the public's grant of authority and resources. We are accountable for the quality of our performance and the standards of our conduct. We are exemplary leaders and exemplary followers.

As to the specifics involved, the following is applicable referencing Guiding Principle

1.04:

Police investigation shall at a minimum be based upon reasonable suspicion or an actual or possible offense or crime. Investigation 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.

The Commissioners made their findings to the preponderance of the evidence standard in determining just cause as follows:

Pursuant to section 62.50(17)(b) Wis. Stats., the Board must determine whether there is just cause to sustain the charges. In making its determination, the Board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. 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.
4. Whether the effort described under subd. 3 was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

The Commissioners determined that both officers violated all of the just cause considerations involved here and each of them admitted to doing so at the hearing under all of the circumstances. The charges specified in Ex. 8 (Officer Budziszewski) and Ex. 10 (Officer McIntosh) have been sustained. The fact that the officers failed to separate the victim from the witness was an unacceptable interview process. Furthermore, the failure of the officers to even identify the witness at the scene who called MPD concerning the alleged battery involved was unacceptable as well. Further, the questions asked of the victim concerning the possibility of domestic violence being involved was incomplete and not within the protocol of MPD for such complaints. Clearly, there were possibly other crimes involved here that were not even considered by the officers. Their failure in this investigation culminated in the failure to write a

report relative to this matter is telling.

Accordingly, the Commissioners reached their decision and proceeded to require a Phase II hearing to determine an appropriate penalty, if any, that should be imposed in this matter.

PHASE II

The Chief and his executive staff felt that a ten (10) day suspension without pay was the appropriate penalty based upon the charges involved in Exhibits 8 and 10. This penalty incorporated the seriousness of the conduct involved and application of the matrix set forth in Ex. 12.

The Commissioners considered the entire record made at the trial including the positions of both officers as set forth in Ex. 9 (Officer Budziszewski) and Ex. 11 (Officer McIntosh) in their responses to the charges made. In applying the preponderance of the evidence standard, just causes 6 and 7 were applied as follows:

Pursuant to section 62.50(17)(b) Wis. Stats., the Board must determine whether there is just cause to sustain the charges. In making its determination, the Board shall apply the following standards, to the extent applicable:

6. Whether the Chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

When applying the just causes set forth, the Commissioners also considered Ex. 13 (Officer McIntosh) and Ex. 14 (Officer Budziszewski) regarding the respective officers' service record. It should be noted that the Chief only uses the matrix as set forth in Ex. 12, developed over his tenure as Chief regarding comparable matters to the case at bar. The fact that the victim was ultimately murdered by Mr. Howell shortly after the interaction of July 11, 2022 with the officers here was not considered a determinative factor in reaching their decision. What was considered was the failure of the officers of the MPD to intervene to the extent possible

under the requirements of the rules applicable for MPD officers to apply as shown by the evidence involved in the call of July 11, 2022.

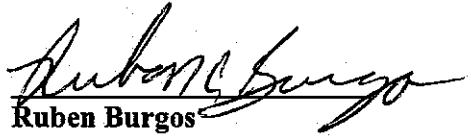
After a thorough consideration of all the applicable and relevant evidence involved, the Commissioners unanimously found that the appropriate penalty for each officer should be a six (6) day suspension without pay. They gave consideration to a four (4) day suspension requested by each officer, but determined that the failures involved here were too serious for the reduced penalty for the actions, or failures to act, on the part of the officers in this situation.

Accordingly, the foregoing represents the decision of the Commissioners deciding this case.

SO ORDERED:

Miriam Horwitz

Date: _____


Ruben Burgos

Date: 6-4-24

Bree Spencer

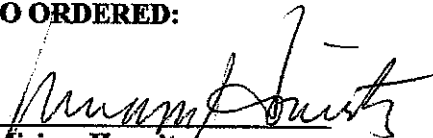
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Accordingly, the foregoing represents the decision of the Commissioners deciding this case.

SO ORDERED:



Miriam Horwitz

Date: 6/5/24

Ruben Burgos

Date: _____



Bree Spencer

Date: 6/4/2024