

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

**In the Matter of the Appeal of Christopher E. Manney
Personnel Order 2014-102**

Hearing Dates: March 19-23, 2015

Hearing Locations: Police Administration Building-Municipal Court
Centennial Hall

Commissioners: Kathryn A. Hein
Steven M. DeVougas
Sarah W. Morgan

Hearing Examiner: Hon. Michael J. Skwierawski

Appearances: Mark L. Thomsen, Cannon & Dunphy
For the Milwaukee Police Department

Jonathan Cermele, Brendan P. Matthews, Jennifer R. Land,
Cermele & Matthews, S.C.
For Appellant Christopher E. Manney

PROCEDURAL HISTORY

Chief of Police Edward A. Flynn charged Police Officer Christopher E. Manney in Personnel Order 2014-102, dated October 15, 2014, with the following violations of Milwaukee Police Department Rules & Procedures:

1. Core Value 1.00-Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures Relating to: Citizen Contact, Field Interviews, Search and Seizure-Section 085.25(A): Failure to have reasonable suspicion prior to conducting a pat-down search.
2. Core Value 1.00-Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures Relating to Use of Force-Section 460.05(1): Failure to adhere to training and procedures regarding Use of Force approach considerations.

Manney, 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 from March 19-23, 2015. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Police Officer Robert Fitchett, Milwaukee Police Department
Police Officer Andrew Fuerte, Milwaukee Police Department
Sergeant Christopher Schroeder, Milwaukee Police Department
Lieutenant James MacGillis, Milwaukee Police Department
Captain Johnny Sgrignuoli, Milwaukee Police Department
Lieutenant Heather Wurth, Milwaukee Police Department
D.I. Michael J. Brunson, Milwaukee Police Department
Chief Edward Flynn, Milwaukee Police Department

For the Appellant: Police Officer Michael R. Knetzger, Green Bay Police Department
Christopher E. Manney
Steven Spingola
Robert C. Willis
Lieutenant Kenneth Harris, Milwaukee Police Department
Sergeant Jeff Lintonen, Milwaukee Police Department
Lieutenant Phil Hanyard, 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. Police Officer Christopher Manney was appointed to his position with the Milwaukee Police Department on February 19, 2001. (Exhibit 68.) During that time, he received an array of awards and commendations. Manney also had a very clean disciplinary record.
2. On April 30, 2014, Manney made a series of errors in judgment in connection with the approach and "pat-down" of Dontre Hamilton. It is difficult to reconcile Manney's conduct on April 30 with his prior service record and experience. Yet, it is these events that give rise to the present disciplinary proceeding.
3. On April 30, 2014, Officers Robert Fitchett and Andrew Fuerte were dispatched at 1:54 p.m., to a "welfare check"¹ assignment at the Starbucks located in Red Arrow Park at 920 North Water Street. (Exhibit 4.) Officers Fitchett and Fuerte observed Mr. Hamilton

¹ Police Officer Fuerte stated that a "welfare check" is to make sure someone is okay, as opposed to "trouble with a subject," which means someone is disorderly or unruly.

lying on the concrete, next to the Red Arrow statue. (Id.) The officers requested identification from Mr. Hamilton. They also inquired if Mr. Hamilton needed medical attention. (Id.) Mr. Hamilton offered his identification and informed the officers he was fine, did not need anything and was taking a nap. (Id.) The officers suggested that he move to a bench, where he might be more comfortable, but Mr. Hamilton declined. (Id.) Officer Fitchett testified that they ran Mr. Hamilton's name through the computer and "nothing came up."² Officer Fitchett also testified that he did not believe Mr. Hamilton was homeless, but rather that he was an MATC student. Officer Fitchett did not believe that Mr. Hamilton was mentally disturbed.

4. Officers Fitchett and Fuerte left the scene, but were again dispatched approximately ten minutes later. (Id.) The officers spoke to the caller, a Starbucks employee, and informed her that Mr. Hamilton was not disturbing anyone or doing anything wrong and the police could not force him to leave.³ (Id.) Officer Fuerte again recommended Mr. Hamilton move to a bench or to another park, so that he would not be harassed, but Mr. Hamilton desired to remain where he was. (Id.; Exhibit 85.)
5. At approximately 3:28 p.m., Manney responded to a voicemail message on his cell phone to go to Red Arrow Park to investigate a complaint reported by an employee at Starbucks. (Exhibit 4.) Unbeknownst to Manney, Officers Fitchett and Fuerte had addressed this call an hour earlier. (Id.) After receiving the voicemail, he contacted radio dispatch to determine if there were any pending calls in the area. (Exhibit 8A.) Dispatch responded that there was no calls pending and Manney responded by requesting that dispatch show him as responding to that location to a "trouble with subject" complaint. (Id.)
6. As Manney pulled up to Red Arrow Park, he observed the Starbucks hut and could see some bags he believed were consistent with a homeless subject by the Red Arrow statue. (Id.) Manney stated that maybe one other person was in the park at that time. (Id.) As Manney exited his squad and approached, he saw Mr. Hamilton lying on his back, with his head facing east and his feet facing west. (Id.) Manney stated that Mr. Hamilton was lying completely flat on his back, with his arms down to his side and his hands turned upright. (Id.) Manney stated that Mr. Hamilton was lying completely still, but his left leg was bent upward and rapidly twitching back and forth. (Id.) When Manney got within ten feet of Mr. Hamilton, he could see that Mr. Hamilton's eyes were closed. (Id.)
7. Manney stated that as he approached Starbucks, he was holding his keys, so as to remain quiet. (Id.) Manney's attention was focused on Mr. Hamilton and when he was 3 1/2 feet from Mr. Hamilton, Mr. Hamilton's eyes opened abruptly. (Id.) Manney told investigators that Mr. Hamilton's eyes opened very wide and stared directly at him. (Id.) The way Mr. Hamilton's eyes were staring at him, made Manney believe that Mr. Hamilton might be under the influence of drugs, alcohol or a mental disorder. (Id.)

² Mr. Hamilton had a municipal warrant. However, Officers Fitchett and Fuerte stated that there is a practice within the Milwaukee Police Department not to arrest people with just a municipal warrant, as the District Attorney does not prosecute these individuals.

³ Manney contended at hearing that Mr. Hamilton may have been in violation of a city ordinance (ORD 47.25), which prohibited sleeping in parks. It is disputed if Manney was aware of this ordinance or if Mr. Hamilton was sleeping.

8. Manney then approached Mr. Hamilton, bent down and stated, "Hey partner, Milwaukee Police, you need to stand up, we need to chat." (Id.) According to Manney, Mr. Hamilton's eyes were fixed upon him and not blinking at all. (Id.) Mr. Hamilton stood up on his own and faced away from Manney. (Id.) Manney approached Mr. Hamilton from behind and began to commence a "Terry pat-down."⁴ (Id.) Manney informed Mr. Hamilton of what he was doing and asked for Mr. Hamilton's name. (Id.) Manney then asked Mr. Hamilton if he had any knives, needles or guns on his person. (Id.)
9. According to Manney, this question caused Mr. Hamilton to turn from cooperative to aggressive. (Id.) Manney stated that Mr. Hamilton forced his arms down, trapping Manney's arms. (Id.) Manney used his right hand to feel around Mr. Hamilton's waistband for a weapon; he felt a round object but did not believe it to be a gun. (Id.) Mr. Hamilton continued to keep his arms close to his body, making it difficult for Manney to pull away or lift up; Manney stated that Mr. Hamilton ignored his directives to put his arms up. (Id.)
10. Manney attempted to move to Mr. Hamilton's right pocket area, but before he could perform a more thorough search, Mr. Hamilton began to turn away from him. (Id.) Manney attempted to put some space between himself and Mr. Hamilton. (Id.) Manney described Mr. Hamilton as having a "1000 yard stare"⁵ as they faced each other. (Id.) Manney took a defensive position and attempted to disengage; however, Mr. Hamilton clenched his fist and took an attack posture. (Id.) As Manney attempted to disengage, he told Mr. Hamilton "it's not worth it."
11. Suddenly, Mr. Hamilton lunged at Manney and swung at his face with a closed fist. (Id.) Manney was able to deflect the punch and used a palm strike to Mr. Hamilton's chin. (Id.) The strike had no effect on Mr. Hamilton and the two men began to spin in a counterclockwise direction. (Id.) Manney used his right fist to strike Mr. Hamilton's face in an attempt to get free. (Id.) Manney yelled "Milwaukee police, get back, get back, it's not worth it." (Id.) Manney pushed Mr. Hamilton into the skating rink railing and attempted to call for back up, but could not get through. (Id.)
12. At this point, Manney felt like he did not have control of the situation and began to fear for his safety. (Id.) He grabbed his wooden baton, however, as he swung it at Mr. Hamilton, Mr. Hamilton trapped the baton between his arm and torso. (Id.) Mr. Hamilton began to turn in a circle, making it difficult for Manney to maintain control of his baton. (Id.) Manney again began to deliver palm strikes to Mr. Hamilton in an attempt to get him to release the baton, but the palm strikes had no effect. (Id.)
13. Manney stated that Mr. Hamilton had "superhuman strength" and he did not appear to be affected by anything. (Id.) It was at this point he feared for his life. (Id.) Again, he

⁴ A Terry stop or pat-down derives from the Supreme Court's ruling in *Terry v. Ohio*, 392 U.S. 1 (1968), which states that a police officer may briefly detain a person whom they reasonably suspect is involved in criminal activity. The officer may also do a limited search of the suspect's outer garments if they have a reasonable and articulable suspicion that the person detained may be "armed and dangerous."

⁵ "1000 yard stare" is a law enforcement term to describe "a direct, continuing, but unfocused stare." It is identified as a potential pre-attack posture" in the DAAT manual and something officers should look out for.

attempted to radio, but does not believe he was successful. (Id.) At that point, Manney stated that he believed his only option was to disengage and use deadly force. (Id.) Manney released the baton and pushed back from Mr. Hamilton. (Id.) Manney stated that Mr. Hamilton struck him with the baton before he could draw his firearm. (Id.) After further struggle, Manney was able to put 2-3 feet of space between them and discharged his weapon. (Id.) Mr. Hamilton continued to advance toward him. (Id.) At some point, Mr. Hamilton fell forward. Manney still considered Mr. Hamilton a threat and continued to discharge his weapon. (Id.)

14. When Mr. Hamilton was down, Manney stopped firing his weapon. (Id.) Manney immediately radioed for back up and called for a medical unit. (Id.) While Manney was still on the radio, Sgt. Jeff Lintonen arrived on the scene. (Id.)
15. Once Manney received medical attention, he was escorted to the Police Administration Building, where he provided a statement to Detectives Erik Gulbrandson and Charles Mueller. (Id.) Also present was District Attorney John Chisholm, District Attorney Investigator Scott LaFleur, Lt. Justin Carloni, Attorneys Brendan Matthews and Jennifer Land and DOJ-DCI Special Agents. (Exhibit 6.)
16. Sgt. Christopher Schroeder served as the lead investigator in Internal Affairs for the Manney Investigation. Sgt. Schroeder testified that this matter was thoroughly investigated and that all of Internal Affairs worked on some aspect of the Manney Investigation. On July 30, 2014, Manney appeared for his PI-21 interview with Sgt. Schroeder. (Exhibit 84.) Sgt. Schroeder testified that a PI-21 is an interview that is taken by the Internal Affairs Division to determine if an officer has violated department rules. It cannot be used for self-incrimination. Sgt. Schroeder testified that an investigator must be careful not to put words in the officer's mouth or coerce or suggest certain answers during the interview.
17. During his initial PI-21, Manney stated that as he approached Mr. Hamilton, he could see "bulges" and that Mr. Hamilton was not "acting right." (Id.) Manney further stated that Mr. Hamilton "probably got something on him, most homeless people have knives on them." (Id.) This was the first time Manney mentioned that he noticed bulges on Mr. Hamilton. Manney described Mr. Hamilton as "extremely strong, inhuman strong." (Id.)
18. This was Sgt. Schroeder's first investigation, so Captain Johnny Sgrignuoli⁶ oversaw Sgt. Schroeder's PI-21 interview of Manney and directed Sgt. Schroeder's activities with regard to investigating this matter on behalf of Internal Affairs. After Manney's initial PI-21, Cpt. Sgrignuoli ordered a second PI-21 interview to obtain clarification and more focused answers. Cpt. Sgrignuoli testified that he wanted to determine if Manney was able to articulate a reasonable suspicion related to his approach and attempted pat-down of Mr. Hamilton.
19. On August 27, 2014, Manney appeared for a second PI-21 interview. (Exhibit 86.) Manney stated that he was responding to a trouble with suspect call, but that he would

⁶ Captain Sgrignuoli's rank was Lieutenant at the time of the Manney investigation.

approach a suspect the same way if it were a welfare check. (Id.) Manney stated that he was planning on doing a pat-down because he “got very odd behavior...I’ve got on him [Hamilton], I got some bags stacked over here.” (Id.)

20. Manney was questioned extensively about the “bulges” he noticed on Mr. Hamilton:

Sgt. Schroeder: Okay. Can you be more specific regarding the bulges you’re talking about, like can you describe where were they, on his person, any shapes, anything that, any description you can give about the bulges?

Officer Manney: He had some bulges in his pockets.

.....

Sgt. Schroeder: What did you think those bulges were?

Officer Manney: Unknown...they could be anything. People that I’ve dealt with through my training and experience in the past that have the homeless bags and the different pockets all over them, you could find almost anything, sometimes just a shard of glass, sometimes it’s a crack pipe, sometimes it’s just a driver’s license. There’s all kinds of things that they carry with them. Because that’s normal. They’re carrying their whole life with them.

(Id.)

21. Cpt. Sgrignuoli instructed Sgt. Schroeder to contact Lt. James MacGillis, an instructor at the Milwaukee Police Academy and an expert in Defense and Arrest Tactics (DAAT), with regard to Manney’s use of force. Both Sgt. Schroeder and Lt. MacGillis testified that this was an informal conversation. Lt. MacGillis was not provided with any of the particular details regarding the investigation at this time.
22. In a memo dated August 27, 2014, from Sgt. Schroeder to Cpt. Sgrignuoli, Sgt. Schroeder detailed Lt. MacGillis’ preliminary opinions. (Exhibit 79.) Lt. MacGillis stated that he did not have a problem with Manney approaching Mr. Hamilton, but the pat-down needed substantiation. (Id.) However, Lt. MacGillis did not believe Manney unnecessarily put himself in harm’s way, but rather found himself in the situation. (Id.)
23. Subsequently, Lt. MacGillis was provided with investigative materials and reports related to the Manney investigation. (Exhibit 83.) Lt. MacGillis was asked to opine on Manney’s use of force. After reviewing the documents, Lt. MacGillis concluded that Manney’s “pat-down” was out of policy. Manney never articulated that he suspected or believed Mr. Hamilton had a weapon.
24. On September 4, 2014, Chief Flynn sent an email to the Los Angeles Police Department for a courtesy review of MPD’s investigation. Chief Flynn testified that he reached out to

LAPD to ensure thoroughness of the investigation and/or suggestions regarding any additional avenues to consider, since LAPD had significant experience with these types of incidents. In addition, MPD officers had attended training with LAPD's Internal Affairs Division. (Exhibit 88.)

25. LAPD eventually produced a report, which was not available until after the second set of disciplinary charges were issued, so it had no bearing on Internal Affairs' recommendation for discipline. (Exhibit 101.) However, Chief Flynn testified that he did not request a report or the opinions of the LAPD as to whether Manney had a reasonable suspicion for the pat-down. In addition, Deputy Inspector Michael Brunson testified that the report contained errors in that it stated Manney believed Hamilton had a knife, which was erroneous and it did not cover the use of force aspect in depth. As such, the LAPD's report did not provide any new information.
26. On September 11, 2014, Sgt. Schroeder produced a comprehensive summary compiling materials produced during the course of the criminal and internal investigations related to the death of Mr. Hamilton. (Exhibit 6.)
27. On September 23, 2014, Internal Affairs issued the first charge against Manney for violation of Core Value 1.00-Competence, referencing Guiding Principle 1.05 Referencing Standard Operating Procedures Relating to 085.25(A). (Exhibits 2, 4 and 56.) The basis for this charge was that Manney failed to have a reasonable suspicion that Mr. Hamilton was armed with a weapon, and posed a threat to Manney and/or others, prior to conducting a pat-down search and acted contrary to training he received during a Homeless Outreach Team overview. (Exhibit 2.)
28. On October 1, 2014, Manney submitted his response to charges. (Exhibit 59.) Manney indicated that the totality of the circumstances led him to believe that he was not dealing with somebody in a normal state of mind and felt that Mr. Hamilton posed a significant danger to his personal safety. (Id.) He mentioned that Mr. Hamilton looked at him with an "1000 yard stare." (Id.) Manney stated that he had "a plethora" of reasons to believe Mr. Hamilton posed a threat to his safety. (Id.)
29. On October 2, 2014, Lt. Heather Wurth in the Internal Affairs Division, was asked to examine Manney's response to charges for the purpose of determining whether Manney violated his training under the DAAT principles and MPD policy. (Exhibit 61.) Lt. Wurth noted that based on Manney's own admission, he knew that Mr. Hamilton was an "emotionally disturbed person" (EDP); that he displayed a number of pre-attack postures; and that Manney was at a physical disadvantage; yet Manney decided to approach Mr. Hamilton and stand him up. This was in violation of MPD's DAAT training, which states in part "an unrestrained, standing subject is in a much better position to be able to deliver force against you than a subject who is prone on the ground and in handcuffs." (Id.)
30. Milwaukee Police Officers are also advised not to approach EDPs alone since "EDPs sometimes react violently and unpredictably, with little warning, so backup is extremely important. Additionally, if you have to use physical intervention, some EDPs can be

difficult to control because the chemicals, endorphins and adrenaline in their systems, as well as the fact that they often feel very focused and determined, can make them very strong. However, it's best to keep your backup in a cover officer role, so that you can get the subject to focus on you." (Id.)

31. On October 6, 2014, based on Lt. Wurth's analysis of Manney's response to charges, Internal Affairs issued a second charge for violation of Core Value 1.00-Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures Relating to Use of Force-Section 460.05(1). (Exhibits 3 and 62.)
32. On October 14, 2014, Manney submitted his response to the second charge. (Exhibit 112.) Manney's stance was that the charges were contradictory in that either Mr. Hamilton was not dangerous enough to pat-down or he was so dangerous he should not have been approached without back up. (Id.) Manney testified that even though he believed that Mr. Hamilton posed a threat to his safety, he had a job to do. (Id.)
33. On October 15, 2014, Chief Flynn terminated Manney for treating Mr. Hamilton as a dangerous criminal instead of an EDP. (Exhibits 5 and 90.) Chief Flynn determined that Manney's approach and use of an out-of-policy pat-down was based on an assumption of Mr. Hamilton's mental state and housing status, which led to a physical confrontation and resulted in the use of deadly force. (Id.)

CONCLUSIONS OF LAW

34. This appeal is governed by the seven just cause standards set forth in Wis. Stat. § 62.50(17)(b). 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 *U.S. v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003). We conclude that all seven standards are satisfied with respect to the two charges against Manney.
35. The first just cause standard asks "whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct." Manney acknowledges that he received DAAT and Professional Communications training at the police academy. In addition, Manney had fourteen years of experience on the job. According to this training, it states that "EDPs sometimes react violently and unpredictably, with little warning, so backup is extremely important." At hearing, Manney was questioned regarding his plan to control the situation if Mr. Hamilton ceased being compliant with the pat-down and he stated that he did not have one, despite being afraid of Mr. Hamilton, identifying him as a potential threat and an EDP. As such, we conclude that the City has satisfied this first standard by a preponderance of the evidence.
36. The second just cause standard asks "whether the rule or order the subordinate allegedly violated is reasonable." There are several relevant standard operating procedures in this case. In regards to the first charge, SOP 085.25(A) states that law enforcement officers have the right to perform a pat-down search of the outer garments of a suspect for weapons if the suspect has been (1) legitimately stopped; (2) with reasonable suspicion

and (3) only when the police member has reason to believe that the suspect possesses weapons on his or her person and poses a threat to the police member's or another person's safety. SOP 085.10 defines a reasonable suspicion as "articulable facts that, within the totality of the circumstances, lead a police member to reasonably believe that criminal activity has been, is being, or is about to be committed." Manney argued at hearing that this SOP was internally inconsistent and not in accordance with U.S. Supreme Court and Wisconsin Supreme Court precedents. We disagree and do not see any inconsistency or that this SOP is not in accordance with relevant precedent. States, cities and other municipalities can adopt policies that are more restrictive than those promulgated by the Supreme Court or their state's supreme court. As such, we find this SOP completely reasonable.

37. In relation to the second charge, SOP 460.05 simply mirrors what is contained in the DAAT manual, which is taught across the State of Wisconsin. Manney makes no allegation that this SOP is unreasonable and we find the same.
38. Likewise, SOP 001.05-Fair and Impartial Policing states in relevant part that "Police members shall not consider race, color, ethnicity, national origin, economic status...in carrying out law enforcement activities..." Again, this is reasonable and relevant, as Manney was found to have profiled Mr. Hamilton based on his perceived economic status as a homeless person, and made a number of assumptions in that regard.
39. There is no need to explain at length the self-evident reasons why it is reasonable for the Department to insist that its officers comply with its SOPs. We conclude that the City has satisfied the second standard by a preponderance of the evidence.
40. 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." As explained in the Findings of Fact, this case was thoroughly investigated. As Sgt. Schroeder testified, each member of Internal Affairs worked on this case at some point. The depth of the investigation is reflected in Sgt. Schroeder's voluminous report, which summarized the investigative efforts that took place. The Chief reached out to other members of the Department, as well as to the LAPD, to make sure things were handled fairly and thoroughly. There was extensive testimony by Sgt. Schroeder, Lt. MacGillis, Lt. Wurth, Cpt. Sgrignuoli, D.I. Brunson and Chief Flynn regarding the efforts the Department made to investigate this critical incident from every angle. We conclude that the City has satisfied the third standard by a preponderance of the evidence.
41. The fourth just cause standard asks "whether the effort was fair and objective." Manney claims that the Department made efforts to bury exculpatory evidence, specifically, the LAPD report and the memo detailing Lt. MacGillis' initial opinions. We do not find these accusations credible. While the Department and Manney disagree on the definition of exculpatory evidence, we did not hear any testimony that established an effort by the Department to actively bury evidence and/or contrary opinions. We conclude that the City has satisfied the fourth standard by a preponderance of the evidence.

42. 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.” We consider the two charges separately below.
43. The first charge is a violation of the pat-down policy as articulated in SOP 085.25(A). The policy allows for a pat-down for weapons if the member believes the suspect has weapons and poses a threat to the police member’s or another person’s safety. Not every field interview poses a sufficient justification for conducting a pat-down search. The policy goes on to list seven criteria that might justify a pat-down search, such as the type of crime suspected; number of subjects vs. police members present, etc. From Manney’s testimony, he stated that Mr. Hamilton was laying down and appeared to be asleep. His palms were upward and he was lying still, except for his left leg which was moving. In Manney’s initial statement to investigators, he made no mention of bulges. In his initial PI-21, Manney states that he noticed a bulge in Mr. Hamilton’s right pocket. In Manney’s second PI-21, he stated that he saw bulges. At no time did Manney state that he believed that Mr. Hamilton had a weapon. Further, we find it hard to believe that an individual who seemed to be sleeping, palms up and open, posed a threat to Manney in that position. Manney cannot have it both ways. Either he believed Mr. Hamilton was too dangerous to approach and he needed to call for back up or the pat-down was not warranted, as Mr. Hamilton did not pose a threat and was not disturbing anyone or committing a crime. Manney testified that at no time did Mr. Hamilton go for his right pocket, where he witnessed the “bulge.”
44. The second charge is for violation of approach considerations for the use of force. Under the DAAT Disturbance Resolution Model, there are three tasks for approach considerations: Decision Making; Tactical Deployment and Tactical Evaluation. (Ex. 49.)
45. Under the rubric for Decision Making, there are two sub-components: Justification and Desirability. The first question is whether there is a legal justification for the action. It is disputed as to whether Manney was justified in taking his action. However, it is undisputed that it was not desirable for Manney to approach, since the primary consideration was whether he could control the situation. (Id.) Again, initially, Manney stated that he thought he could control the situation, but he also testified that he feared for his safety upon laying eyes on Mr. Hamilton. Again, Manney cannot have it both ways. At hearing, Manney was squarely asked what his plan was to control the situation if Mr. Hamilton ceased to cooperate, given that Manney testified that Mr. Hamilton was an EDP and he was much stronger than Manney. These are facts that Manney stated he was aware of at the time he decided to engage Mr. Hamilton.
46. Under the rubric of Tactical Deployment, there are three sub-components: Control of Distance, Positioning and Team Tactics. For Control of Distance, the manual states that the danger zone for an unarmed subject is less than ten feet. (Id.) Manney testified that he was right next to Mr. Hamilton and decided to stand him up, with no means to control the situation. As such, he did not maintain proper control of distance. As for positioning, the DAAT manual states that an officer should position himself to be at an advantage relative to the subject. Manney moved himself from a position of advantage (standing

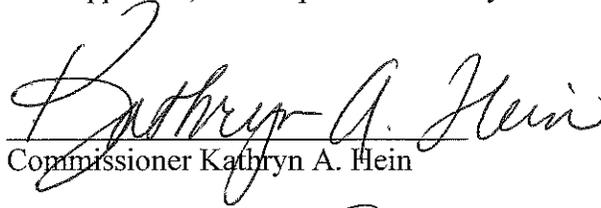
over Mr. Hamilton) to a position of disadvantage (standing in front of Mr. Hamilton). In regards to Team Tactics, Manney identified Mr. Hamilton as an EDP. Instead of calling for back up, he chose to engage Mr. Manney on his own. Manney testified that the reason he did not call for back-up was that he had a job to do, and that it was a low priority call. It would not be an affront to his courage to take steps to provide for his safety and those of others before engaging.

47. Under the rubric of Tactical Evaluation, there are four categories: Threat Assessment Opportunities; Officer/Subject Factors; Special Circumstances and Level/ Stage/Degree of Stabilization. Under Threat Assessment Opportunities, Mr. Hamilton allegedly displayed several early warning signs; such as pre-attack postures and indications of mental illness. Manney was also at a disadvantage under the Officer/Subject factors. Mr. Hamilton was younger, stronger and taller than Manney. Additionally, the fact that Mr. Hamilton was identified as an EDP should have informed Manney that he needed back up or to recalibrate his approach. The Level/Stage/Degree of Stabilization is what jumped out to Lt. Wurth in her policy assessment. The DAAT manual states that “an unrestrained standing subject is in a much better position to be able to deliver force against you than a subject who is prone on the ground and in handcuffs.”
48. An assessment of the Approach Considerations, based on Manney’s own admissions and testimony, establishes that there was substantial evidence that Manney violated Core Value 1.00-Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures Relating to Use of Force-Section 460.05(1).
49. The sixth just cause standard asks “whether the Chief is applying the rule or order fairly and without discrimination against the subordinate.” As discussed above, we find an extremely thorough investigation and no animus against Manney. The testimony of Sgt. Schroeder, D.I. Brunson, Cpt. Sgrignuoli, Chief Flynn and the notes on Exhibit 104 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.
50. In evaluating the sixth just cause standard, we often look to “comparables,” that is, the discipline imposed in earlier cases are similar to the case under review. However, it goes without saying that this was a unique and complex case. The Chief testified that this was the first case where the degree of harm resulted in death. As such, there are no comparables for the violations at issue. Yet, taking into account all of the foregoing considerations, we conclude that the sixth just cause standard is satisfied by a preponderance of the evidence.
51. 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.” As stated before, Manney had only a very minor disciplinary record. At the same time, the violations at issue are quite serious, and those violations led to Mr. Hamilton losing his life and had catastrophic consequences for the Hamilton family and the community.

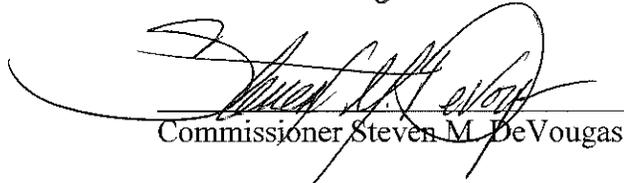
52. When we balance the seriousness of the violation versus Manney's good record of service, we do so with an eye to the ultimate question: "whether," in the words of Wis. Stat. § 62.50(17)(a), "the good of the service requires that the accused be permanently discharged." We also may look at the member's character, work record, and the impact of the misconduct on the complainant, department and community. First, we think it appropriate to give great weight and deference to the judgment of the Chief, so long as his judgment appears reasonable and there is no evidence suggesting that he has been influenced by improper considerations. After all, the Chief is immersed in the life of the Department on a day-to-day basis in a way that we are not. The Fire and Police Commission is, however, in just as good a position as the Chief in terms of making findings of fact and in addressing the forward-looking questions regarding what the good of the service requires.
53. Again, our approach might be quite different if it appeared that the Chief was possibly motivated by improper considerations such as racial bias, political partisanship or personal vindictiveness. There is no such indication. Chief Flynn testified that the degree of harm was an important consideration, as was the competence of Christopher Manney. The Chief testified that he believed he had no option but to terminate an officer who had engaged in this level of incompetence.
54. Another heavy consideration is balancing the member's character and work record versus the impact of the misconduct on the complainant, department and community. Again, while Manney had an essentially clean record and presents as a good police officer with good character, his violations had a profound impact on the Hamilton family and significantly damaged the public trust as it relates to the Department. His actions have obviously also profoundly impacted Christopher Manney himself.
55. In this case, the seriousness of the violations plainly brings a discharge within the range of reasonableness, even when taking into account Manney's record of service. Moreover, it appears that the Chief has not been influenced by any improper considerations. Giving due weight to the Chief's judgment, we conclude that the good of the service requires that Christopher Manney be permanently discharged.
56. In sum, we conclude that the seven just cause standards are satisfied by a preponderance of the evidence. We further conclude that the good of the service requires that Christopher Manney be discharged for the charges we have sustained.
57. It should be noted that we have taken special care to guard against "hindsight bias" and have focused on what Manney stated he knew and observed at the time of the incident. We do not want to send a message that officers cannot use their judgment in protecting themselves and the citizens of Milwaukee. As we have often stated, being a police officer is a very demanding job. The fact remains, however, that this incident is a tragedy for all parties involved and for the community at large.

DECISION

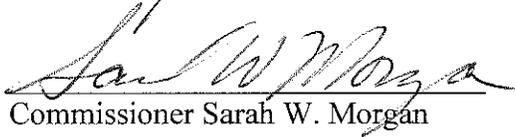
The Appellant, Christopher E. Manney is ordered discharged from the Department.


Commissioner Kathryn A. Hein

4/28/15
Date


Commissioner Steven M. DeVougas

April 27, 2015
Date


Commissioner Sarah W. Morgan

April 27, 2015
Date