

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

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**In the Matter of the Appeal of Ayotunde D. Bello**

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Hearing Date: August 5, 2020

Hearing Location: City Hall, 200 E. Wells Street, Milwaukee, Wisconsin  
Room 301-B, 8:30 A.M.

Commissioners: Steven M. DeVougas, Esq.  
Angela McKenzie, Esq.  
Nelson Soler

Hearing Examiner: Rudolph M. Konrad, Esq.

Appearances: For the Milwaukee Police Department,  
Robin A. Pederson, Esq.  
Office of the City Attorney

For Appellant, Ayotunde D. Bello,  
William R. Rettko, Esq.  
Rettko Law Offices, S.C.

**PROCEDURAL HISTORY**

In Personnel Order 2020-57, dated May 20, 2020, Chief of Police Alfonso Morales ("Chief Morales") found Police Officer Ayotunde D. Bello ("Officer Bello") had violated Milwaukee Police Department Code of Conduct on three (3) counts. In Count 1, the Chief found that Officer Bello violated Core Value 1.00, Competence, referencing Guiding Principle 1.05, which requires all members to "be familiar with Department policy, procedures and training and conduct themselves accordingly;" The Chief found that he had violated Standard Operating Procedure 747.2, Operation Procedures Relating to Body Worn Camera ("BWC"). Officer Bello failed to record events on his body worn camera during a traffic stop as required. For this violation, he suspended Officer Bello for fifteen (15) days.

In Count 2, the Chief found Officer Bello had violated Core Value 3.00, Integrity, referencing guiding principle 3.01, which requires all members, whether on or off duty, "to not behave in such a way that a reasonable person would expect that discredit could be brought upon the Department, or that would create the appearance of impropriety or corrupt behavior." The Chief found that

Officer Bello stopped a female driver for unsafe lane deviation. Rather than give her traffic tickets he had prepared, he obtained her telephone number and then called and texted her to invite her to his apartment, where they engaged in sexual intercourse. For this violation, the Chief ordered Officer Bello discharged from the Department.

In Count 3, the Chief found Officer Bello had violated Core Value 3.00, Integrity, referencing guiding principle 3.05, which requires Department members to obey federal, state, and local laws and to report any violation. The Chief found that Officer Bello had forced the female driver to have sexual intercourse with him and had taken possession of her Marijuana, all in violation of Wisconsin Statute 940.225(2), Second Degree Sexual Assault, 946.12, Misconduct on Public Office, City Ordinance 106-38, Possession of Marijuana. For this violation, the Chief ordered Officer Bello discharged from the Department.

Officer Bello appealed the Chief's order to the Milwaukee Fire and Police Commission.

### **SUMMARY OF HEARING PROCEEDINGS**

A hearing was held and recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Police Chief: Police Officer Ayotunde D. Bello  
Sergeant Debbie Allen  
Inspector Alex Ramirez

For Officer Bello: Police Officer Lorenzo Hernandez, Jr.  
Police Officer Jeremie Gainer  
Police Officer Yoshiea Griffin  
Police Officer Heather Schweitzer  
Police Officer Ayotunde D. Bello

### **FINDINGS OF FACT**

We find the following facts have been established by a preponderance of the evidence.

1. Officer Bello entered the Police Academy on December 4, 2017. He commenced recruit training on June 17, 2018, at District 3. Sixteen months later, on October 21, 2019, Officer Bello engaged in the conduct that resulted in his discipline and discharge. (Ex. 12)
2. On October 21, 2019, Officer Bello and Officer Charles Seelow were assigned to Squad 3477, Violent Crimes-Safe Street Initiative, from 8:00 P.M. until 12:00 A.M. At 8:37 P.M., the officers stopped a vehicle at 4527 West Lisbon Avenue that had unsafely cut in front of them. The driver of the vehicle was S.R., a Black female approximately forty (40) years old. The TraCS (Traffic and Criminal Software) system recorded that the following citations were issued to the driver: Operating While Suspended (\$124.00), Operating a Motor Vehicle Without Insurance (\$124.00), Operating after Revocation/Suspension of Vehicle Registration, (\$98.80) and Unsafe

Lane Deviation (\$98.80). The Computer Aided Dispatch record notes the officers cleared the stop at 9:24 P.M. with the notation, C12 x 4 (citation), indicating four citations were issued.

3. Review of Officer Bello's BWC during the time of the traffic stop showed that he recorded 22.01 minutes of the fifty-seven (57) minute traffic stop. His BWC was not activated to record the initial approach to the traffic stop. He eventually turned the BWC on, but then turned it off before he approached the vehicle again in order to give the driver the citations. As a result, the five (5) minute conversation between Officer Bello and S.R. was not recorded. It was during this time the squad camera recorded him placing the citations in his pants' cargo pockets rather than giving them to S.R. It was also during this time that he obtained S.R.'s telephone number and wrote the number on one of the citations. (Ex. 1, 3)

4. Officer Bello maintains that he put the citations in his pocket and intended to mail them to her because he had forgotten to fill out the probable cause portion of the citations. Police Officers, however, are not required to fill out the probable cause portion of the citation on the street. In order to not unduly prolong traffic stops, officers have up to ten (10) days after a citation is issued to enter the probable cause information in the computerized citation system. There was, therefore, no reason for Officer Bello to not give her the citations at that time.

5. Although S.R. had no legal right to drive her vehicle because her license had been suspended and her vehicle was not legally registered, Officer Bello permitted her to continue driving, allegedly, to save time, rather than wait for the vehicle to be towed or to wait for another driver to arrive.

6. At about 11:00 P.M., while still on duty, Officer Bello began calling and texting S.R. At 11:27 P.M., he texted, "Hey baby . . . We still on for tonight . . . Wya?" (Where you at?) He eventually talked to S.R. over the phone and planned to meet her at the McDonald's parking lot near his apartment in St. Francis. He met her there at approximately 1:00 A.M. From there, she followed him in her car to his apartment. (Ex. 4)

7. What occurred between Officer Bello and S.R. in his apartment is in dispute. He maintains that they had consensual sexual contact and intercourse. She claims he forced himself on her and sexually assaulted her. She maintains he stole marijuana and money from her purse. He maintains he took the marijuana because it was an illegal substance. He intended turn it in to the Department for disposal when he returned to work. He denies he took anything else.

8. Before S.R. left Officer Bello's apartment on the morning of the 22<sup>nd</sup>, she got into an argument with him over the marijuana he took from her and also accused him of taking money from her purse. After she left the apartment, she called the St. Francis Police Department and told them that Officer Bello sexually assaulted her and stole money and other items from her purse. (Ex. 4)

9. Officer Bello was arrested at approximately 5:00 P.M. on October 22<sup>nd</sup> for alleged sexual assault and theft. St. Francis police conducted a consensual search of his apartment and found, among other items, four TraCs citations, violator's copies, naming S.R. as the violator and dated October 21, 2019. S.R.'s telephone number was written at the top of one of the citations. A CAD

record of the police calls related to the S.R. traffic stop, Department of Transportation records relating to S.R.'s vehicle and license, and two bags of marijuana wrapped inside a paper towel. Officer Bello told the St. Francis police officers where he had put the marijuana. Officer Bello maintains that he was unable to mail the citations or turn the marijuana over to the Department on his next work day because he was arrested on his off day. This case is pending in the District Attorney's Office and no charges have been issued to date. (Ex. 5)

10. In closing argument, Officer Bello, by his attorney, chose not to contest the first and second charges; that is, he did not contest either the body camera rule violation, or violation of the rule that requires all members, whether on or off duty, not to behave in such a way as to bring discredit upon the Department, or that would create the appearance of impropriety or corrupt behavior. Officer Bello did, however, contest the third charge, that he violated state and local laws, and also contested the discipline imposed on all three charges.

11. The Commission members voted unanimously as follows:

- To sustain the discipline of Officer Bello for violating the Department's SOP relating to Body Worn Camera, sec. 747.25(C)(2)(f), failure to record until completion of the event upon leaving the scene, and to sustain the fifteen (15) day suspension without pay.
- To sustain the discipline of Officer Bello for behaving in such a way as to bring discredit upon the Department or that would create the appearance of impropriety or corrupt behavior, and to sustain the Chief's finding that the good of the service requires Officer Bello be discharged from the Department.
- To not sustain the discipline of Officer Bello for failure to obey state and local laws.

### CONCLUSIONS OF LAW

12. This appeal is governed by the seven just-cause standards set forth in Wis. Stat. sec. 62.50(17) (b) as follows:

- (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 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 the 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.”

(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 Department.”

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).

13. We conclude that just cause standards one (1) through (5) are satisfied with respect to the charge against Officer Bello on the first two (2) charges. We do not need to address just cause standards one (1) through five (5) in reference to those charges because those violations were, in the end, not contested. We do, however, have to address just cause standards six (6) and seven (7) in reference to the discipline imposed on those charges. In reference to the third charge, we only need to address just cause standard five (5), because we did not sustain the charge.

14. We note, however, that there is sufficient substantial evidence in the record to sustain the Chief’s finding of the first two (2) rule violations to meet the preponderance of the evidence standard even without Officer Bello’s concession. Officer Bello’s failure to record the complete traffic stop was established by his testimony, his body camera footage, and the squad camera footage. (Ex. 1, 3) Officer Bello’s behaving in such a way as to bring discredit upon the Department or that would create the appearance of impropriety or corrupt behavior was established by his own testimony, the squad camera footage, the fact he wrote her telephone number on a citation, the fact he released her to drive away with no license in an unregistered vehicle, the fact that he called and texted S.R. within two (2) hours after leaving the scene, that he took her to his apartment and engaged in sexual intercourse within four (4) hours after last seeing her on the scene. Moreover, Officer Bello’s reason for not giving her the traffic citations, that is, that he forgot to fill in the probable cause statement, is not credible.

15. 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.” The third charge alleged that Officer Bello violated state and local laws by committing a sexual assault, a theft, and engaging in misconduct in public office. The sole evidence of sexual assault introduced at the hearing was S.R.’s statements to the St. Francis police and to MPD Sergeant Debbie Allen (“Sergeant Allen”). The record contains no credible evidence that corroborates her allegations. S.R.’s statement to the St. Francis police is summarized in their police report. (Ex. 4) S.R.’s statement to Sergeant Allen was recorded and the audio was played at the hearing. (Ex. 5, 6). S.R. did not appear or testify at the hearing. S.R.’s accusations, therefore, were not subject to cross-examination and the Commissioners had no opportunity to observe her demeanor. Officer Bello’s attorney’s questioning of Sergeant Allen about her investigation raised a number of inconsistencies and contradictions in S.R.’s statements. Had those questions been put to S.R. at the hearing, the Commissioners would have been able to make a more informed judgment about

her credibility. Absent that opportunity, we cannot conclude that her out-of-hearing statements alone, not subject to cross-examination, not corroborated by other evidence, and not under oath, constituted substantial evidence sufficient to meet the preponderance of the evidence standard. The theft charge also depends largely on S.R.'s statements. Officer Bello maintains he did not take any money from S.R., and he did not take the marijuana for his own use; rather, he took possession of the marijuana to turn it over to the MPD to destroy. He was unable to turn in the marijuana because he was arrested before his next shift began. When the St. Francis police came to his apartment, he consented to a search of the apartment and showed them where he had put the marijuana. Based on these facts alone we cannot conclude Officer Bello took the marijuana for his own use or that he took anything else from S.R. Finally, we are reluctant to find Officer Bello violated Wis. Stat. sec. 946.12, Misconduct in Public Office, for largely the same reasons. To determine whether Officer Bello violated the state criminal statute requires more evidence than was offered at the hearing. Specifically, what was said by Officer Bello to S.R. during the portion of the traffic stop that was not recorded by his body camera would have to be clearly established. The one witness who could have done so is S.R., but her statements do not disclose all that was said during the five minute conversation and she could not be questioned about it at the hearing.

16. The sixth just cause standard asks, "whether the Chief is applying the rule or order fairly and without discrimination against the subordinate." We find a thorough investigation was conducted with no credible evidence of animus against the officer and there is no evidence in the record that the investigating officers treated Officer Bello unfairly in any way. The testimony of Inspector Alex Ramirez, the Discipline Review Summary and the supporting documents establish the considerations that were presented for the Chief's review. Reviewing the comparable disciplines, in light of the different cases and records of the officers involved, we find no reason to believe that the fifteen (15) day suspension and discharge is in any way unfair or the product of discrimination. Officer Bello's attorney argued that the discipline in this case is more severe than in some prior cases for similar offenses; nevertheless, it must be acknowledged that the facts of each case are different and the discipline in each case is evaluated in the context of the officers' past performance and discipline record. Moreover, there is less tolerance today than there might have been in the past for certain offenses. In sum, the comparable disciplines cited do not establish that the Chief applied the rule unfairly or discriminated against Officer Bello. We conclude the Chief has satisfied the sixth standard by a preponderance of the evidence.

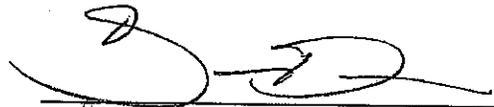
17. The seventh and final just cause standard asks, "whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the Department." To meet this standard the Chief reviewed the items listed in the Discipline Review Summary and weighed the factors listed. Officer Bello, at the very least, turned a traffic stop into an opportunity for a sexual adventure. He tried to conceal his misconduct by turning off his Body Worn Camera; the very device whose purpose is to prevent misconduct. He put the citations in his pocket instead of giving them to S.R., for no valid reason. Within a few hours he was engaging in sexual intercourse with S.R. At a minimum, his conduct brought discredit on the Department and created the appearance of corrupt behavior. Officer Bello's conduct warrants discharge because the Chief must ensure that women stopped by MPD officers will not become the targets of sexual advances. We conclude the Chief has satisfied the seventh standard by a preponderance of the evidence.

**DECISION**

As to Count 1, the Chief's Order of Suspension is sustained, and for the good of the service requires Ayotunde D. Bello to be suspended from the Milwaukee Police Department for a period of fifteen (15) working days without pay pursuant to the terms noted in the MPD Complaint and Personnel Order 2020-57, dated May 20, 2020.

As to Count 2, the Chief's Order of Discharge is sustained and the good of the service requires Ayotunde D. Bello to be discharged from the Milwaukee Police Department pursuant to the terms noted in the MPD Complaint and Personnel Order 2020-57, dated May 20, 2020.

As to Count 3, the Chief's Order of Discharge is not sustained.

  
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Commissioner Steven M. DeVougas, Esq.

8/13/2020  
Date

  
\_\_\_\_\_  
Commissioner Angela McKenzie

8/27/2020  
Date

  
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Commissioner, Chair Nelson Soler

08-13-2020  
Date