

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

In the Matter of the Appeal of Shahriar Solati and Nicholas Kuchta

Hearing Dates: January 5 and 6, 2021

Hearing Location: City Hall, 200 E. Wells Street
Milwaukee, Wisconsin 53202
Room 301-A, 8:30 A.M.

Commissioners: Everett L. Cocroft
Fred L. Crouther
Steven M. DeVougas, Esq.

Hearing Examiner: Rudolph M. Konrad, Esq.

Appearance: For the City:
Robin A. Pederson, Esq.
Office of the City Attorney

For the Appellants: Brendan P. Matthews, Esq.
Rebecca Meyer, Esq.
Cermele & Matthews, S.C.

PROCEDURAL HISTORY

In Personnel Orders 2020-90, and 2020-89, both dated July 30, 2020, Acting Chief of Police Michael J. Brunson (“Chief Brunson” or “Chief”) found that Police Officers Shahriar Solati and Nicholas Kuchta (“Officers Solati and Kuchta,” “Officer Solati” and “Officer Kuchta”) had violated Milwaukee Police Department Code of Conduct on three (3) counts.

1. Core Value 1.00, Competence, referencing Guiding Principle 1.05, requiring members to be familiar with and follow department policy, procedures and training, and to conduct themselves accordingly; specifically, Standard Operating Procedure (“SOP”) sec. 725.15(A)(14), failure to document an investigation in a memo book. For this offense, Chief Brunson imposed upon Officers Solati and Kuchta a district level written reprimand.
2. Core Value 1.00, Competence, referencing Guiding Principle 1.03, requiring members to render service to the community promptly and efficiently; specifically, failure to leave the District Station upon being dispatched. For this offense, Chief Brunson suspended Officers Solati and Kuchta for five (5) working days.

3. Core Value 1.00, Competence, referencing Guiding Principle 1.04, failure to investigate in a prompt, thorough, impartial and careful manner. For this offense, Chief Brunson discharged Officers Solati and Kuchta.

Officers Solati and Kuchta appealed the Chief's orders to the Milwaukee Fire and Police Commission.

SUMMARY OF PROCEEDINGS

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

For the City: Police Officer Shahriar Solati
 Police Officer Nicholas Kuchta
 Sergeant Anthony Schmitz
 Lieutenant Liam Looney
 Acting Chief of Police Jeffery Norman

For Officers Solati
and Kuchta: Former Police Captain Heather Wurth
 Former ECO Christin Saint Pierre
 Police Officer Alfred Herrmann
 Sergeant Bradley Buddenhagen
 Police Officer Bronson Moore
 Sergeant Todd Lewan
 MPA Secretary-Treasurer, Danilo Cardenas
 Police Officer Shahriar Solati
 Police Officer Nicholas Kuchta

FINDINGS OF FACT

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

1. The events leading to the discipline of Officers Solati and Kuchta occurred between 1:51 A.M. and 2:20 A.M. on February 8, 2020. As of that date, Officer Solati had been an MPD police officer for fourteen (14) years. Officer Kuchta had been an MPD police officer for two (2) years. Both officers were working the late shift in District 4, assigned Squad 4320. Other squads had been dispatched to the scene of a shooting, leaving their squad as one of the few available to take calls. Officers Solati and Kuchta had just returned from a domestic violence call and were at the district station completing tasks related to that call. As they were entering their reports into the department's Records Management System, they heard on their radios a call for police service broadcasted by the dispatcher. The Computer Aided Dispatch ("CAD") reports that broadcast was at 1:53:52 A.M. ("BC TG4," means broadcast to Talk Group 4) Both officers testified that they heard the call and they understood it to be a Priority 2 call for police service, and not a Priority 1 call. The dispatcher, however, placed the call on hold, apparently waiting for a squad to become

available. Sergeant Mahnke, who was the Acting Lieutenant at that time, asked Officer Solati what they were working on. Officer Solati told him they were entering a domestic violence report and warrant into the system. Sergeant Mahnke told them they would be responding to calls for police service shortly. They should first make sure the warrant was in the system, he directed, then go 10-4 into service with the dispatcher. Shortly after Sergeant Mahnke spoke to them, they were dispatched. The CAD reports they were dispatched at 2:00:25 A.M., which was six and a half minutes after the pending dispatch call was broadcasted and nine (9) minutes after it was first received. Officer Solati completed entering the DV warrant and then checked with Sergeant Mahnke to ensure it was properly entered into the system. They went to pick up their body worn cameras, which were being downloaded to a disk by Acting Desk Sergeant Police Officer Bronson Moore. They told him they were leaving now and would return to complete the download, but Moore told them that the download was almost completed and asked if they could wait. When the download was completed, they left the station. It was established that they left at 2:15 A.M. (Ex. 1, 7)

2. The information reported in the pending dispatch broadcast did not fully inform Officers Solati and Kuchta of the urgency of the call, and misdirected them as to the location of the incident. The CAD recorded the pending dispatch broadcast in part as follows: “5908 N. SHERMAN BL. . . CALL FOR POLICE . . . Priority 2 . . . CLLR WOKE UP TO SOUNDS OF NBR FEMALE SCREAMING THAT MALE IS JUMPING ON HER. BUILDING IS SOUTH OF CALLS LOC . . .” The caller, however, gave the dispatcher a more complete report of what was occurring. She reported to the dispatcher she was “woke up to my *neighbors in the next building*. You can hear her screaming. He over there jumping on her. You can *hear it through the walls* about cheatin’ and I just need somebody to come check on her.” The ECO questioned the caller to determine the location of the incident and incorrectly concluded it was a building to the south. The caller further stated, “You can hear her through the wall. *He over there beatin’ the hell out of this girl.*” (Emphasis added) The ECO then asked the caller if she wanted to remain anonymous, and the caller replied “anonymous.” The ECO, incorrectly classified it as Priority 2 call. In her defense, the ECO cited a TCD Assignment Classification Manual provision that stated a Priority 2 classification is “appropriate when the request for help is received from a third party who does not know the nature of the problem.” (Ex. 7) All department witnesses, however, agreed that the call was incorrectly classified and should have been classified as a Priority 1 call because it described a battery in progress.

3. As Officers Solati and Kuchta left District 4 at 2:15 A.M., and proceeded to the dispatched location, they were able to read the CAD report of the incident on their squad computer screen. It gave the location as 5908 N. Sherman Blvd, stated an adult female called, gave her telephone number, and the call classification as Priority 2. The officers also read the narrative, “CLLR WOKE UP TO SOUNDS OF NBR FEMALE SCREAMING THAT MALE IS JUMPING ON HER. BUILDING IS SOUTH OF CALLS LOC.” The report initially noted the caller could be contacted either by telephone or in person, but that entry was changed one minute and a half later to “Anonymous.” The CAD contained no updates or further information. The officers reported arriving on scene at 2:20:32 A.M., and leaving the scene at 2:35:18 A.M. (Ex. 1) The officers did not activate their red light and siren because it was a Priority 2 call; nevertheless, they arrived within five (5) minutes after leaving the station.

4. The building from which the call for police service was made is located on the south end of an apartment complex that consists of seven buildings. Each building appears to contain four to six apartments. The buildings are arrayed on the west side of North Sherman Blvd. along a rectangular u-shaped driveway. One can enter going west off North Sherman Blvd., then drives south along the entrances of three (3) large buildings, which have six (6) entrances facing the driveway, and then east to North Sherman Blvd. One can also drive the reverse route. The leg east on the south end of the driveway has two (2) large buildings on each side of the driveway with three (3) entrances each. The caller's location, 5908 N. Sherman Blvd, is located there among the farthest south buildings. The building south 5908 is a single family home. (Ex. 4, 80)

5. Upon arrival, the officers entered the complex via the south driveway and noted there was no building to the south of 5908. They waited for several minutes in front of 5908 with their windows down, heard nothing, saw nothing, and saw there were no lights on. They concluded the caller was confused about the location and that the incident she reported could have happened anywhere. They decided not to contact the caller because the contact information on the CAD had been changed to "Anonymous," and it was a Priority 2 call. Officer Solati believed, based on his fourteen (14) years on the force, that "Anonymous" means the same as "Do Not Call." The department's witnesses maintained otherwise. They testified, "Anonymous" does not mean "do not call," but rather means the caller does not want to be identified in police reports. Officer Solati, nevertheless, conceded he would have called back had it been a Priority 1 call. With their windows still down, they drove very slowly west, then north, then east, along the drive close to the apartment buildings. They did not see or hear any disturbance anywhere in the entire complex. After driving the length of the driveway, the officers positioned the squad near the north entrance of the apartment complex so they could watch both entrances for vehicles entering and leaving the buildings. They waited there for ten (10) more minutes and did not see any movement or hear any sounds. More than thirty (30) minutes had passed since the 1:51 A.M. call for service and no updates had been posted. They cleared the assignment and left at 2:35 A.M.

6. Neither officer made any entries in their memo books about this call. The purpose of making memo book entries is to assist an officer's memory in completing their reports. (See SOP sec. 725.15(A) (14). (Ex. 14) In this case, the officers testified the information they might have needed was recorded on the CAD and, therefore, there was no need to make entries. Witnesses disagreed about whether the officers were required to make memo book entries for this call. Former MPD Captain, Heather Wurth, a 28 year MPD veteran, testified that police officers are not required to note things in their memo books when the germane information is available to them from other sources, such as here, where the pertinent information was recorded in the CAD system. Lieutenant Looney disagreed. He testified the SOP required them to note what happened at the scene and document the disposition.

7. It was later learned that Arzel J. Ivery, ("Ivery") resided at 5904 North Sherman Blvd., the building directly west of 5908. [The apartments are so constructed that the addresses increase from west to east.] On the night of February 8, 2020, shortly after the 1:51 A.M. call for police service, Ivery allegedly murdered his girlfriend and her two (2) daughters. He disposed of their bodies by wrapping them in an inflatable mattress, removing them from his apartment, loading them into his car, transporting them to a vacant garage, and burning them. The exact time each of these horrible events occurred has not been determined. (Ex. 7)

CONCLUSIONS OF LAW

8. This appeal is governed by the seven just-cause standards set forth in Wis. Stat. sec. 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, e.g., *U.S. v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003).

9. The first just cause standard asks, “whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct.” We have no difficulty concluding that police officers are aware of their obligations to record pertinent information, act promptly and efficiently, and conduct investigations thoroughly. We conclude the Chief has satisfied the first standard by a preponderance of the evidence.

10. The second just cause standard asks, “whether the rule or order the subordinate allegedly violated is reasonable.” The rules alleged to have been violated in this case are necessary to ensure the safety the public from unnecessary harm and injury, and to ensure crimes are promptly and thoroughly investigated and reported. We conclude the Chief has satisfied the second standard by a preponderance of the evidence.

11. 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 the rule or order.” Sergeant Anthony Schmitz investigated the incident and reported his findings in a memorandum dated April 28, 2020. (Ex. 8) His report includes a transcript of the call to the dispatch and the CAD record. Additionally, it included summaries of witness interviews, police reports, Officers Solati’s and Kuchta’s PI-21 interviews, and the homicide investigation. (Ex. 7) The Chief also received the officers’ written response to the charges, and Lieutenant Looney’s recommendation of charges (Exs. 5, 6, 12). We conclude the Chief has satisfied the third standard by a preponderance of the evidence.

12. The fourth just cause standard asks, whether the investigative effort described above was “fair and objective.” The officers maintained that the internal investigation took longer than the 90-day limit imposed by the department. Although Sergeant Schmitz completed his investigation within ninety (90) days, officers maintain the investigation was not completed until later, when additional reports were filed. We do not need to resolve the issue whether the internal investigation was completed in time because the length of the investigation is irrelevant to the issue of unfairness. To establish unfairness, there must be evidence of unfairness in the record. It cannot be inferred from a violation of a directory time limit. Reviewing the entire record in this matter, we find no evidence of unfairness or lack of objectivity in the investigation. The Chief has satisfied the fourth standard by a preponderance of the evidence.

13. 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.”

A. In reference to the first count, we find the Chief did not satisfy the fifth just cause standard. As noted in paragraph six (6) above, a current MPD lieutenant and a retired MPD captain could not agree on whether the officers were required to

enter data in their memo books, or whether they could rely on data that was recorded digitally and could be easily retrieved if needed to write a report. If high ranking and experienced police officials cannot agree what should have been recorded in a memo book by these officers in this case, we are reluctant to conclude that the Chief carried his burden of proof.

B. In reference to the second count, we find the Chief did not satisfy the fifth just cause standard. There were many reasons Officers Solati and Kuchta did not leave the District 4 station earlier: the delay between the pre-dispatch broadcast and the dispatch, the incomplete information in the pre-dispatch broadcast, the incorrect classification of the call, the direction to finish processing a warrant, and the request to wait for the download to be completed. None of these delays were caused by lack of promptness or inefficiency by the officers. The officers were managing conflicting demand placed upon them based upon their knowledge at time and their experience.

C. In reference to the third count, we find the Chief did satisfy the fifth just cause standard. The officers' investigation was neither thorough nor careful. The lack of clarity that contributed to the officers' delayed response should have induced them to seek more information about the call once they arrived on the scene and found no disturbance and no apartment building to the south of 5908. They could have contacted the caller in person or by telephone, or ask the dispatcher to contact the caller, or at least ask the dispatcher if she had more information or any follow up. Finally, they could have left their squad and walked around 5908 and the near general area to see if they could hear anything or see anything unusual.

14. The sixth just cause standard asks, "whether the Chief is applying the rule or order fairly and without discrimination against the subordinate." The Chief has cited no other case where an officer was discharged for failing to fully investigate a crime or complaint. Such a case may have occurred in the past, but none was presented to the Commission. In the more recent cases that were reviewed, the suspensions ranged from five (5) to fifteen (15) days. The lack of prior similar disciplines alone is not evidence of unfairness or discrimination, but is a factor that can be considered by the Commission in determining the appropriate discipline. We conclude the Chief has satisfied the sixth standard by a preponderance of the evidence.

15. 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." Chief Norman testified that the primary reason for the discharge was the degree of harm that resulted. In this case, the officers' failures eroded the confidence of the public in MPD to protect victims who are unable to protect themselves. Against this, the Commission must weigh the officers' record of service. Officer Solati is a (14) fourteen year veteran who has a discipline free record and commendations for meritorious service. Officer Kuchta, having served for (2) two years, is much less experienced, but also has a discipline free record. In this case it is appropriate for us to consider the range of prior disciplines because there is a wide disparity between those disciplines and the discharge here imposed. Weighing these factors, we conclude that in lieu of

discharge, Officer Solati shall be suspended for 30 days, and Officer Kuchta, in light of his relative inexperience, shall be suspended for 15 days.

DECISION

The disciplines imposed by Chief Brunson on Count 1 and 2 are not sustained. The disciplines imposed by Chief Brunson on Count 3 are sustained but the discharges are changed as follows: for the good of the service, Officer Shahriar Solati is suspended for thirty (30) working days without pay, and Officer Nicholas Kuchta is suspended for fifteen (15) working days without pay.

Commissioner Everett L. Cocroft

Date

Commissioner Fred L. Crouther

Date



Commissioner Steven M. DeVougas, Esq.

January 20, 2021
Date

discharge, Officer Solati shall be suspended for 30 days, and Officer Kuchta, in light of his relative inexperience, shall be suspended for 15 days.

DECISION

The disciplines imposed by Chief Brunson on Count 1 and 2 are not sustained. The disciplines imposed by Chief Brunson on Count 3 are sustained but the discharges are changed as follows: for the good of the service, Officer Shahriar Solati is suspended for thirty (30) working days without pay, and Officer Nicholas Kuchta is suspended for fifteen (15) working days without pay.



Commissioner Everett L. Cocroft

1/21/21

Date

Fred L. Crouther

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1/21/2021

Date

Commissioner Steven M. DeVougas, Esq.

Date