

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

In the Matter of the Appeal of Devon L. Williams

Hearing Date: April 12, 2021

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

Commissioners: Everett L. Cocroft
Fred L. Crouther
Ann Wilson

Hearing Examiner: Rudolph M. Konrad, Esq.

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

For Appellant, Devon L. Williams
Rebecca Meyer, Esq.
Cermele & Matthews, S.C.

PROCEDURAL HISTORY

In Personnel Order 2020-137, dated December 3, 2020, Acting Chief of Police Michael J. Brunson, (“Chief Brunson” or “Chief”) found Police Officer Devon L. Williams (“Officer Williams”) had violated the Milwaukee Police Department Code of Conduct, Core Value 6.00, Restraint, referencing Guiding Principle 6.01, failure to exercise restraint in the use of force. Chief Brunson found that on June 8, 2020, at approximately 3:20 P.M., at 1630 N. 29th Street, Officer Williams, along with other officers apprehended and handcuffed a suspect. While outside the home, the suspect thrust his head towards Officer Williams, who then pushed him away with an open hand to the face. As an assisting officer pulled the suspect away from Officer Williams, he again pushed the suspect. For this violation, Chief Brunson suspended Officer Williams for fifteen (15) days without pay, and ordered that he be re-trained in Professional Communications.

Officer Williams 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 Lieutenant Gregory Borat

For Officer Williams: None called

FINDINGS OF FACT

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

1. On June 8, 2020, at 3:20 P.M., Officer Devon L. Williams (“Officer Williams” or Williams”) and his partner, Officer Alexander Nuter, conducted a traffic stop at 2817 W. Lisbon Ave., for a registration violation. The driver of the vehicle did not have a driver’s license and the female passenger had outstanding juvenile warrants. About eight (8) minutes after the stop began, the rear passenger, Tavion T. Edmond (“Edmond”), stepped out of the vehicle and, after Officer Williams told him to get back into the vehicle, ran off. Officer Williams and other officers chased him. Edmond ran into the backyard of a house at 1630 N. 29 Street, entered the back door, and ran into the basement. Officer Williams and other officers pursued him into the basement. Edmond resisted the officers’ attempts to arrest him. They overcame his resistance and handcuffed him. Edmond claimed he was injured and Officer Williams immediately requested medical assistance. The officers walked him up the stairs and to the front of the house, where he sat on the front steps waiting for medical attention. (Exs. 1, 2)

2. While waiting outside, Edmond told one of the arresting officers he had been punched in the face while being arrested in the basement. He then accused Officer Williams of punching him in the face. Officer Williams told him he did not hit him and his actions were recorded on his body worn camera. Edmond then stood up. A female officer told him to sit down and Officer Eric Sweeney (“Officer Sweeney” or “Sweeny”) grabbed Edmond’s right hand. Edmond then turned his head and suddenly and quickly lunged towards Officer Williams saying, “Swing at me again, n-----.” Edmond’s face came within six to eight inches of Officers Williams’ face, close enough to head butt him or spit on him. Williams quickly pushed Edmond back and said, “Get out of my face dog.” Williams pushed him back with his open left hand on the bottom part of Edmond’s face. Officer Sweeney pulled Edmond to the right as Officer Williams appeared to push Edmond further to the right with an open left hand to the back of Edmond’s head. The pushing incident, from beginning to end, took a fraction of a second. (Exs. 1, 2)

3. Officer Williams described his push as a reactionary strike to protect himself. The push was to create distance between himself and Edmond so that Edmond could not head butt him. The second push occurred because he was already in motion when Officer Sweeney pulled Edmond away. In responding to the threat from Edmond, Officer Williams maintained that he acted in compliance with the Defense and Arrest Tactic Training Guide (“DAAT”), which instructs an officer to use a “reaction hand strike” to overcome a threat of assaultive behavior. (Ex. 3) According to the training guide, a reaction hand strike is a quick jab with the forward hand to the subject’s chin. Its purpose is to create distance between the officer and the subject. It is delivered with the officer’s reaction hand to the subject’s chin using a vertical fist or a palm-heel. (Ex. 11) In this incident, Officer Williams pushed Edmond away with an open hand to the lower part of his face. As he explained, “The department DAAT form says strike which means punch, but at the

time of the incident I didn't see a need to strike him, I only wanted him out of my face and to gain distance so that he would not strike me." Edmond swung away from him because of the push by Williams and the pull by Sweeney. Williams reached out to Edmond with his open hand and appeared to push the back of Edmond's head. Officer Williams explained it as follows: "I honestly don't believe that I can follow someone to the side and deliver a push in one second. I do believe that I was already in motion to deliver a second push and while in motion the officer pulled the subject and that's how I pushed the back of his head." (Ex. 3)

4. Detective Brad Mellenthien investigated to determine if Officer Williams had committed a battery. In addition to interviewing Edmond and the officers at the scene, he viewed all four-six body worn cameras and the squad camera. He was able to view the incident from different angles and, some parts frame by frame. Reviewing the footage from Officer Sweeney's body worn camera, he concluded, "you can observe that PO WILLIAMS used an open hand, but the majority of the contact shows the back of EDMOND's head being pushed back toward the camera. PO WILLIAMS continues to move forward and appears to be attempting to grab EDMOND to assist PO SWEENEY in maintaining control of him." (Ex. 5, p 15) The criminal investigation, after review by the District Attorney, was closed as unsubstantiated pending any additional information from the personnel investigation. After the personnel investigation was completed, the criminal investigation was not reopened. (Ex. 4)

CONCLUSIONS OF LAW

5. 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).

6. Just cause standard number five 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 do not need to address the other just cause standards because we find that the Chief failed to show by a preponderance of the evidence that Officer Williams violated the rule as described in the charge filed against him.

7. The charge against Officer Williams specifies that he pushed the suspect twice without justification. A review Officer Williams' and Officer Byer's body worn camera videos and the police investigative reports entered into evidence establish that Officer Williams reacted appropriately and consistent with his training when threatened with bodily harm by Edmond's sudden thrust of his head toward Officer Williams' face. Officer Williams quickly pushed him away with his open hand. In reference to the first push, we find that the charge has not been proven by a preponderance of the evidence.

8. The alleged second push is more problematic. The specification states, "An assisting officer pulled the suspect away from Officer WILLIAMS, who followed and again pushed the suspect, this time to the back of the head." The two body worn camera videos viewed at the hearing alone do not prove the charge because the entire incident lasted less than half a second. Did Officer Williams intentionally push Edmond when there was no cause to? Was he merely trying keep

Edmond away from him? Was as he trying to grab Edmond to assist Officer Sweeney to gain control of him? Was his second push a delayed reaction caused by the perception-reaction gap, as suggested by one of the commissioners? No convincing answers to these questions are given in the record. Accordingly, we conclude that, in reference to the alleged second push, the charge also has not been proven by a preponderance of the evidence.

DECISION

The members of the Commission have found unanimously, by a preponderance of the evidence, that Devon L. Williams did not violate the Milwaukee Police Department's Code of Conduct as charged pursuant to Personnel Order 2020-137.



Commissioner Everett L. Cocroft

4/26/21

Date

Fred L. Crouther

Commissioner Fred L. Crouther

4/22/2021

Date



Commissioner Ann Wilson

04/20/2021

Date