

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

In the matter of the complaint of

Decision of the Board

MATTIE CONNOR BROWN

v.

**POLICE OFFICER TIMOTHY BANDT and
POLICE OFFICER TODD KAUL**

FPC Complaint No. 05-45

On October 16, 2008, having reviewed the complaint, applicable Milwaukee Police Department rules, the transcript and exhibits resulting from a hearing conducted regarding this matter and the proposed findings of fact and recommendation of Hearing Examiner Roy Evans, we met and reached the unanimous conclusion that there is insufficient evidence in this record to show that the accused officers acted inappropriately as alleged in the complaint.

We hereby adopt the Summary and Recommendation as submitted by Hearing Examiner Roy Evans. We also adopt proposed Findings of Fact 1-9 as submitted, delete Findings of Fact 10-12 as submitted, and add the following as Findings of Fact 10-13:

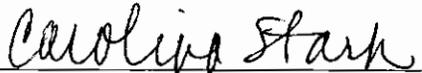
10. The complainant alleges that on July 9, 2005, Police Officer Timothy Bandt was discourteous in violation of MPD Rule 4 Section 2/060.00, that he was untruthful in violation of MPD Rule, Section 2/105.00 and that he utilized more force than was reasonably necessary in violation of MPD Rule 4 Section 2/445.00.
11. The record in this case does not contain sufficient evidence to support a finding that Officer Bandt was discourteous or untruthful or that he utilized more force than a reasonable police officer would have utilized given the same circumstances and information.
12. The complainant alleges that on July 9, 2005, Police Officer Todd Kaul was discourteous in violation of MPD Rule 4 Section 2/060.00, that he was untruthful in violation of MPD Rule, Section 2/105.00 and that he utilized more force than was reasonably necessary in violation of MPD Rule 4 Section 2/445.00.
13. The record in this case does not contain sufficient evidence to support a finding that Officer Kaul was discourteous or untruthful or that he utilized more force than a reasonable police officer would have utilized given the same circumstances and information.

DECISION OF THE BOARD

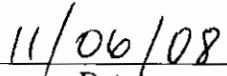
In order to prevail, a complainant must show and the Board must find that a preponderance of the evidence supports a finding that the member violated Department rules and/or standard operating procedures as alleged in the complaint and that just cause as defined in section 62.50(17)(b) Wis.Stats. exists. The record in this case is not sufficient to meet these standards, and therefore all charges contained in the complaint of Mattie Connor Brown against Police Officer Timothy Bandt and Police Officer Todd Kaul must be, and are hereby, dismissed.

Board of Fire and Police Commissioners
Of the City of Milwaukee

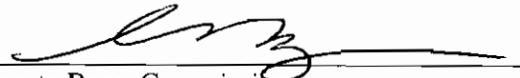
By:



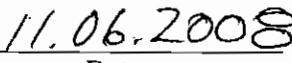
Carolina Stark, Commissioner



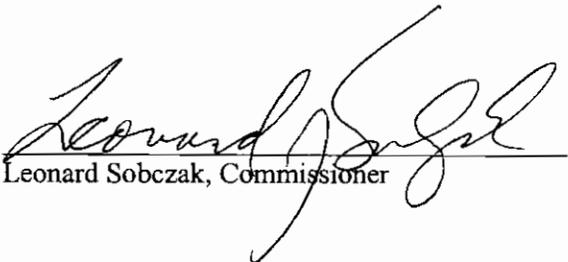
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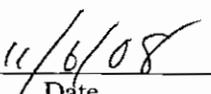
Ernesto Baca, Commissioner



Date



Leonard Sobczak, Commissioner



Date

BOARD OF FIRE AND POLICE COMMISSIONERS

CITY OF MILWAUKEE

**IN RE: The Matter of:
Citizen Complaint of
MATTIE CONNER BROWN**

File No. 05-45

COMPLAINT SUMMARY

This matter was heard on November 27, 2007 before the Hon. Roy B. Evans, Esq, acting as Hearing Examiner on behalf of the Board. The Complainant, Mattie Conner Brown, appeared in person with counsel, Attorney Charles W. Jones. The accused officer, Timothy Brandt, appeared in person and, along with the other officers who testified at the hearing, was represented by Attorney Rachel Pings.

The complaint (exhibit #1) alleged that on July 9, 2005, in the City of Milwaukee, at approximately 9:00 AM, the Complainant, while a house guest and sitting on the porch of her niece having her hair colored, observed an automobile pull up in front of the residence which was exited by several individuals who approached the residence. One of the individuals requested that they be allowed to search the premises based on an allegation that a man had been seen entering the premises and had also been seen throwing drugs out of a window. The Complainant, believing that she should cooperate, gave permission to the individuals, who at some point identified themselves as police officers, to enter and search the premises. At some point, after the officers entered the premises, followed by the Complainant and her niece, they began to search for evidence in a bedroom. The Complainant, realizing that she was a visitor and had no authority to give permission to enter or search the premises, asked that the search be halted. The niece, Kenya McGee, who had also been on the porch when the officers requested

permission to search, and was the renter of the premises, questioned the search and asked if the officers had a search warrant. After establishing that the officers had no warrant but were prepared to secure one, the niece also requested that the search be halted until such time as a warrant could be obtained. The officers refused to halt the search and were again told to leave the premises by both the Complainant and the niece. The officers requested that the Complainant leave the area being searched and to not interfere. The Complainant, being upset at the officers refusal, again demanded in firm tones, that the search be stopped whereupon the officers physically removed Complainant from the bedroom area being searched to the kitchen where she continued to struggle, was restrained and subsequently placed under arrest for obstructing. The Complainant was hand cuffed, a paddy wagon was summoned and the Complainant was eventually transported to the District station for processing. Complainant claims that she was verbally disrespected, humiliated and physically abused causing her to suffer injuries and damages for which she claimed she sought and received medical treatment. The officer at the scene did in fact receive a valid search warrant (exhibit #6) via laptop computer and completed their search finding no suspect or drugs.

APPLICABLE MILWAUKEE POLICE DEPARTMENT RULES AND STATUTES

Wisconsin Statute 62.50(17)(B) (Determining Just Cause) (Exhibit #2)

MPD Rule 4, Section 2/060.00 (Exhibit #3)

MPD Rule 4, Section 2/445.00 (Exhibit #4)

MPD Rule 4 Section 2/105.00 (Submitted but not made an exhibit)

SUMMARY OF TESTIMONIES

Mattie Conner Brown, Complainant (transcript pages 10-45) (See Complaint summary above.)

Officer Timothy Brandt (Transcript pages 56-94)

Officer Brandt testified that he was one of the officers at the scene and that upon arrival at the porch and after identifying himself as a police officer, with his badge visible, got permission from the niece, Ms McGee, to search the residence. He testified that he did not receive nor seek permission from the Complainant to search the premises having knowledge that Ms. McGee was the renter of the property and that she had authority to consent. He testified that after the search began the Complainant began to yell at the officers about the need for a search warrant and that she pushed her way into the area being searched. That the Complainant refused his command to leave the search area and was subsequently physically removed from the area and placed under arrest for obstructing. He stated that there was no excessive force used and at the time he testified that she made no complaint of being injured. A paddy wagon was summoned, she was transported to the district station for booking and the complainant was issued a municipal citation for obstructing. The officer stated that the niece was cooperative and gave consent to search. The officer also indicated under direct examination that there was a Professional Performance Division investigation based on Ms Brown's complaint and that no performance violations were determined as a result of that investigation

Officer Michael Lutz (Retired) (Transcript pages 97-109)

Officer Lutz testified that a confidential informant provided him with information about drugs and illegal weapons at the residence in question along with a description of a suspect. He testified that he contacted an Asst. District Attorney and indicated that he had enough evidence for a search warrant but would attempt to knock and talk in order to get permission to enter and, if unsuccessful in that method, that he would call back for a warrant if needed. (See Search Warrant Exhibit #6) He indicated that he approached the resident with two other officers and saw two women sitting on the porch doing hair. He stated that they approached the women and received permission from Ms McGee to go inside and search the premises. While attempting to search he stated that the Complainant began to yell and act wild and crazy in her efforts to get the officers to stop the search. When the complainant did not comply with his demand to leave, he and officer Brandt physically removed her from the search area, hand cuffed her, placed her under arrest and requested transport for her to be processed having been issued a citation for obstruction. He indicated that he stopped the search and requested and received a valid search warrant. Whereupon the search continued and was completed.

Officer Todd Kaul (Transcript pages 118-126)

He testified that he was an assisting officer in the execution of the search. He exited the police vehicle and secured the rear of the house. By radio transmission he was cleared to enter the house and began searching the living room. He indicated that the Complainant came into the premises yelling that the search should not continue and that she was physically confronting the other officers whereupon she was restrained and placed under arrest. That after her arrest he

observed her as she sat in the living room waiting to be transported. He indicated that there was some yelling and command language used but that there was otherwise not abuse of the Complainant.

Sergeant James Sobek (Transcript pages 127-132)

He testified that he came to the scene, which was outside of his district, as a matter of routine having heard the matter being discussed over the police radio. He made no observations or notes after arriving at the scene and, even though he was the senior officer, he took no action and did not observe any injuries or receive any complaints before leaving the scene.

Officer Nathan Yeo (Transcript pages 135-141)

He testified that he was the officer assigned to transport the Complainant to the district via paddy wagon for processing. He indicated that he arrived at the scene and observed the Complainant in custody with a substance running down her face and had to be put in the wagon because she was screaming and hollering and making a scene on the steps. He testified that he offered to wipe her face but she stated that she did not want him to touch her. He allowed a female civilian to wipe the Complainant's face. He then transported her to District 7 where she was searched by a female officer and processed.

PROPOSED FINDING OF FACTS

As to the Complainant's allegations of violations of the Milwaukee Police Department Rules as set forth in exhibits #3 and #4.

1. That Officer Brandt and the other officers who testified were at all times members of the

Milwaukee Police Department and bound by the rules and regulations. In particular those contained in exhibits #2 and #3 which are a part of his action.

2. That on July 9, 2005 at approximately 9:00 AM, officer Brandt and other officers attempted to execute a search of a premises, based on an informants tip, located at 2745 N.18th Street in the City of Milwaukee.

3. That after arriving at said address the officers were given permission, by the renter of the premises without a warrant, to search the premises for suspects and contraband.

4. That after commencing the search the Complainant objected and began to demand that the search be stopped claiming that she gave permission and should not have given permission to search because she had no standing to grant same in that she did not rent or own the premises being searched.

5. That while conducting the search the Complainant cursed and refused to physically remove herself from the area being searched after being instructed to do so by officer's Brandt and Lutz.

6. That as a result of her refusal and because of her continued behavior she was physically removed by officer's Brandt and Lutz from the area being searched to another room (kitchen) where the Complainant resisted and was arrested for obstruction, placed in handcuffs and transported by paddy wagon to District No. 7 for processing..

7. That the officers suspended the search, requested and received via fax a search warrant (exhibit #6) signed by Judge Barry C. Slagle.

8. That the search continued. No suspect or drugs were found. An illegal stun gun was found but no charges were issued.

9. That there were no visible signs or complaints of injuries reported to authorities that were alleged to have been sustained by the Complainant as a result of her arrest

10. Based on the testimony there is insufficient evidence or proof to support a finding that Officer Brandt or the other officers were either discourteous, uncivil or otherwise disrespectful to the Complainant in carrying out their duties as police officers under the circumstances.

11. Complainant has not met her burden to show by a preponderance of the evidence that officer Brandt or either of the other officers at the scenes violated MPD Rule 4, Section 2/060.00 or MPD Rule 4, Section 2/445.00 in the course of carrying out their duties as City of Milwaukee police officers.

12. Complainant failed to show that Officer Brandt or either of the other officers used a degree of force which a reasonable police officer would deem unnecessary under the circumstances.

HEARING EXAMINERS RECOMMENDATION

Having reviewed the complaint, listened to the testimony of the parties and in consideration of the evidence necessary to sustain a finding of MPD conduct violation on the part of officer Brandt or the other police officers involved in this matter, the Hearing Officer has come to this conclusion: Although the Complainant's testimony was deemed to be honest and forthright in its presentation and, perhaps may have provided the Hearing Examiner with some basis for credibility in support of some of her claims, the complainant, nevertheless did not provide a single witness to support her testimony or claims. The Complainant presented no witnesses at the hearing to corroborate her testimony or rebut any of the testimony of the officers who

testified. The Complainant claimed that she was injured and sustained damages, injuries and medical expenses, however, she failed to produce any documentation, medical proof or bills to support this claim. A basic tenet of law is that willfully disobeying a lawful order to follow directions or comply may constitute grounds for an arrest and basis for the issuance of a citation for obstructing. The testimony of the Complainant clearly shows, by her own testimony, that she refused to follow lawful instructions and admits "I recall going completely berserk" (Transcript page 24 at #22), and, "I was yelling. I was out of control" (Transcript page 18 #22) just prior to and during her attempted arrest. Therefore, without any additional relevant information or evidence and based on my review of all things considered, it is my opinion that the Complainant, Mattie Conner Brown, having the burden of proof, failed to show, by a preponderance of the evidence, that officer Brandt or any of the other officers giving testimony in this matter, intentionally engaged in any identifiable conduct that would rise to the level warranting application of the penalties associated with violation of MPD Conduct Rules 4, Section 2/ 060.00, 2/445.00 or 2/105.00.

THEREFORE, it is the hearing examiners conclusion and responsibility to conclude and thus concludes and hereby recommends that the Citizen Complaint of Mattie Conner Brown against Officer Timothy Brandt, file No. 05-45, be dismissed.

Respectfully submitted this 3rd day of January, 2008.



Roy B. Evans, Esq., Hearing Examiner