

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

In the Matter of the Appeal of Nikolas B. Zens

Hearing Dates: December 14, 18 and 28, 2020

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

Commissioners: Everett L. Cocroft
Fred L. Crouther
Angela McKenzie, Esq.

Hearing Examiner: Rudolph M. Konrad, Esq.

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

For the Appellant, Nikolas B. Zens
Brendan P. Matthews, Esq.
Rebecca Meyer, Esq.
Cermele & Matthews, S.C.

PROCEDURAL HISTORY

In Personnel Order 2020-76, dated July 30, 2020, Chief of Police Alfonso Morales (“Chief Morales” or “Chief”) found that Police Officer Nikolas B. Zens (“Officer Zens”) had violated Milwaukee Police Department Code of Conduct provisions on two (2) 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 conduct themselves accordingly; specifically, the Wisconsin Law Enforcement Standards Board’s “Tactical Response, A Training Guide for Law Enforcement Officers,” which, depending on the situation and environment, generally instructs officers engaged in a foot pursuit to not follow that exact same path as the suspect, meter (“pie”) corners in order to maintain distance from a corner to avoid turning directly into an ambush, and to stop, look, and listen for a suspect after losing sight of him during a foot pursuit. Chief Morales found that Officer Zens “failed to adhere to policy when he failed to stop and look for the suspect after losing sight of him while chasing him on foot.” For this violation, Chief Morales

suspended Officer Zens for twenty (20) working days without pay. (Ex. 15; the Training Guide reference is Ex. 8, p. 17; the complete document is part of Ex. 17)

2. Core Value 1.00, Competence, referencing Guiding Principle 1.05, requiring members to be familiar with and follow department policy, procedures and training and conduct themselves accordingly, referencing Wisconsin Law Enforcement Standards Board's "Defense and Arrest Tactics, Training Guide for Law Enforcement Officers," which instructs officer that "[if] you have determined that you face a threat that meets the requirements to permit deadly-force response, and you have decided to shoot, you may still fulfill three target requirements: Target acquisition, Target identification, Target Isolation." It further states, "Target isolation means that you can shoot at your target without danger of harming innocent people. If the person who shot at you from the apartment building ran out of the building and into a crowd of people, you could not shoot at him or her without endangering others." Chief Morales found that Officer Zens "failed to adhere to policy when he failed to meet the deadly force requirement of target isolation, ultimately wounding a Bystander." For this violation, Chief Morales discharged Officer Zens. (Ex. 14; the Training Guide is Ex. 1, pp. 81-82; the complete guide is part of Ex. 17)

Officer Zens appealed the Chief's order 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 Nikolas B. Zens Sergeant Allen Groszcyk Sergeant Vynetta Norberg Sergeant Matthew Mengel Inspector Paul Formolo
For Officer Zens:	Lieutenant Liam Looney Mr. Robert C. Willis Inspector Paul Formolo (as adverse witness) Police Officer Jose Flores Sergeant Matthew Mengel Lieutenant William Wilson MPA Secretary-Treasurer, Danilo Cardenas Police Officer Nikolas B. Zens

FINDINGS OF FACT

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

As Brown tried to enter through the door, Officer Zens shouted, "Let me see your hands, now!" At the same time, Officer Zens noticed another person in the doorway. The two persons were backlit by the interior light shining into the dark backyard. Brown turned towards Officer Zens and abruptly extended his arms outward from under his shirt near his waistband. Officer Zens, now five (5) to ten (10) feet from Brown, feared Brown was about to shoot him, fired at Brown center mass to stop him. Officer Zens did not use his firearm's site to aim his shot. Instead, he turned and reacted quickly. Officer Zens then saw Brown's hand: he was unarmed. Thereafter, Officer Zens holstered his firearm. After he shot, both persons fell to the ground. Office Zens then saw Brown's hands and holstered his firearm. When he shot at Brown, he missed him and hit Davis, who was behind Brown. Davis was seriously injured but fortunately not killed. The time from when Officer Zens began the chase to the time he discharged his weapon was about 12 seconds. (Ex. 3, 7, 9, 17)

6. The Chief found that Officer Zens failed to follow police training on foot pursuit tactics. Specifically, when he rounded the northeast corner of the 3222 house after losing sight of Brown, he did not "meter" the corner or stop or slow to avoid running into an unforeseen situation. To "meter" a corner means to not turn the corner close to the wall; in other words, step away from the wall before turning the corner. Wisconsin Law Enforcement Standards Board's "Tactical Response, A Training Guide for Law Enforcement Officers," is a training guide for law enforcement officers. In reference to foot chases, it recognizes that tactics will vary depending on the situation and environment; nevertheless, the general guidelines instruct officers engaged in a foot pursuit to not follow that exact same path as the suspect, meter corners in order to maintain distance from a corner to avoid turning directly into an ambush, and to stop, look, and listen for a suspect after losing sight of him or her during a foot pursuit. (Ex. 8, p. 17, Ex. 19)


7. The Chief also found that Officer Zens failed to follow police training on specific target requirements relating to the use of deadly force. Specifically, he failed to acquire target isolation and as a result wounded a Bystander. Wisconsin Law Enforcement Standards Board's "Defense and Arrest Tactics, Training Guide for Law Enforcement Officers," instructs officer that "[if] you have determined that you face a threat that meets the requirements to permit deadly-force response, and you have decided to shoot, you may still fulfill three target requirements: Target acquisition, Target identification, Target Isolation." It further states, "Target isolation means that you can shoot at your target without danger of harming innocent people." Nevertheless, a police officer may shoot without acquiring target isolation "if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person." (Ex. 1, pp. 81-82) The training guide entitled, "Firearms, A Training Guide for Law Enforcement Officers," contains the same provisions. (Ex. 4, pp. 53-54)

8. The Chief's rationale for disciplining Officer Zens was given by Inspector Formolo. Prior to his testimony, Inspector Formolo had reviewed the investigative reports, videos, interviews, and Officer Zens' PI-21 statement. He testified that Officer Zens was engaged in a single minded pursuit of Brown as exhibited by his PI-21 statement. The statement the Inspector referred to is recorded in Sergeant Vynetta Norberg's memorandum. "He stated he lost sight of him for approximately a half second. He stated he chased him around the corner directly after him. He stated he should've stopped after he lost sight of him but kept going because of fear and adrenaline and he wanted to get him into custody." (Ex. 9, p. 56) The Inspector testified that his actions are inconsistent with the Tactical Response training guide, which states "If you decide to pursue,

unnecessary use of force.” (Ex. 11, p. 14) In this case an innocent person suffered a serious injury. An additional concern was a prior incident of Officer Zens not following training. Two months earlier, while he was pursuing a suspect on foot, he swore at the fleeing subject and yelled at him several times, “I’m going to shoot you.” He was not disciplined for this conduct, but rather was counseled. We conclude the Chief has satisfied the seventh standard by a preponderance of the evidence.

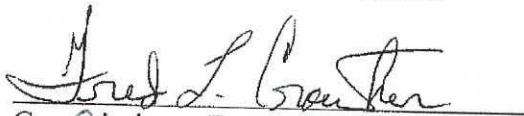
DECISION

The discipline imposed by Police Chief Alfonso Morales is sustained and the good of the service requires that on the first count, Officer Nikolas B. Zens to be suspended for twenty (20) working days without pay, and on the second count, Officer Nikolas B. Zens be discharged from the department.



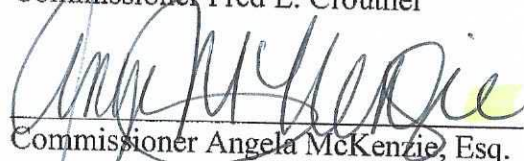
Commissioner Everett L. Cocroft

1-5-21
Date



Commissioner Fred L. Crouther

1-5-21
Date



Commissioner Angela McKenzie, Esq.

1-14-21
Date