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DISTRICT I

July 5, 2023

To:

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You are hereby notified that the Court has entered the following opinion and order:

2021AP2078 Gary W. Inman v. City of Milwaukee (L.C. # 2020CV4450)

Before Brash, C.J., Donald, P.J., and Dugan, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Gary W. Inman appeals from an order of the circuit court upholding the decision of the Board of Fire and Police Commissioners for the City of Milwaukee (the Board) which suspended Inman from the Milwaukee Police Department for ten days without pay. We agree with the circuit court that the Board acted properly and that the evidence is sufficient to support the Board's decision. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1]

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

We adopt the circuit court's decision and affirm. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) (court of appeals may adopt circuit court opinion).

BACKGROUND

On August 20, 2019, Milwaukee Chief of Police Alfonso Morales "Chief Morales" suspended Inman after an internal police investigation found that Inman violated Milwaukee Police Department Core Value 1.00 (acting with competence) and Guiding Principle 1.04 (failure to conduct a prompt, thorough, impartial, and careful investigation). The suspension stemmed from an incident that occurred on June 22, 2018, when Inman was dispatched to investigate a suspicious vehicle. The details of the incident are thoroughly addressed in the circuit court order, but it suffices to say that while investigating the vehicle, Inman encountered a young female who ultimately revealed that she was a human trafficking victim. An internal police investigation found that Inman failed to properly investigate whether the young female was a victim of sexual assault, failed to properly investigate her claims of trafficking, failed to contact his supervisor for guidance, and otherwise failed to handle the matter in accordance with Milwaukee Police Department standards. Inman was subsequently suspended.

Inman appealed his suspension to the Board. Following testimony from multiple witnesses, the Board upheld the suspension. Inman filed both a statutory appeal pursuant to WIS. STAT. § 62.50 and a petition for a writ of certiorari with the circuit court. The circuit court affirmed the Board. Inman now appeals.

DISCUSSION

A circuit court's decision on statutory appeal is "final and conclusive." As such, no portion of Inman's statutory appeal is before this court. *See* ***Gentilli v. Board of Police & Fire Comm'rs of City of Madison***, 2004 WI 60, ¶14, 272 Wis. 2d 1, 680 N.W.2d 335. Inman's appeal to this court is therefore solely by writ of certiorari. *See* ***Herek v. Police & Fire Comm'n Vill. of Menomonee Falls***, 226 Wis. 2d 504, 510, 595 N.W.2d 113 (Ct. App. 1999).

We review the Board's decision, not the decision of the circuit court. *See* ***Driehaus v. Walworth Cnty.***, 2009 WI App 63, ¶13, 317 Wis. 2d 734, 767 N.W.2d 343. The Board's decision enjoys "a presumption of correctness and validity." *See* ***id.*** "However, a board must apply the appropriate legal standards and adequately express the reasons for its decision on the record." ***Id.*** "Whether the board acted in excess of its powers, applied an incorrect theory of law, or made an arbitrary, oppressive or unreasonable decision are each questions of law that this court reviews *de novo*." ***Id.*** The Board's findings will be upheld if they are supported by "any reasonable view of the evidence[.]" *See* ***State v. Waushara Cnty. Bd. of Adjustment***, 2004 WI 56, ¶13, 271 Wis. 2d 547, 679 N.W.2d 514.

On appeal, Inman contends that: (1) the Board violated his due process rights; (2) the Board exceeded its jurisdiction by failing to reach a conclusion based upon the charges; (3) Core Value 1.0 and Guiding Principle 1.04 are unconstitutionally vague; and (4) the Board lost competence when it failed to issue a written decision within the time limits prescribed by its internal rules.

The circuit court reviewed the action of the Board, which is our charge on appeal. *See* ***Driehaus***, 317 Wis. 2d 734, ¶13. The circuit court addressed all of Inman's arguments, and

Inman does not raise any new arguments on appeal. The circuit court's decision pertaining to certiorari review is extremely thorough and well-considered. Accordingly, we adopt the circuit court's decision as the decision of this court. *See* WIS. CT. APP. IOP VI(5)(a) (court of appeals may adopt a circuit court opinion).

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

FILED
09-17-2021
John Barrett
Clerk of Circuit Court
2020CV004450

BY THE COURT:

DATE SIGNED: September 15, 2021

Electronically signed by Kevin E. Martens-27
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 27

Gary W. Inman,

Petitioner,

v.

Case Nos. 20-CV-4450
20-CV-5834

City of Milwaukee et al.,

Respondents.

DECISION AND ORDER

The Petitioner, police officer Gary Inman, has filed a statutory appeal and petition for writ of certiorari regarding the Board of Fire and Police Commissioners for the City of Milwaukee's ("FPC") decision to uphold his 10-day suspension regarding alleged violations of department policy and procedures. For the following reasons, both the appeal and petition are denied.

BACKGROUND FACTS

On June 22, 2018 at approximately 7:30 a.m., Officer Inman was dispatched to investigate a suspicious vehicle. Upon arrival, Officer Inman discovered an adult male and a young woman ("M.S") laying down in a van together. The vehicle's license plates did not belong to the vehicle, the vehicle was unregistered, and the male did not have a valid driver's license. When Officer Inman asked M.S. her name and age, she said she was 19 and provided a fake name. At this point, Officer Inman believed prostitution may have been occurring. When Officer Inman again questioned M.S. away from the adult male, she revealed her real name and that she was 15 years old. When asked why she was with the male, M.S. replied "because I told him I was over 18." Officer Inman then informed the male that M.S. was not 19, told him that it was a "good thing you

didn't do anything else with her", and let the male go. Officer Inman later stated that he did not believe he had probable cause to make an arrest at this time.

After the male left, Officer Inman became aware that M.S. had been missing from St. Rose, a group home, for several months. He transported M.S. to St. Rose and did not attempt to speak to her during the ride. Upon arrival, Officer Inman discovered that M.S. had been discharged from St. Rose. He then reviewed M.S.'s reports and discovered that, three months earlier, M.S. had been reported to have had sex with adult males for money. An hour later, at roughly 9:00 a.m., a St. Rose employee told Officer Inman that M.S. had stated she had been trafficked within the last month. The employee asked Officer Inman if the Sensitive Crimes Division ("SCD") or protective services should get involved, but Inman said that they could not do anything. Officer Inman later acknowledged that, at this point, there was probable cause to believe that M.S. was a victim of trafficking. Officer Inman unsuccessfully attempted to interview M.S. at that point even though he had never investigated a sexual assault. Because he had not worked in the SCD, Officer Inman was not aware that female victims are less likely to disclose information to male officers. Officer Inman did not inform SCD or his supervisor of suspected trafficking at this time because he did not believe he could provide them with enough information.

M.S. further disclosed to a St. Rose employee that she had been engaging in prostitution to make money and had given some of that money to another individual. Officer Inman was in the room and could hear this exchange. Officer Inman later stated this was the first moment where he thought he should contact SCD. However, body camera footage showed the St. Rose employee asking Officer Inman if he should get SCD involved to which he replied "not without better evidence." Officer Inman indicated that he wanted M.S. to open up to him so that he could ensure that she would open up to SCD. At 9:20 a.m., M.S. stated to a St. Rose employee that she had been trafficked and punched by a man that drove a silver Lexus and lived by an auto center near North Avenue. Again, Officer Inman did not notify SCD or contact his supervisor.

Officer Inman then spoke on the phone with an individual from St. Croix County, where M.S. had previously been living. He was advised that representatives from St. Croix were in the process of obtaining a capias and that he should take M.S. to the Milwaukee County Children's Center ("MCCC"). An MCCC employee, in turn, told Officer Inman that he needed a capias in order to for MCCC to take physical custody of M.S. At this time, Officer Inman made several phone calls, including one at 11:21 a.m. to Officer Fuerte, his supervisor. According to Officer

Inman, he provided Officer Fuerte with a factual summary and requested SCD support. Officer Fuerte, however, later stated that Officer Inman only reported a missing juvenile and neither requested SCD support nor made any mention of sexual assault.

Officer Inman then received a call from Erin Moore, a Pathfinders advocate, who asked him to take M.S. to the Child Advocacy Center ("CAC"). Although the SCD has an office at the CAC, it had still not been notified of the circumstances involving M.S. Moore picked up M.S. and Officer Inman followed them to the CAC. Officer Inman stated that he informed his supervisor that he was going to the CAC around 1:00 p.m. and that his supervisor told him to keep SCD updated. While traveling to the CAC, Officer Inman was advised that a capias had been issued from St. Croix County for M.S. and that two deputies would pick M.S. up at MCCC. At this point, Officer Inman considered M.S. detained. Even though department policy states that juveniles are to be brought to CAC, it is common knowledge within the SCD that detained juveniles should not be taken to the CAC due to its lack of security. Individuals from SCD could have alerted Officer Inman of this had they been present.

Moore began an examination of M.S. at the CAC. Officer Inman states that he told Moore that he would take M.S. into physical custody as soon as the examination was completed; Moore denies that he said this to her. Officer Inman went to the waiting room, and waited there for two hours. He did not know the layout of the CAC building nor exactly where M.S. was being examined. As of this point, SCD still had not been contacted regarding M.S. After two hours, Officer Inman states that the CAC receptionist told him that M.S. had left through a backdoor. However, Moore claims that she and M.S. left the examination through the same door in which they had entered. According to Moore, she did not see Officer Inman and would have spoken to him had he been there. Officer Inman attempted, without success, to contact Moore after she and M.S. had left. Officer Inman partially drafted a report concerning the events of the day but never submitted it.

M.S. was eventually found on August 17. She was pregnant and had used heroin and cocaine while pregnant. M.S. also refused to speak to any law enforcement officers about whether she had been subject to trafficking.

MPS Investigation of Policy Violations and Disciplinary Decision

Lieutenant Jones, an internal affairs officer, reviewed Officer Inman's actions and recommended an investigation for a violation of two code of conduct policies – Core Value 1.00 ("CV 1.00") and Guiding Principle 1.04 ("GP 1.04"). CV 1.00 specifies that all MPD officers are "accountable for the quality of [their] performance and the standards of our conduct." Guiding Principle 1.04, in turn, states that:

> Police investigations shall at a minimum be based upon reasonable suspicion of an actual or possible offense or crime. Investigations shall be conducted and reports shall be prepared in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.

City of Milwaukee police officers are obligated to follow both CV 1.00 and GP 1.04.

Milwaukee police officers are also required to comply with standard department operating procedures. Standard Operating Procedure 112 ("SOP 112") applies to sexual assault matters. Step 3 of SOP 112 requires an officer to conduct a "minimal facts interview." A minimal facts interview merely requires that an officer interview a victim enough to know that a crime involving sexual assault or trafficking may have occurred in the City of Milwaukee. Step 4 of SOP, in turn, requires an officer to notify the shift commander of suspected sexual assault or trafficking so that he or she can inform SCD. Notably, SOP 122 requires that an officer notify the shift commander before moving the victim for a forensic exam or the care of a private physician.

Sergeant Palmer investigated the matter. He interviewed Officer Inman, Officer Fuerte and Sergeant Kennedy, an SCD officer. Officer Palmer also reviewed phone logs, body camera footage, memos involving M.S. and other materials and wrote a 16-page report recommending that Officer Inman be disciplined for violating CV 1.00 and GP 1.04. The report found that Officer Inman was guilty of failing to "conduct an investigation in a prompt, thorough, impartial and careful manner by failing to ensure the SCD was notified and involved in an investigation involving the human trafficking of a juvenile." The Milwaukee Police Chief adopted these findings, determined that Officer Inman had violated CV 1.00 and GP 1.04, and imposed a 10-day unpaid suspension.

The FPC Hearing and Decision

The FPC heard Officer Inman's appeal on June 26 and 29, 2020. At the hearing, the board heard testimony from Officer Inman, Lieutenant Jones, Sergeant Palmer, Erin Moore, and Sergeant Kennedy, among others.

Officer Inman's Testimony

Officer Inman stated that he informed Officer Fuerte of suspected trafficking and believed Officer Fuerte would contact SCD. Officer Inman also testified that he had told Moore he would take M.S. into physical custody when she was done with the examination and that the receptionist at the CAC told him that M.S. had escaped through a backdoor. Finally, Officer Inman conceded that, at various points, he had reasonable suspicion to believe that a crime may have occurred and that, had he read the M.S. reports while the adult male in the van was still present, he could have preserved the van as a crime scene.

Lieutenant Jones' Testimony

Lieutenant Jones, a member of the SCD, testified that Officer Inman's investigation was deficient in several ways. According to Lieutenant Jones, those errors included not immediately finding the car to be a crime scene, not immediately looking at M.S.'s reports, not conducting a minimal facts interview on scene, not detaining the adult male in the van, not following the St. Rose employee's suggestion to contact SCD, putting Moore in charge of M.S. after she was considered in custody, not contacting the SCD because "he could not get evidence", and taking M.S. to the CAC instead of MCCC. Though not certain, Lieutenant Jones testified that SCD officers likely would have initially responded to the scene with the van had they been notified. Lieutenant Jones also testified that, although the CAC was a safe place for all victims, it was not appropriate for M.S. because she was in custody.

Sergeant Palmer's Testimony

Sergeant Palmer was the internal affairs investigator for this case. He testified that he had interviewed Officer Fuerte who, though not remembering much about the M.S. matter, was certain that Officer Inman never informed him of sexual assault or trafficking. Officer Fuerte stated that he had experience with SCD protocols and was certain that, had he been informed about sexual

assault or trafficking, he would have immediately contacted SCD. Sergeant Palmer also stated that, had SCD been notified, Officer Inman would have been advised that, although SOP 112 states that a child "may" go to the CAC, that was not appropriate in this case because M.S. was in custody.

Erin Moore's Testimony

Erin Moore, the pathfinder advocate, denied that she and M.S. left the CAC using a backdoor. She also denied that Officer Inman told her that he would put M.S. into custody once the examination at CAC was completed.

Sergeant Kennedy's Testimony

Sergeant Kennedy testified that the SCD was not aware that M.S. may have been involved in trafficking and was undergoing an examination at CAC. According to Sergeant Kennedy, had SCD known this, they would have acted immediately and sent an officer to be with M.S. He also testified that, although SOP 112 permits officers to transport child victims to the CAC, this is not appropriate for custodial victims like M.S. Sergeant Kennedy further stated that M.S.'s exchanges with the St. Rose employees constituted a minimal facts interview and that Officer Inman should have notified his supervisor immediately after hearing M.S. say she had been involved in trafficking. According to Sergeant Kennedy, "[a]nytime an officer is unfamiliar or has questions for what they do, the SOP is pretty clear that they should be contacting either their supervisor or their shift commander."

The FPC Decision

After the hearing, the FPC upheld the chief's discipline and determined that Officer Inman was guilty of violating CV 1.00 and GP 1.04. In doing so, the FPC found Officer Fuerte's testimony to be more credible than that of Officer Inman. The FPC emphasized that a St. Rose employee had tried to get Officer Inman to reach out to the SCD and that, had he complied with SOP 112 and caused SPD to be notified, he would have known not to take M.S. to CAC.

LEGAL STANDARD

Police officers appealing a FPC decision have two options: an appeal under Wis. Stat. § 62.50 and an appeal via common law certiorari review. Officers are permitted to bring both forms of appeal at the same time.

Statutory Review Under Wis. Stat. § 62.50

Under Wis. Stat. § 62.50, which governs statutory appeals for Milwaukee police officers, the court's only inquiry is whether, with the evidence presented, there was just cause for the determination made by the FPC. Wis. Stat. § 62.50(21). Just cause consists of seven factors:

> 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 that 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 a 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 chief's department.

Wis. Stat. § 62.50(17)(b).

The FPC's review in this case is intended to be the "main event" for an officer's appeal, and not a "tryout" for further appeals. *See Younglove v. City of Oak Creek Fire & Police Comm.*, 218 Wis.2d 133, 141, 579 N.W.2d 294 (Ct. App. 1998) (citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985). The Court does not apply a *de novo* standard of review, but instead looks to see if "the Board's decision is supported by the evidence that the Board found credible." *Younglove*, 218 Wis.2d 133, 138-139, 579 N.W.2d 294 (Ct. App. 1998). The legislative purpose of the review statute was to ensure that courts simply determine "whether the board had performed its statutory duty and made a reasonable decision upon the evidence, i.e. had acted not necessarily wisely but as reasonable men [and women] upon the evidence placed before them." *Clancy v. Bd. of Fire & Police Com'rs of Milwaukee*, 150 Wis. 630, 635-36, 138 N.W. 109 (1912).

Certiorari Review

Officer Inman also filed a common law petition for certiorari review. The scope of certiorari review is typically limited to whether the FPC (1) acted within its jurisdiction; (2) proceeded on a correct theory of law; (3) was arbitrary, oppressive or unreasonable; or (4) might have reasonably made the order or finding it made based on the evidence. *Antisdel v. City of Oak Creek Police & Fire Comm'n*, 2000 WI 35, ¶ 13, 234 Wis.2d 154, 609 N.W.2d 464. However,

when a party uses both a certiorari appeal and statutory appeal, the analysis is limited to whether the FPC acted within its jurisdiction and whether it proceeded on a correct theory of law. *Sliwinski v. Board of Fire and Police Com'rs of City of Milwaukee*, 2006 WI App ¶ 11, 289 Wis.2d 422, 711 N.W.2d 271. The Court must determine if the FPC conclusion in this case is supported by the evidence. *Gentilli v. Board of Police and Fire Com'rs of City of Madison*, 2004 WI 60, ¶ 35, 272 Wis.2d 1, 680 N.W.2d 335.

DISCUSSION

The FPC had just cause to find that Officer Inman was guilty of violating CV 1.00 and GP 1.04 and to uphold his 10-day suspension without pay and, in doing so, acted both within its jurisdiction and under a correct theory of law.

Certiorari Review

Under certiorari review, the Court does not apply a *de novo* standard to the FPC's decision but, instead, looks to see if its "decision is supported by the evidence that the [FPC] found credible." *Younglove*, 218 Wis.2d at 138-139. The FPC considered the conflicting testimony of Officer Inman *vis a vis* Officer Fuerte and Erin Moore; to the extent that it found the testimony of Officer Fuerte and Moore to be more credible, the Court cannot revisit its findings. Determinations of credibility are a task for the tribunal that hears them. *Id.* at 296-297. As a result, this Court must accept the FPC's credibility determinations, including that Officer Inman did not inform Officer Fuerte that M.S. may have been the victim of trafficking and that Officer Inman did not inform Moore that he intended to take M.S. into custody after her CAC interview.

Officer Inman raises additional challenges, alleging that the rules applied by the FPC were unconstitutionally vague and that the FPC decision should be overturned because of a delay in issuing its written decision. Officer Inman further argues that he was deprived of due process because certain FPC members were inattentive during the hearing and, thus, incapable of being impartial and fair towards him. For the following reasons, the Court finds that these arguments do not provide a basis for certiorari relief.

I. Officer Inman Received Adequate Notice That He Was Charged With Violating CV 1.00 And GP 1.04 And The FPC Decision Properly Addressed Those Charges.

Officer Inman argues that his due process rights were violated because he was not given notice of the charges against him. Citing *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 546

(1985), he argues that the FPC, by finding that he had violated SOP 112 rather than CV 1.00 and GP 1.04 (the violations for which he received formal notice), violated his due process rights by not giving him notice of all of the charges against him. In *Loudermill,* the Supreme Court held that, for administrative hearings, a person is entitled to "notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Id.* at 546. Officer Inman argues that, although he was informed that the hearing was in regards to a violation CV 1.00 and GP 1.04, he was ultimately found to have violated a different rule -- SOP 112. The respondent argues that Officer Inman *was*, in fact, found by the FPC to have violated CV 1.00 and GP 1.04 and that compliance with SOP 112 was simply one of the underlying factors considered in reaching that decision. The respondent highlights that the FPC decision itself finds that Officer Inman violated CV 1.00 and GP 1.04 and that his failure to comply with SOP 112 – such as failing to inform Officer Fuerte of a potential trafficking situation – simply demonstrates the manner in which Officer Inman violated CV 1.00 and GP 1.04.

The FPC's final written decision document explicitly states that it found Officer Inman guilty of violating CV 1.0 and GP 1.04. It notes that the police chief found that Officer Inman had violated CV 1.00 and GP 1.04 and that, upon administrative review, those decisions were upheld. The record indicates that, although SOP 112 was invoked as an investigative standard during the hearing, Officer Inman was charged under CV 1.00 and GP 1.04. SOP 112, in other words, was used as one of the underlying bases to demonstrate how Officer Inman violated CV 1.00 and GP 1.04. There is a difference between being found guilty of a rule violation and finding that noncompliance with the rule is evidence of a different rule violation. After finding that Officer Inman did not notify Officer Fuerte (or SCD) of suspected trafficking in a timely manner and that he should not have taken M.S. to the CAC once she was in custody, the FPC could reasonably conclude that he failed to "conduct an investigation in a prompt, thorough… and careful manner by failing to ensure the SCD was notified and involved in an investigation involving the human trafficking of a juvenile."

Officer Inman further argues that, even if a violation of SOP 112 was simply "evidence" of a violation of CV 1.00 and GP 1.04, the FPC should have referenced SOP 112 in its witnesses and exhibits list. He provides no case law, however, to support this argument. Furthermore, because SOP 112 is part of the standard operating procedure of the Milwaukee police department,

it should be well-known to all police officers. Therefore, not including SOP 112 in an exhibit list was not a violation of Officer Inman's due process rights.

Nor did the FPC exceed its jurisdiction by reaching a conclusion that was at odds with the charged violation. Officer Inman argues that, by invoking SOP 112 at the hearing, the board ignored the charges listed in the charging document. As previously indicated, however, Officer Inman's failure to comply with SOP 112 was just one of the several ways which he was found guilty of violating CV 1.00 and GP 1.04. The FPC, therefore, provided Officer Inman with adequate notice of the violations alleged against him and did not reach conclusions at odds with those violations.

II. The Charges And Rules Upon Which The FPC Based Its Decision Were Not Unconstitutionally Vague.

Officer Inman argues that the rules he was found to have violated are unconstitutionally vague and, as a result, he was deprived of due process. According to Officer Inman, SOP 112 is unconstitutionally vague in this case because he was found to have violated it by taking M.S. to the CAC even though it states that officers "may" take child victims to that facility. The city, in turn, highlights that Officer Inman was not found guilty of violating SOP 112, but instead of violating CV 1.00 and GP 1.04.

A statute is constitutionally vague if it "fails to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Administrative rules can be found to be unconstitutionally vague under this same standard. *State ex rel. Kalt v. Board of Fire & Police Commissioners for the City of Milwaukee*, 145 Wis. 2d 504, 510, 427 N.W.2d 408 (Ct. App. 1988). The Wisconsin Supreme Court has provided a standard for vagueness:

> The concept of vagueness may be generically described as resting on the "constitutional principle that procedural due process requires fair notice and proper standards for adjudication." The constitutional demand of procedural due process is not a requirement that the statute or ordinance be drafted with mathematical exactitude.... "Condemned to the use of words, we can never expect mathematical certainty from our language." Accordingly, the standard applied to examine a statute or ordinance has been expressed as follows: "A fair degree of definiteness is all that is required to uphold a statute or regulation, and a statute or regulation will not be voided merely by showing that the boundaries of the area of proscribed conduct are somewhat hazy." ...:
>
> " '... Before a ... rule may be invalidated for vagueness, there must appear some ambiguity or uncertainty in the gross outlines of the duty imposed or conduct prohibited such that one

> bent on obedience may not discern when the region of proscribed conduct is neared, or such that the trier of fact in ascertaining guilt or innocence is relegated to creating and applying its own standards of culpability rather than applying standards prescribed in the ... rule.' "

City of Milwaukee v. K.F., 145 Wis. 2d 24, 32-33, 426 N.W.2d 329 (1988) (second ¶ alterations in original) (citations omitted).

Officer Inman does not argue that CV 1.00 and GP 1.04 are unconstitutionally vague, but instead attacks SOP 112. He therefore makes no showing that he could not discern the region of proscribed conduct as it applies to CV 1.00 and GP 1.04. Furthermore, SOP 112 is not unconstitutionally vague as applied to these circumstances. SOP 112 states that a police officer "may" take a child to the CAC. It does not mandate or require that children be taken to the CAC in every circumstance. According to Officer Inman, because part of his punishment was due to bringing M.S. to this facility, the law is unconstitutionally vague. However, the FPC found that, had Officer Inman complied with his obligation to ensure that SCD receive timely notification of possible trafficking in this case, he would have been advised not to take M.S. to the CAC in this case after he considered her "in custody". In addition, taking M.S. to the CAC was not the only reason Officer Inman was found guilty of violating CV 1.00 and GP 1.04. He was also found to have violated those policies by failing to inform Officer Fuerte about the possible sexual assault and trafficking. The FPC reasonably agreed with the witness testimony that police officers should know to immediately notify supervisors of suspected trafficking in these circumstances. Officer Inman, therefore, has failed to demonstrate that CV 1.00 and GP 1.04 – or, for that matter, SOP 112 -- are unconstitutionally vague in this case. As a result, his due process rights were not violated.

III. Officer Inman Has Not Shown That His Due Process Rights Were Violated Due To Lack Of Attentiveness By FPC Members During The Hearing.

Officer Inman alleges that FPC members were, at various times, asleep or distracted by electronic devices during the hearing to the point that their inattentiveness prevented them from being impartial and fair, which in turn deprived him of due process. His attorney submitted an affidavit indicating that at least three FPC members were either distracted by their phones or had fallen asleep at different points of the hearing. Officer Inman asks the court to apply cases concerning jury attentiveness such as *State v. Saunders*, 2011 WI App 156, 338 Wis. 2d 160, 807 N.W.2d 679, and *State v. Dyess*, 124 Wis.2d 525, 370 N.W.2d 222, (1985) to this case. The

respondent, in turn, highlights that there is no proof that these individuals were actually asleep, and that it is possible that those using electronic devices may have been reviewing the record, which the parties submitted in electronic format.

Officer Inman has provided no case law that supports extending cases involving jury attentiveness to administrative hearings. And importantly, the record lacks any other evidence that could support a finding that the FPC members failed to pay attention to the overall presentation of evidence. It is not uncommon for individuals to close their eyes for a period of time when listening to an oral presentation. Electronic devices may be used to view electronic evidence. Momentary lapses in attentiveness are not uncommon and, by itself, not indicative of lack of impartiality. The FPC hearing involving Officer Inman took approximately two days. The FPC's findings were not so contrary to the evidence presented at the hearing that it would support Officer Inman's theory of inattentiveness. And even if a few FPC members were occasionally distracted, it is not plausible based on this record to conclude that they were distracted to the point of impartiality across a two day hearing. As a result, Officer Inman was not deprived due process due to inattentiveness of the FPC members.

IV. The FPC Retained Jurisdiction In This Matter Despite Issuing An Untimely Written Decision.

Finally, Officer Inman argues in his certiorari appeal that the FPC lost jurisdiction because it did not produce a written decision within ten days of the hearing in accordance with its own rules. The respondent argues that, despite the FPC rule that the board "shall" return a written opinion within 10 days, the board was not obligated to follow the rule.

Time constraints that are self-imposed by administrative boards have not been found to be binding, even when they use the word "shall". *Kruczek v. DWD*, 2005 WI App 12, 278 Wis. 2d 563, 692 N.W.2d 286. In *Kruczek*, the petitioner appealed a decision by the Department of Workforce development. The Petitioner argued that, because the Department did not issue an order within 30 days despite the administrative code stating that the department "shall" issue a decision within 30 days, the decision was invalid. *Id.* at ¶ 11. The court examined four factors: (1) the objectives to be accomplished by the statute or regulation; (2) the statute's history; (3) consequences of an alternate interpretation; and (4) whether a penalty is imposed for the violation of the time limit. *Id.* at ¶ 14-15. The court determined that the Department was not required to issue a decision within 30 days because the department needed time to consider the punishment;

there was no language in the code which suggested that immediate compliance was required; the punishment – debarment -- was temporary; and the code did not suggest that the department loses jurisdiction if it failed to issue a timely decision. *Id.* at ¶ 15-23.

Applying *Kruczek*, the FPC was not required to issue its written decision within ten days in this case. There is nothing in the FPC's rules directing that the 10 day deadline *must* be met, nor is there language indicating that the FPC loses jurisdiction if they do not issue a decision within that time. The legislature has not indicated that written administrative decisions must to be issued within 10 days and the punishment in this case, a suspension, is temporary. As a result, the FPC did not lose jurisdiction of the matter even though it issued an untimely written decision.

Statutory Review Under Wis. Stat. § 62.50

Officer Inman also brings an appeal under Wis. Stat. § 62.50. Under this type of appeal, the Court's only inquiry is whether, based on the evidence presented, there was just cause for the determination made by the board. Wis. Stat. § 62.50(21). This analysis is deferential to the board. *Younglove,* 218 Wis.2d at 141. When examining whether there was just cause, the Court's goal is to ensure that the board decision is reasonable given the evidence it determined to be credible. *Id.* Just cause is comprised of seven factors:

> 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 that 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 a 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 chief's department.

Wis. Stat. § 62.50(17). Inman argues that FPC decision fails to satisfy all seven factors and that just cause is therefore lacking.

For the following reasons, the Court finds that the FPC did, in fact, have just cause to make its decision based on the credible evidence.

I. Officer Inman Could Reasonably Be Expected To Have Knowledge That His Actions Violated Department Rules And Could Result In Discipline.

Based on the evidence adduced at the hearing, the Court finds that Officer Inman could reasonably be expected to have known that his conduct during the M.S. investigation may lead to a suspension. Officer Inman was charged under CV 1.00 and GP 1.04 which state that "[i]nvestigations shall be conducted...in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law." Under SOP 112, once a minimal facts interview has been conducted, the officer must "notify the shift commander who will notify the [SCD]" if there are facts to indicate that a sexual assault of trafficking may have occurred. After hearing conflicting testimony, the FPC determined that Officer Fuerte credibly testified that Officer Inman did not promptly notify him that M.S. had provided information indicating that she may have been the victim of trafficking and that, as a result, SCD was not notified prior to M.S. leaving the CAC. Based on this determination, Officer Inman could reasonably have anticipated that there would be consequences for his failure to act and that, by failing to comply with SOP 112, he did not meet the requirements of CV 1.00 and GP 1.04.

II. The Rules That Officer Inman Was Found To Have Violated Are Reasonable.

As previously indicated, Officer Inman argues that the rule that he was found to have violated – SOP 112 – was not reasonably applied in this case because it is too vague. Again, however, his discipline was premised upon violating CV 1.00 and GP 1.04, not SOP 112, and the Court previously determined that those rules were not unconstitutionally vague. Furthermore, the FPC relied on multiple factors in determining these violations, including (but not limited to) noncompliance with SOP 112, an inadequate minimum facts investigation, and failure to properly monitor M.S. once she was deemed in custody. CV 1.00 and GP 1.04 simply require officers to be prompt, thorough and careful in their investigations. This is not an unreasonable expectation. The FPC heard the testimony of several police officers, none of whom indicated that any of these policies were unreasonable. Indeed, everyone involved in the incident and hearing (other than Officer Inman) appears to have agreed that his conduct violated these policies. The FPC found that, under these policies, the SCD should have been notified of this matter much sooner and that the failure to do so was the result of Officer Inman's nondisclosure. This is a reasonable finding based on the credible evidence and a reasonable application of the charged policies.

III. **The Police Chief Made A Reasonable Effort To Discover If Officer Inman Violated Department Rules Before Charging Him.**

Officer Inman argues that the police chief did not make a reasonable effort to investigate whether or not he had violated these rules. According to Officer Inman, the police chief failed to interview all relevant witnesses and, had he done so, would not have found any rule violations. Officer Inman further argues that the police chief did not conduct a reasonable investigation because he did not interview Moore to determine the circumstances under which M.S. left the CAC.

The Court finds that the police chief did, in fact, make a reasonable effort to investigate this matter before charging Officer Inman with policy violations. The record reflects that the police chief summarized what he saw in bodycam videos and reviewed relevant telephone and dispatch records. He also interviewed multiple witnesses and provided a 16-page report. This indicates that the investigation of this matter involved a significant review and was not perfunctory. Importantly, Officer Inman does not identify any additional witness who, if interviewed by the police chief prior to charging, would have corroborated his account. With regard to Moore, the FPC heard testimony from her at the hearing that, in fact, contradicted Officer Inman regarding what occurred at the CAC and the circumstances involving M.S. The investigative steps performed by the police chief, in conjunction with the credible testimony that was found to support his decision, establish that he made a reasonable effort to determine if Officer Inman violated CV 1.00 and GP 1.04.

IV. **The Effort To Investigate The Matter Was Fair And Objective.**

Officer Inman argues that the effort to investigate this matter was not fair or objective because the police department's Internal Affairs division did not finish a written investigation within 90 days as required under SOP 450. He gives no indication, however, that this undermined the fairness or objectivity of the investigation. Officer Inman states that it is hypocritical for the police department to charge him with an SOP violation only to then commit one itself. Whether or not this is true, it does not support a finding that the police department was not fair and objective during its investigation of this matter.

V. **The Police Chief Discovered Substantial Evidence That Officer Inman Violated Department Rules.**

Officer Inman argues that the police chief did not discover substantial evidence that he violated a department rule because the requirements of SOP 112 did not clearly apply to these circumstances. This is a rehash of his previous due process argument that was addressed – and

rejected -- earlier in this decision. Officer Inman further contends that the substantial evidence was lacking because the FTC improperly added a time-based element to SOP 112 and because there was conflicting testimony in this case. Again, however, Officer Inman was found to have violated CV 1.00 and GP 1.04, which impose requirements to conduct prompt investigations, and not SOP 112. Evaluating the timeframe involved is *essential* to determining if a violation of CV 1.00 and/or GP 1.04 has, in fact, occurred. Its consideration in this case demonstrates that investigation and determinations in this matter were conducted reasonably and objectively supported. With regard to conflicting testimony, the FPC has the responsibility to determine credibility. In this matter, it assessed relevant considerations in finding Officer Fuerte and Moore to be more credible. The court must be deferential to the credibility determinations of the FPC. *Youmglove*, 218 Wis.2d at 140. Additionally, the FPC heard testimony from other police officers indicating that Inman did not meet the standard for police conduct. All of this establishes that the FPC had substantial evidence that Officer Inman violated CV 1.00 and GP 1.04 and that there was just cause for its decision.

VI. The Police Chief Applied Department Rules Fairly And Without Discrimination Against Inman.

Officer Inman alleges that the police conduct rules were not fairly applied against him because other officers did not receive the same punishment for violating the same rule. However, the examples offered by Officer Inman in which officers did not receive a 10-day suspension are distinguishable from his circumstance. In imposing discipline, the FPC considered Officer Inman's work history and experience on the force. It was further concerned by the fact that M.S. was a minor and the significant impact that his violation of conduct rules had on her. In light of these factors, Officer Inman's charge and suspension does not appear to be unfair or discriminatory.

VII. The Discipline Imposed In This Case Reasonably Relates To The Seriousness Of The Violations And To Officer Inman's Record Of Service With The Department.

Finally, Officer Inman claims that the discipline imposed does not reasonably relate to the seriousness of the alleged violation. He argues that the FPC was inconsistent in its reasoning for charging him because at one point they indicated it was "not crucial" to their decision whether or not he reported the sexual assault at 11:21 AM. This appears to be a misunderstanding. Although the FPC found that Inman did not inform Officer Fuerte of the sexual assault, he was disciplined for failing to conduct a prompt investigation. Thus, whether or not Officer Inman reported the

assault is not determinative, as he was ultimately punished for a delay in informing his supervisor. Officer Inman also argues that his record of service should have resulted in a lesser punishment. He does not, however, cite any statutes or cases indicating that a record of service should insulate an officer from punishment when he or she is involved in this type of significant rule violation. Throughout the disciplinary process, the FPC consistently indicated that a failure to contact a supervisor regarding a possible trafficking circumstance is a substantial error. Officer Inman's suspension, regardless of how long he had been on the force, is reasonably related to the seriousness of the violations of CV 1.00 and GP 1.04.

CONCLUSION

Because the FPC had just cause in suspending Officer Inman, acted within its jurisdiction in making this decision, and applied a correct theory of law, Officer Inman's appeals are **denied**.