

MILWAUKEE POLICE DEPARTMENT MEMORANDUM

Date: October 1, 2014

TO: Chief of Police Edward A. Flynn

FR: Police Officer Christopher Manney

RE: Response to Charge



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Sir, this memo is in response to a charge that I failed to have reasonable suspicion to conduct a pat-down search of Dontre Hamilton.

I am quite shocked that I was charged with this alleged violation, as my pat-down of Hamilton was completely reasonable, responsible, and common sense, based on the circumstances. I certainly had reasonable fear that Hamilton was possibly armed and posed a threat to my safety. These fears later came to fruition when Hamilton showed his intentions and attempted to kill me, a uniformed police officer, in broad daylight.

Contained in IAD's own investigation are details taken from a report from February 10, 2013 (IR # 13-0410040), which documented P.O. Jay Jackson's interactions with Hamilton. During an interview of P.O. Jackson, subsequent to his handling of Hamilton's attempted suicide where he stabbed himself numerous times in the neck, P.O. Jackson stated that he observed Hamilton to be "extremely disturbed...had like a 1000 yard stare...extremely paranoid." P.O. Jackson also stated that Hamilton had a muscular build and that if he (P.O. Jackson) was by himself, Hamilton "most definitely would have overpowered...me or pretty much any officer I can think of, to tell you the truth. He was just that big, that muscular...I would say he would be impossible to control if you were one-man."

The previous paragraph is important to note, as I also observed some of these same characteristics of Hamilton during my encounter with him on April 30, 2014, which I will detail throughout this memorandum. P.O. Jackson's statement illustrates how another reasonable officer viewed Hamilton on a different occasion, which is applicable to my incident with him. Specifically, P.O. Jackson described the "1000 yard stare" and also Hamilton's physical condition, as well as his own view of the officer/subject factor with Hamilton.

Upon approaching Hamilton in Red Arrow Park, I observed him to be lying on his back near the statue with his arms down at his sides, hands turned up, eyes closed, and one leg bent at the knee and rapidly twitching back and forth. No other body parts were moving. Based on the behaviors exhibited and the fact that Hamilton was laying down in an odd location that is directly in the path of where the general public walks, I immediately suspected during my tactical evaluation that he probably wasn't in a normal state, which brought about significant concern for my safety in preparation for dealing with the individual.

As I got nearer to Hamilton, his eyes opened abruptly and very wide. He then stared directly at me with his eyes as wide open as possible, which again is not the behavior of a person in a normal state. The subject was fixated on me with a stare that made feel as if he was looking through me and wanted to hurt me, also well-known in the law enforcement field as the "1,000 yard stare," which included no blinking. Combined with Hamilton's behaviors that I observed while he was lying on the ground and the stare, I immediately believed the subject was either under the influence of drugs/alcohol or suffering from mental illness and was a significant threat to my safety.

Once Hamilton stood up, I observed him to be significantly younger than me, in his 20's, with a very muscular build (I do not consider myself to be in particularly good physical shape or as strong and as muscular as the subject), black eyes with no blinking, and *bulges* in his clothing. I also noticed a bag near him and I believed that the subject appeared to be homeless, based on several factors. From my experience of dealing with hundreds or possibly thousands of homeless individuals in the downtown area over the years as a Milwaukee police officer, I know that most homeless people that I've dealt with have knives on them or some kind of weapon on them to fend off other homeless persons or persons that may pose a threat to them as they sleep and live in public areas. This is commonplace.

Based on the totality of the circumstances, I felt that I was not dealing with somebody in a normal state of mind and that due to an overwhelming number of factors, I felt that the subject posed a significant danger to my safety and may have had a weapon on his person that he could use against me, which I felt may be the reason for the bulges in his clothing. I felt compelled, for my safety, to conduct a pat-down search of Hamilton for weapons. As I attempted the pat-down, my fears that Hamilton wanted to hurt me came to fruition and I was viciously attacked by him and eventually forced to defend my life with my service weapon.

Again, since being served with this charge, I haven't understood how the Department could believe that I didn't have reasonable suspicion to conduct a pat-down search of Hamilton. I had a plethora of reasons to fear that Hamilton posed a threat to my safety and may be armed with an object/weapon that he may hurt me with. I firmly believe that a reasonable officer in the exact same circumstances would have attempted to conduct a pat-down search of Hamilton for weapons also. As a matter of fact, I would say that any officer that didn't conduct a pat-down search of Hamilton in these exact circumstances would be acting irresponsibly as it relates to their own safety and would have disregarded their training to recognize threats to them. My attempted pat-down search of Hamilton was absolutely justified and any statement to the contrary is misguided.

To further demonstrate my justification to conduct the pat-down search of Hamilton and combat the allegation that I wasn't justified, I will cite several authorities related to the topic of pat-down searches.

According to the most current Crisis Management Training Guide for law enforcement officers in Wisconsin and published by the Wisconsin Department of Justice Law Enforcement Standards Board (2007) on Wilenet.org, persons that are mentally ill or under the influence of drugs/alcohol are classified as emotionally-disturbed persons, or EDP's (Hamilton was an EDP, per this definition). They are described as people who do not think clearly and rationally. As it relates to tactical considerations, the guide states that when an officer is "...dealing with *any* EDP, you are dealing with someone who is potentially dangerous..." Furthermore, the guide states that "*always assume that an EDP may be dangerous.*" The guide advises officers to also be aware of early warning signs of danger and pre-attack postures when dealing with these subjects. These warning signs include: giving the officer excessive emotional attention

(Hamilton's violent-appearing, fixated stare at me) and moving in exaggerated ways (Hamilton's concerning behavior of laying in the public's way with only a twitching leg and the rest of his body motionless. I felt that this was very concerning, as it made me feel as though he was telling the world that he will lay where he wants and that nobody better mess with him. It certainly was not normal.) Pre-attack postures include: targeted glance (Hamilton gave me a fixated stare and made me feel as if I was about to be the target of an upcoming attack by him) and the "thousand-yard" stare (as previously described, Hamilton clearly exhibited this pre-attack posture to me, which included a direct, continued stare).

It should be noted that per Internal Affairs' own report, DOJ SAC Klabunde noted that "several witnesses reported seeing Mr. Hamilton in the park prior to the incident and described him as 'not all there, strung out, on something, or coming down (characteristics of an EDP)." Clearly, the general public was fearful of Hamilton's state of being at the time (as I was once I began dealing with him), as a reasonable person would consider persons in any of these conditions to be potentially dangerous. I submit that the average citizen who exhibits appropriate caution for their own safety tends to stay away from persons in these conditions due to the inherent danger involved in dealing with them.

According to the most current Defense and Arrest Tactics (DAAT) Training Guide for law enforcement officers in Wisconsin and published by the Wisconsin Department of Justice Law Enforcement Standards Board (2007) on Wilenet.org, early warning signs of threats to officers include the same warning signs and pre-attack postures as previously described in the paragraph immediately above and that were present during this exact encounter with Hamilton. They also describe officer/subject factors. In my case, I was dealing with a subject considerably younger than me, in much better shape than me, and much stronger and more muscular than me. I was also working one-man and didn't have backup immediately available to me. I knew I had to deal with this subject one-on-one and I was at a physical disadvantage from the start. Also included in the guide is the level/stage/degree of stabilization concerns. Specifically, it states that "an unrestrained, standing subject is in a much better position to be able to deliver force against you than a subject who is prone on the ground and in handcuffs" and "...the less stabilization, the greater the threat." In this case, Hamilton and I were out in the open and he was completely unrestrained and free. These factors contributed to my decision to conduct the pat-down search of his person for my safety.

Furthermore, the DAAT guide, as it relates to frisks (pat-down searches), states that "if you (officers) additionally have reasonable suspicion, based on articulable facts, that you or someone else is in danger from the subject, you may conduct a limited search (a frisk) for weapons or objects that could be used as weapons." Also, according to Milwaukee Police Department Standard Operating Procedure 085 issued May 29, 2013, and in effect at the time of my incident with Hamilton, "for a frisk to be warranted after a person has been stopped, the police member must reasonably suspect that he/she or another is in danger of physical injury from that person. The police member is then entitled to conduct a limited search for weapons or objects which might be used as weapons." Clearly, based on the totality of circumstances that I have already detailed above, I had reason to fear for my safety and I met all of these listed criteria to justify a pat-down search of Hamilton.

Additionally, I would like to cite the U.S. Supreme Court case of *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), which dealt with a challenge by the defendant that the officer in the case had no reason to conduct a pat-down search of his person strictly based on the officer observing a "bulge" in his clothing. In the case, a gun was located on the defendant's person and he was arrested. In this case, the Supreme Court held that "the facts available to the officer at the moment of the seizure or the search warrant a man of *reasonable caution* in the belief that the

action taken was appropriate." Also, the court held that "there is little question the officer was justified. The bulge in the jacket permitted the officer to conclude that Mimms was armed, and thus posed a serious and present danger to the safety of the officer. In these circumstances, any man of 'reasonable caution' would likely have conducted the "pat down."

The case of Pennsylvania v. Mimms is meant to illustrate the Supreme Court's recognition of just how concerning to an officer's safety *bulges* in citizens' clothing are during stops. As stated, Hamilton not only had bulges in his clothing during our encounter, but there were also numerous other factors at the time that contributed to my fears that he posed a threat to my safety and that he may have been armed.

Again, I had an overwhelming amount of justification to conduct a pat-down search of Hamilton, which I have thoroughly detailed in this memorandum. I vehemently dispute this charge, which I find to not only be misguided, but also irrational. I believe the decision by the Department to charge me with this violation, which I don't know has ever been charged to another officer in my career with this department, is either due to ulterior motives or simply the lack of experience, or recent experience, of the supervisors involved in this decision in conducting their own field-interviews where pat-down searches were necessary. My conduct was absolutely appropriate in this case.

Due to my suffering from and diagnosis of severe Post Traumatic Stress Disorder due to this incident, I required and received assistance to complete this memorandum. I attest that the information contained in this document is true and correct.

Respectfully submitted,

P. Christopher Manney D-6 12

Police Officer Christopher Manney #014766
District Six - Early Power Shift