STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1650, A09-1669

Reverend Terry Williams,
Respondent,

vs.

Minneapolis Police Department,
Respondent (A09-1650), Relator (A09-1669),

Minneapolis Park Police Department,
Relator (A09-1650), Respondent (A09-1669),

City of Minneapolis Commission on Civil Rights,
Respondent.

Filed July 6, 2010
Affirmed
Muehlberg, Judge[*]

Minneapolis Commission on Civil Rights
File Nos. A6152-PS-1A, A6153-PS-1A

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Muehlberg, Judge.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

In these consolidated certiorari appeals, relators Minneapolis Park Police Department (MPPD) and the Minneapolis Police Department (MPD) challenge the order by the Minneapolis Commission on Civil Rights (commission) denying relators' summary judgment motions in which they argued that the police were immune from respondent's racial-discrimination claims. MPPD argues official immunity should apply to the officer's brief investigatory stop of respondent because her actions did not rise to the level of willful or malicious misconduct, and MPD makes the same argument as applied to the back-up officers' actions. Both relators argue that the accusation that the stop was based on racial profiling should not preclude the application of official immunity, and vicarious official immunity should apply to the departments. Because we conclude that a reasonable factfinder could find that the officers acted willfully or maliciously, we affirm.

FACTS[1]

On the afternoon of July 20, 2006, respondent Reverend Terry Williams was preparing to go for a run around Lake Calhoun in Minneapolis. He was stretching on the

[1] "When reviewing a denial of summary judgment based on a claim of immunity, we presume the truth of the facts alleged by the nonmoving party." *Meier v. City of Columbia Heights*, 686 N.W.2d 858, 863 (Minn. App. 2004), *review denied* (Minn. Dec. 14, 2004) (quotation omitted). Accordingly, we adopt the respondent Williams' version of the facts.

grass near his parked car while talking to his mother on his cell phone. He stretched by moving side to side and then front to back; he did not stretch on his hands because he was holding and talking on the cell phone.

At the same time, Officer Anne Deneen of the Minneapolis Park Police Department (MPPD) was patrolling in her squad car around Lake Calhoun, traveling south on West Calhoun Parkway. Deneen saw Williams, who is African American, standing on the west side of the parkway dressed in jogging clothes talking on his cell phone. She described his stretching while talking on the phone as fake stretching, because he appeared to be expending little effort. Deneen observed another African American man across the street on a bike who was also talking on a cell phone. Although she thought the two men were looking at each other, Williams did not even notice the man on the bike.

Based on these observations, Deneen claims to have believed that the two men were serving as lookouts for one another in a scheme to commit theft from a vehicle. But Deneen acknowledged that she did not see Williams looking in any of the cars parked near him.[2] She drove past the men, looped back, and stopped near Williams. Deneen observed the men for about two minutes, which included the time it took her to drive past and loop back.

Deneen then got out of her squad car and told Williams to come over to her car. Williams asked her several times why she wanted to talk to him. Rather than answer, she

[2] In Deneen's statement, the transcript shows "no audible answer" in response to whether Williams was inspecting cars. In reviewing the tape of the statement, however, we hear the officer say "no" in her response.

continued to repeat her command in a stern voice. Williams then told her that his identification was in his vehicle and that he was willing to either show it to her or allow her to get it herself. She did not respond to this offer and told him, "You're going to either come to my vehicle or I'm going to call for a back-up." Williams said, "Backup for what?" Deneen repeated her demand that Williams come over and at this point, Williams accused her of racial profiling. She then called for backup. Throughout this exchange, Williams did not yell and he testified that if Deneen had explained why she wanted him to come to her car, he would have come to her car.

While waiting for backup to arrive, Deneen did not tell Williams why she wanted to talk to him. She also did not retrieve his identification from his car or allow him to do so, allegedly for safety reasons since there were no other officers on the scene. A few minutes later, MPD Officer Dan Tyra arrived. Tyra's squad-car video recorder was recording the incident from the time he arrived. Then, two more MPD officers arrived. Williams continued to tell the officers that his identification was in his vehicle and it was unlocked, but the officers did not respond.

While Tyra learned from Deneen that she wanted Williams to come to her car, Williams asked why they wanted him to come to the squad car. In response, Tyra said in a loud voice, "You want to go to the back of her car? How do you want to do this? You want to go to the back?" Tyra then told Williams, "[Deneen wants] to discuss it in the back of her car not in the wide open." Then Tyra and the other MPD officers closed in on Williams so he agreed to go into the squad car. Tyra searched Williams briefly before

he went into the squad car. While putting Williams into the backseat, Tyra told him, "It's no big deal." Williams replied, "It's a big deal cuz you're profiling."

Tyra mocked Williams, saying in a sarcastic tone, "Profiling? What does that mean?" Another MPD officer shrugged in response. Deneen said to Tyra, "Supposedly I'm profiling." Tyra said, "Okay," and one of the other officers said, "I didn't know you did that." Tyra leaned close to Deneen and quietly said, "Profiling's illegal," and Deneen said, "I know," and one of the male officers chuckled. Deneen then informed the other officers what she observed and described the man on the bike. Then she stated, "I could be profiling? But you know." Williams felt that the officers were belittling, mocking, and trying to intimidate him with their comments about racial profiling.

Two MPD officers drove off to look for the man on the bike. The officers never found him. Tyra shut off his squad-car video camera and Deneen entered the front of her car with Williams still in the back.

With Williams in the back of her vehicle, Deneen asked for his name and other information, which he provided. After taking some of his information, Deneen finally explained to Williams why she stopped him and the high-crime history of the area. Williams explained that she should have just asked him what he was doing there and that he would have told her. He also continued to accuse her of racial profiling. She responded, "Well, you know, profiling, well, maybe I did, I don't know."

While Williams was detained in the squad car, Tyra came back over to the car. He put his head in the window and sarcastically asked Williams why he kept referring to himself as "Pastor," since Tyra did not refer to himself as "Officer" when he was off

duty. Williams replied, "Well, as a pastor I'm always on duty." Tyra shrugged and laughed about it. Williams testified that Deneen looked at Tyra like she did not approve of his mocking behavior.

After detaining Williams in the squad car for about 15 minutes, Deneen walked Williams to his vehicle and looked at his identification. She advised him that he should probably leave his valuable items at home instead of in his car because of the high rate of theft from cars. She gave him her name and badge number at his request and allowed him to leave. Williams was detained by the officers for approximately 30 minutes, in total.

Sergeant Mark Swanson, a MPPD day-duty supervisor, spoke to Williams on July 25, 2006 about the incident. Based on his conversations with Williams and Deneen, he concluded that Deneen did not violate any policies and had "actively engaged in good police work."

During an interview with the Minneapolis Department of Civil Rights (MDCR) in November 2006, Deneen denied some of her prior statements that were on the tape from Tyra's squad car and in written and oral statements she previously made to her supervisor. First, she denied that Tyra spoke to Williams after he was placed in the squad car even though she previously told her supervisor in writing and verbally that Tyra had questioned Williams's use of "Pastor." Second, she denied saying that she might have profiled Williams while talking to the MPD officers once Williams was inside the squad car.

In August 2006, Williams filed charges of racial discrimination against the MPPD and MPD with the MDCR.[3] On March 30 and May 16, 2007, the MDCR issued a finding of probable cause of racial discrimination against the MPPD and MPD, respectively. With regards to the MPPD, the MDCR found that Deneen (1) did not have reasonable suspicion to stop Williams; (2) detained Williams for an unreasonable length of time; and (3) demonstrated bad faith by providing inconsistent versions of the incident to investigators and instigating "an unnecessarily humiliating experience for [Williams]." Regarding the MPD, the MDCR found "probable cause of race discrimination by finding that the MPD officers engaged in a discourteous, disparaging, and improper dialogue with [Williams] by belittling him for his complaint of racial profiling, and attempting to embarrass, humiliate, and shame [Williams] by joking about his references to himself as a pastor."

MPPD and MPD moved for summary judgment before the commission, arguing that material facts showed that their officers had not discriminated against Williams as a matter of law and that their officers were entitled to official immunity from suit, thus entitling the MPPD and MPD to vicarious immunity from suit. The presiding officer of the three-member panel of the commission denied these motions. The MPPD and MPD

[3] The MDCR provides administrative services for the commission. Minneapolis, Minn., Code of Ordinances (MCO) § 141.80(b) (2008). The MDCR, among other duties, receives complaints, investigates claims for probable cause, conciliates disputes, and refers cases to the commission. *Id*. § 141.80(c); 141.50. The commission consists of members appointed under different rules than the department, and is charged with rule-, policy- and decision-making authority regarding the city's civil-rights ordinance. *Id.* § 141.40. Following the department's investigation and referral, the commission conducts hearings and renders findings pursuant to the ordinance. *Id.* § 141.50.

both appealed. By order, a special-term panel of this court determined that this court has jurisdiction to hear these consolidated appeals.

D E C I S I O N

The issue is whether the MPPD and MPD are entitled to summary judgment based on vicarious official immunity from the charges filed by Williams. "Although denial of a motion for summary judgment is not ordinarily appealable, an exception to this rule arises when the order denies summary judgment based on statutory or official immunity." *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 218 (Minn. 1998). "The ground for the exception is that immunity from suit is effectively lost if a case is erroneously permitted to go to trial." *Id.* On appeal from summary judgment, "[w]e review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). "When reviewing a summary judgment ruling, we must consider the evidence in the light most favorable to the nonmoving party." *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006).

"Immunity is a legal question that is reviewed de novo." *Id.* "The party asserting immunity has the burden of showing particular facts demonstrating an entitlement to immunity." *Meier*, 686 N.W.2d at 863. "When reviewing a denial of summary judgment based on a claim of immunity, we presume the truth of the facts alleged by the nonmoving party." *Id.* (quotation omitted).

Under the doctrine of official immunity, "a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to

an individual for damages unless he is guilty of a willful or malicious wrong." *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 569 (Minn. 1994) (quotation omitted). This doctrine protects "public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." *Id.* (quotation omitted).

Official immunity may be raised as a defense to charges that a police officer has discriminated against an individual in the provision of public services. *Id.* at 570-71. If the police officers here are entitled to official immunity, then the MPPD and MPD would be entitled to vicarious official immunity: "In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee's conduct."[4] *Schroeder*, 708 N.W.2d 508; *accord Beaulieu*, 518 N.W.2d at 570 n.5 (noting that if the police officers are entitled to official immunity from a charge of racial discrimination under the Minnesota Human Rights Act (MHRA), then the employing city would be immune under vicarious official immunity).

The police officers are not entitled to official immunity if they committed a malicious or willful wrong in stopping Williams.[5] *Beaulieu*, 518 N.W.2d at 570-71. "In determining whether an official has committed a malicious wrong, the fact finder

[4] The concept of vicarious official immunity is based on the same reasoning as official immunity: it seeks to prevent a public official from refusing to exercise discretion because of fears that his government employer would be found to be liable for his actions. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

[5] "In the official immunity context, willful and malicious are synonymous." *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991).

considers whether the official has intentionally committed an act that he or she had reason to believe is prohibited." *Id.* at 571 (citing *Rico*, 472 N.W.2d at 107-08). This standard, referred to as the *Rico* standard, focuses less on a "subjective inquiry into malice . . . and more [on] an objective inquiry into the legal reasonableness of an official's actions." *Id.* Whether conduct is malicious is generally an issue for the factfinder, but where no reasonable factfinder could find that officers acted with bad faith or malice, summary judgment is appropriate. *Elwood v. County of Rice*, 423 N.W.2d 671, 679 (Minn. 1988).

Beaulieu examined whether police officers were entitled to official immunity in a context similar to the case before this court. In *Beaulieu*, a robbery was reported to have been committed by an African American male wearing black clothing. *Beaulieu*, 518 N.W.2d at 568. Police patrolling the area, aware of the crime and the robber's description, saw an African American person of unknown gender driving with an African American male passenger wearing a dark colored shirt. *Id.* at 568. The police followed the vehicle, claiming that it sped and weaved through traffic without signaling properly, and that the passenger turned around to do something in the backseat. *Id.* at 568-69. The car's occupants, whose surname was Agunbiades, claimed that they did not commit any traffic violations and that the passenger did not turn around to look in the backseat of the car until he heard the police siren just before the car was stopped. *Id.* at 569. The officers stopped the vehicle, learned the driver was female and the male was her 13-year-old son, and told the Agunbiades that they had been stopped in part because the suspect had been seen leaving the crime scene in a car similar to their car, even though the

officers had no information that a car was used in the robbery. *Id.* at 568-69. After 15 minutes of detainment, the police released the Agunbiades. *Id*. at 569.

The mother filed a racial-discrimination claim with the state human rights department. *Id*. The state human rights department filed a formal complaint under the MHRA against the Mounds View police officers and the City of Mounds View, alleging that they racially discriminated against the Agunbiades in providing public services.[6] *Id.* The defendants filed a motion to dismiss the complaint based on official immunity, which the administrative law judge treated as a summary judgment motion and denied. *Id.* The defendants' resulting appeal eventually reached the supreme court. *Id.*

The court analyzed whether the defendants were entitled to summary judgment on the basis of official immunity. *Id*. at 569-72. It determined that the defendants would be so entitled "if there are no genuine issues of material fact tending to show defendants' felony stop of the Agunbiades constituted a willful or malicious violation of the Agunbiades' rights under" the MHRA—specifically, a right to equal enjoyment of public services, regardless of race. *Id*. at 571-72. Because it was undisputed that the defendants were providing a public service—namely, police services—the question became "whether a reasonable fact finder *could conclude* that defendants' treatment of the Agunbiades was [racially discriminatory]." *Id*. (emphasis added). A reasonable

[6] Specifically, the suit was under Minn. Stat. § 363.03, subd. 4 (1990) (renumbered as Minn. Stat. § 363A.12, subd. 1 (2008)) which provided: "It is an unfair discriminatory practice: (1) To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race [or] color . . . ." This language is similar to the law at issue in this case—MCO § 139.40(j)(1) (2008), which prohibits "any person engaged in the provision of public services" from discriminating against any person on the basis of, among other things, race or color.

factfinder could reach this conclusion if "defendants' treatment of the Agunbiades was so at variance with what would reasonably be anticipated absent racial discrimination that racial discrimination is the probable explanation."[7] *Id*. This standard is one of the ways to show through indirect evidence that discrimination occurred under *City of Minneapolis v. Richardson*, 307 Minn. 80, 87, 239 N.W.2d 197, 202 (1976).[8] In *Beaulieu*, the *Rico* standard for malicious violations of rights and the *Richardson* standard for discrimination merged: "if a reasonable factfinder could determine that defendants have engaged in racial discrimination under the *Richardson* standard, then a reasonable factfinder could also conclude that defendants acted maliciously under the *Rico* standard (i.e., intentionally committed an act that he or she had reason to believe is prohibited)." *Beaulieu*, 518 N.W.2d at 572 n.8.

In applying the so-at-variance standard from *Richardson*, courts must consider the totality of the circumstances surrounding the challenged conduct. *Id*. at 572. In the context of a stop, courts must also examine (1) whether there was a reasonable basis for

[7] This standard also applies in determining whether discrimination occurred under the Minneapolis Civil Rights Ordinance at issue in this case. *Minneapolis Police Dep't v. Kelly*, 776 N.W.2d 760, 766-68 (Minn. App. 2010), *review denied* (Minn. Mar. 30, 2010).

[8] In *Richardson*, the supreme court noted that racial discrimination in the area of public services could be proved through direct or indirect evidence. *Richardson*, 307 Minn. 86-87, 239 N.W.2d at 202; *Kelly*, 776 N.W.2d at 766. Indirect evidence of racial discrimination required either (1) proof that the complaint was treated worse with respect to public services than otherwise similarly situated individuals of a different race; or (2) proof that how the complainant was treated was so at variance with what would reasonably be anticipated absent racial discrimination that racial discrimination is the probable explanation. *Richardson*, 307 Minn. 86-87, 239 N.W.2d at 202; *Kelly*, 776 N.W.2d at 766-67. Since in this case there is no evidence on how the officers would have treated a white person in Williams's position, Williams relies on the second *Richardson* prong, like the Agunbiades in *Beaulieu*.

suspecting that the stopped individuals have been engaged in criminal activity; (2) whether the length of the stop was unnecessarily long; and (3) whether any evidence tends to show defendants acted in bad faith or with malicious intent. *Id*. at 572. Under the first factor, a reasonable basis exists for an officer to stop someone "when officers are aware of specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrants that the person stopped has been, or is about to be engaged in criminal activity." *Id*. at 572 n.9. In *Beaulieu*, the police argued that, in stopping the Agunbiades, they relied on several facts other than race, some of which the other party disputed.[9] Viewing the evidence in the light most favorable to the nonmoving party, the *Beaulieu* court concluded that the defendants' initial basis for the stop, while constitutionally sufficient, was weak and did not preclude the possibility of discrimination. *Id*. at 573. Under the second factor, the court concluded that a reasonable factfinder, viewing the evidence in favor of the nonmoving party, could conclude that the length of the detention was unreasonable and the result of racial discrimination. *Id*. The Agunbiades were detained for 15 minutes even though the police had no reason to believe that the suspect was a 13-year-old boy or that he had a woman

[9] Specifically, the police argued that: "(1) The suspect was described as male and the passenger in the suspect vehicle was male; (2) the suspect vehicle reached [a specific] intersection . . . at a time in which a vehicle leaving the crime scene would have reached this intersection; (3) the suspect vehicle [followed] a possible escape route; (4) the suspect was described as wearing dark clothing and the passenger in the suspect vehicle appeared to wear dark clothing; (5) the suspect was described as having short hair and the passenger in the suspect vehicle had short hair; (6) the suspect vehicle was weaving in and out of traffic and traveling faster than the flow of traffic; and (7) the passenger in the suspect vehicle moved between the seats and looked back at the police car." *Id*. at 572-73. The claimants disputed the last three proffered reasons.

accomplice. *Id*. Moreover, the boy was wearing a navy blue shirt, not the shiny black shirt mentioned in the police dispatch. *Id*. Under the third factor, the court noted that there was evidence that the officers acted in bad faith. *Id*. The officers had told the Agunbiades that they stopped them because they were looking for a gray car when in fact the police dispatch had not even mentioned a car. *Id*. Everything considered, the court determined "that a reasonable fact finder could find that defendants maliciously discriminated against the Agunbiades . . . by treating [them] in a manner so at variance with what would reasonably be anticipated absent discrimination, that discrimination is the probable explanation." *Id*. Therefore, the court affirmed the denial of the defendants' summary-judgment motions, which argued that the defendants had official immunity. *Id*.

Because of the similar facts and procedural posture in *Beaulieu* and this case, the analytical framework of *Beaulieu* governs. This appeal is also from a denial of the defendants' summary-judgment motions, which argued that the defendants had official immunity. And the complaint here alleges racial discrimination in the area of public services by police officers under similar statutory language. *Compare* Minn. Stat. § 363.03, subd. 4 (1990) (statutory language quoted above in footnote 6) *with* MCO § 139.40(j)(1) (ordinance language also described above in footnote 6). As in *Beaulieu*, the question of entitlement to summary judgment based on official immunity hinges upon "whether . . . a reasonable fact finder *could conclude* that defendants' treatment of [Williams] was [racially discriminatory]." *Beaulieu*, 518 N.W.2d at 572 (emphasis added). A finding of racial discrimination here turns upon the *Richardson* test: was the officers' treatment of Williams "so at variance with what would reasonably be anticipated

absent discrimination that discrimination is the probable explanation." *Kelly*, 776 N.W.2d at 766-67 (applying the *Richardson* test for discrimination to actions under MCO § 139.40(j)(1) (2008)). The conduct of the MPPD and MPD is considered in turn.

Minneapolis Park Police Department

Answering whether the so-at-variance test is met requires considering the totality of the circumstances and the three factors discussed in *Beaulieu.* Under the first factor, the MPPD argues that Deneen had several valid reasons for stopping Williams:

1. There is a high incidence of thefts from vehicles parked near Lake Calhoun.

2. Thieves often work in teams, contacting each other through various methods, including cell phones.

3. Thieves often attempt to fit in by appearing to take part in recreational activities.

4. Deneen observed Williams dressed in jogging clothes talking on his cell phone in an area that has problems with theft from vehicles because of tree cover.

5. Williams appeared to be fake stretching.

6. Deneen observed another African American man on the opposite side of the street talking on his cell phone, sitting on his bicycle, and rolling back and forth in place.

7. Deneen observed the two men looking at her and at each other, and believed that they may be communicating regarding criminal activity.

8. When Deneen drove away and then returned, the two men were in the same location.

Williams disputes several of these reasons. At this stage, the evidence is construed in his favor. Williams denies that he was stretching in a strange or fake way. Rather, he indicated that he was stretching standing up rather than on his hands because he was

holding his cell phone and talking on it. Williams said he did not see any other African Americans in the vicinity, so he disputes Deneen's observation that he was looking at the other African American on the bike. Deneen also admitted that she did not see Williams look into any of the parked cars nearby and only observed him for about two minutes total, including the time it took her to pass by initially and return. Thus, although the record does not indicate how much time passed from when Deneen drove away and then returned to find the two men in the same locations, it was under two minutes. Also, Williams stated that he "just noticed a car driving past, and then [Deneen] looked at me and of course I looked at her. So she looked at me, yeah." Williams testified that he had never heard or read anything about crimes around the lakes or that there were high numbers of vehicle break-ins, and that he had been using the parks to run for six to eight years.

Construing the evidence in favor of Williams, a reasonable factfinder could find that Deneen observed Williams in total for about two minutes. During this time, she saw him talking on a cell phone and stretching while dressed in jogging clothes during the summer. Where he was stretching had a high incidence of thefts from vehicles. He was standing on a grassy area near the road abutting a lake that is frequently used for recreational purposes like running. Although he was standing near several parked cars, he did not look into any of those cars. Although there was another African American across the street on a bike also talking on a cell phone, Williams did not look at or notice him. Williams did notice the officer as she drove past him because he noticed she was looking at him. When Deneen passed by and then returned in less than two minutes, both

men were in the same locations. Viewing the facts in this light, it is difficult to point to specific and articulable facts which reasonably warrant a conclusion that Williams had been or was about to be engaged in criminal activity. A reasonable factfinder could conclude that Deneen lacked a reasonable basis for suspecting that Williams had been or was about to be engaged in criminal activity.

But even if we did not reach this conclusion, the basis for stopping Williams is weaker than the basis for the stop in *Beaulieu*, because there the officers saw the "suspect vehicle . . . moving in a direction away from the crime scene shortly after commission of an armed robbery and the suspect's dark clothing and race matched the description of the suspect." *Beaulieu*, 518 N.W.2d at 573. The *Beaulieu* court characterized the basis for that stop as "sufficient, albeit tenuous," and noted that it did not preclude the possibility of discrimination. *Id*. So, for even stronger reasons, the bases for the stop asserted by Deneen do not preclude the possibility of discrimination here.

The second factor is whether, construing the evidence in the light most favorable to Williams, a reasonable factfinder could determine that the length of the detention was too long and the result of racial discrimination. *Id*. "A detention after a stop must be reasonable in scope and duration." *Id*. Williams was detained for about 30 minutes, including 15 in the back of the squad car.

At the start of the encounter before Williams was placed in the squad car, he repeatedly asked Deneen why she wanted him to come over to her squad car. Deneen did not answer; rather, she repeated her command in a stern voice to come to her vehicle. Williams then told her that his identification was in his vehicle and that he would be

happy to either show it to her or allow her to get it herself. She did not respond to this offer and eventually called for backup. Throughout this exchange, Williams did not yell and would have come to Deneen's vehicle if she had explained why she wanted him to.

When MPD Officer Tyra arrived, Williams repeated his offer for the officers to look at his identification in his vehicle, which was unlocked. Tyra did not respond to this offer either. Instead, in response to Williams asking why they wanted him to come to the squad car, Tyra said in a loud voice, "You want to go to the back of her car? How do you want to do this? You want to go to the back?" Then Tyra and the other MPD officers closed in on Williams so he agreed to go inside the squad car, where he spent about 15 minutes. At the point when Williams got in the squad car, the police had even less reason to suspect criminal activity because Williams had identified his vehicle, told them they were free to get his identification from it, and Tyra's frisk of Williams revealed no illegal or dangerous items. Moreover, Williams was not provoking the officers: without yelling, he had simply been asking why the officers wanted him to come to the squad car.

A factfinder could find the length of this detention unreasonable. The MPPD and MPD have nearly identical policies on preventing perception of biased policing which provide that officers "shall . . . explain the reason for the contact as soon as practical, . . . [and] attempt to answer any relevant questions that the citizen may have regarding the citizen/officer contact." MPD Policy § 5-104.01; *accord* MPPD Policy § 5-104.01. Deneen did not follow the policy.[10] Had Williams been told why Deneen wanted him to

[10] Since the MPD officers did not initiate the stop, it is understandable that they did not tell Williams why Deneen wanted him to come to her car. They may not have known.

come to the squad car, he would have complied. Or, if the officers had simply retrieved his identification, the entire encounter could have been greatly shortened. The officers cannot justify lengthening the encounter because Williams simply wanted to know why Deneen wanted him to come to the car. Indeed, the police departments' own policies mandate that officers disclose this information. In *Beaulieu*, the court concluded that a 15-minute detention could be unreasonable and the product of racial discrimination. *Beaulieu*, 518 N.W.2d at 573. Here, since Deneen's suspicions of Williams were tenuous at best and the point of the stop was simply to investigate to make sure Williams was not involved in a theft scheme, a reasonable factfinder could determine that the 30-minute detention was unreasonable and the product of racial discrimination.

The third factor is whether any evidence tends to show that the officers acted in bad faith. *Id.* at 532. There is evidence of bad faith by Deneen. During an interview with the MDCR in November 2006, Deneen denied some prior statements she made on the tape from Tyra's squad car and in written and oral statements she made to her supervisor. First, she denied that Tyra spoke to Williams after he was placed in the squad car even though she previously told her supervisor in writing and orally that Tyra had questioned Williams's use of "Pastor." Second, she denied saying that she might have profiled Williams while talking to the MPD officers once Williams was inside the squad car. Making false statements is evidence of bad faith. *Beaulieu*, 518 N.W.2d at 573

Under the totality of the circumstances, a reasonable factfinder could find that Deneen's treatment of Williams was so at variance with what would reasonably be anticipated absent racial discrimination that racial discrimination is the probable

explanation. *Id*. at 572. MPPD is not entitled to summary judgment based on vicarious official immunity.

Minneapolis Police Department

Analysis of the MPD's conduct is under the so-at-variance test, but revolves more around the totality of the circumstances and less on the three factors mentioned in *Beaulieu* because those factors do not apply cleanly to the challenged conduct of the MPD officers. The first factor (is there a reasonable basis for the stop) depends on the conduct of Deneen and not the MPD officers since it was Deneen who decided to stop Williams. Similarly, with respect to the second factor (length of the stop), this was also controlled primarily by Deneen since she controlled the stop. She decided when to call for backup; she decided to question Williams in her car and for how long. Indeed, shortly after Deneen began questioning Williams in her car, the MPD officers left. Thus, the length of the stop was also primarily in her control. Specifically, the inquiry is whether a reasonable factfinder could conclude, under the totality of the circumstances and viewing the evidence in the light most favorable to Williams, whether the MPD officers' treatment of Williams is so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation. *Id*. A reasonable factfinder could find that the MPD officers conduct satisfies the so-at-variance test.

The MPD officers mocked Williams in ways that had racial overtones. When Williams told Tyra that what was happening to him is a big deal because it was profiling, Tyra mocked Williams, saying in a sarcastic tone, "Profiling? What does that mean?" Another MPD officer shrugged in response. In the ensuing conversation between the

officers about whether Deneen had profiled Williams, an MPD officer chuckled when Deneen indicated that she knew profiling was illegal. These comments humiliated Williams, who felt that he was being mocked. Tyra also mocked and questioned Williams referring to himself as "Pastor," noting that he did not refer to himself as "Officer" when he was off duty. These comments were completely unnecessary. Comments such as these violate MPD policy, which provides that officers "shall not use any derogatory language or actions which are intended to embarrass, humiliate, or shame a person," and that officers "shall . . . [b]e courteous, respectful, polite, and professional." MPD Policy §§ 5-104.01, 5-105(14). A reasonable factfinder could conclude that Tyra's comments about racial profiling trivialized Williams's legitimate concerns and that Tyra's questioning of Williams's use of "Pastor" implied that Williams was dishonest. Under the totality of the circumstances and viewing the evidence in the light most favorable to Williams, a reasonable factfinder could find that the MPD officers' treatment of Williams satisfied the so-at-variance test. Thus, MPD is not entitled to summary judgment based on vicarious official immunity.

Affirmed.