

**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

**IN THE MATTER OF CHARGES FILED AGAINST** )  
**POLICE OFFICER DONALD KLEIN,** ) **No. 14 PB 2866**  
**STAR No. 12446, DEPARTMENT OF POLICE,** )  
**CITY OF CHICAGO,** )  
 ) **(CR No. 1039348)**  
**RESPONDENT.** )

**FINDINGS AND DECISION**

On May 30, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Donald Klein, Star No. 12446 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 5: Failure to perform any duty.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 30: Leaving duty assignment without being properly relieved or without proper authorization.

The Police Board caused a hearing on these charges against the Respondent to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on September 22, September 24, and October 2, 2014.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board Members Ghian Foreman, Melissa M. Ballate, and Rita A. Fry recused themselves from this case pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

### **POLICE BOARD FINDINGS**

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.
3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.
4. The Respondent filed a Motion to Strike and Dismiss requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the three-member panel of Police Board members that reviewed this matter pursuant to §2-57-060(c) of the Municipal Code of Chicago failed to do so within the time frame required by the Code; (b) the failure to bring timely charges violates the due process rights of the Respondent; (c) the charges should be barred by laches; and (d) the investigation by the Independent Police Review

Authority failed to follow General Order 93-03. The Respondent's Motion to Strike and Dismiss is **denied** for the reasons set forth below.

a. Three-member panel review. The Respondent argues that the three-member panel of Police Board members that reviewed this matter failed to comply with the time limit set forth in the Municipal Code of Chicago. Section 2-57-060(c) of the Code states in relevant part: "The three-member panel shall, within ten business days of receipt, review the superintendent's response and the chief administrator's objections."

The Respondent correctly notes that the panel received the request for review on April 2, 2014, and that the panel met on April 14, 2014. However, the Respondent is incorrect when he states that this meeting took place eleven business days after receipt of the request. The office of the Police Board is open for business Monday through Friday, and is closed on Saturdays, Sundays, and designated City holidays. The panel met on the eighth business day after receiving the request for review (April 5, 6, 12, and 13 were not business days).

b. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275 (2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for

decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. Here, the Respondent was working and was being paid his full salary and benefits during the entire period from the time of the incident up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until *after* the charges against him were filed. Therefore, the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v. Department of Children and Family Services*, 239 Ill.App.3d 325 (1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children

sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’s investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent’s case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16 (1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the ability to work.<sup>1</sup>

c. Laches. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him. He asserts that the delay dimmed witnesses’ recollections of the events in question and caused the Police Department to destroy the GPS evidence which would have tracked the movement of Respondent’s vehicle, both before and after the events at the Loomis Food Mart. He argues that this undermined his ability to defend against these charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing

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<sup>1</sup>The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1992). Under Illinois law, the Respondent must demonstrate that the Superintendent’s unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d 646 (7<sup>th</sup> Cir. 2011).

After its review of the video recording and transcript of the hearing, the Board finds that the witnesses’ memories, particularly as bolstered by the video recording of the events at the Loomis Food Mart, were not materially compromised by the passage of time. The Board further finds that while the absence of the GPS data was unfortunate, it was not so prejudicial to the Respondent that it requires dismissal of the charges here. The GPS evidence did not bear upon the events that took place at the Loomis Food Mart, and the charges related to those events. While the evidence may have assisted the Respondent in establishing that he did not travel outside the district with Reginald Mitchell and Christopher McKnight, it may well have shown the opposite. Thus, the prejudice is not clearly established, much less the kind of “extraordinary” or “compelling” prejudice that would warrant the application of the laches doctrine. Nor is the

Superintendent guilty of spoliation, as the need for the GPS data pertaining to the movement of Respondent's police vehicle, both before and after the events at the Loomis Food Mart, did not become apparent until nearly two years after the night in question (August 27-28, 2010). This is because Messrs. Mitchell and McKnight were not identified and located until mid-2012, and their account of the events after leaving the Loomis Food Mart was not known until they thereafter gave statements. The Police Department's routine and regular destruction of the GPS evidence prior to the time of their statements was not done with knowledge of their allegations, or in order to thwart the Respondent's defense in this case.

For the reasons set forth above, the Respondent has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges, nor has he demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of this case due to laches.

d. General Order 93-03. The Respondent argues that the investigation by the Police Department failed to follow Chicago Police Department General Order 93-03, which requires a prompt and thorough investigation.

General Order 93-03 does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Here, the investigator requested, and was granted, extensions of time, in compliance with the General Order.

Once the investigator completes the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

There is no evidence of any substantial violation of the General Order in this case. Even

if, however, the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Order in this manner.

5. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, and/or punched Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies, thereby knowingly and without legal justification caused bodily harm and/or made physical contact of an insulting or provoking nature with an individual and/or with individuals, in violation of 720 ILCS 5/12-3(a)(1) or (a)(2) ("Battery"), thereby violating a law or ordinance.

The Board finds the Respondent guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car, and finds the Respondent not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See the findings set forth in paragraph nos. 13 and 14 below, which are incorporated here by reference.

(Board Member Conlon dissents from the finding that the Respondent is guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car. See paragraph no. 13 below.)

(President Carney dissents from the finding that the Respondent is not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See paragraph



no. 14 below.)

6. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, and/or punched Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies, thereby impeding the Department's efforts to achieve its policy and goals, or bringing discredit upon the Department.

The Board finds the Respondent guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car, and finds the Respondent not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See the findings set forth in paragraph nos. 13 and 14 below, which are incorporated here by reference.

(Board Member Conlon dissents from the finding that the Respondent is guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car. See paragraph no. 13 below.)

(President Carney dissents from the finding that the Respondent is not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See paragraph no. 14 below.)

7. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about August 28, 2010, at approximately 12:01 AM, Officer Klein transported Reginald Mitchell and/or Christopher McKnight from the vicinity of Loomis Food Mart, located at 6859 South Loomis Boulevard, to another city neighborhood without justification, thereby impeding the Department's efforts to achieve its policy and goals, or bringing discredit upon the Department.

While Officers Klein and Turner dispute the accounts of Reginald Mitchell and Christopher McKnight about where the officers dropped off these young men, the Board finds the testimony of Lorna Graham particularly credible on this issue and sufficient to prove this charge. Ms. Graham, a former, long-time Chicago Police Department employee, convincingly testified that her grandson Christopher McKnight called her on the night in question and she was required to drive to a location on Western Avenue, between 31<sup>st</sup> and 35<sup>th</sup> Streets in the middle of the night to pick up Mr. McKnight. This location is unquestionably outside the 7<sup>th</sup> police district. Even if it was appropriate for the Respondent and his partner to remove Messrs. McKnight and Mitchell from the area of the Loomis Food Mart, there was no reason advanced as to why they would be dropped off so far away from the Loomis Food Mart.

(Board Members Conlon and Sweeney dissent from this finding: We believe the testimony on this issue is confused and insufficient to find the Respondent guilty of this charge.)

8. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count III: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, and/or placed Reginald Mitchell and/or Christopher McKnight into a squad car and/or into custody, but failed to document his actions with a Field Contact Card and/or Tactical Response Report, thereby impeding the Department's efforts to achieve its policy and goals, or bringing discredit upon the Department.

As indicated in the findings set forth in paragraphs nos. 13 and 14 below, the Board finds that Respondent stopped Mr. Mitchell and then used excessive force in placing Mr. Mitchell into custody. There is no dispute in the record that neither the Respondent nor his partner completed a Tactical Response Report regarding this incident. While the Respondent speculated that he might have completed a Field Contact Card, none was produced and the Board finds that no Field Contact Card was, in fact, completed. The Respondent contends that this kind of documentation was not required because he and his partner did not arrest Mr. Mitchell. Section III(B) of Department Special Order S04-13-09 (Superintendent Ex. No. 6), however, expressly provides that sworn members who conduct investigatory stops, as occurred here, must complete a Contact Information Card, even where no arrest occurs. The officer making the stop then must input the Contact Information Card data into the Department's electronic system before the end of his tour of duty. Nor is an officer excused from completing a Tactical Response Report, where force was used on a subject, as here, even if an arrest is not made.

9. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count IV: On or about August 28, 2010, at approximately 12:01 AM, Officer Klein left his district of assignment when he transported Reginald Mitchell and/or Christopher McKnight from the vicinity of Loomis Food Mart, located at 6859 South Loomis Boulevard, to an area outside the 7<sup>th</sup> District, thereby impeding the Department's efforts to achieve its policy and goals, or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

(Board Members Conlon and Sweeney dissent from this finding. See paragraph no. 7 above.)

10. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 5: Failure to perform any duty,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, and/or placed Reginald Mitchell and/or Christopher McKnight into a squad car and/or into custody, but failed to document his actions with a Field Contact Card and/or Tactical Response Report, thereby failing to perform a duty.

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

11. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, and/or punched Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies, thereby failing to treat any person with respect, and/or failing to treat any person with courtesy and dignity, in violation of General Order 02-01, Sections II.B. and III.B. ("Human Rights and Human Resources"), thereby disobeying an order or directive, whether written or oral.

The Board finds the Respondent guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car, and finds the Respondent not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See the findings set forth in paragraph nos. 13 and 14 below, which are incorporated here by reference.

(Board Member Conlon dissents from the finding that the Respondent is guilty of shoving Reginald Mitchell into the Loomis Food Mart's doors and into the door of a squad car. See paragraph no. 13 below.)

(President Carney dissents from the finding that the Respondent is not guilty of punching Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies. See paragraph no. 14 below.)

12. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about August 28, 2010, Officer Klein failed to document his encounter with Reginald Mitchell and/or Christopher McKnight in a Field Contact Card, in violation of Chicago Police Department Special Order S04-13-09, Section III.B. (“Contact Information System”), thereby disobeying an order or directive, whether written or oral.

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

13. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,  
in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart’s doors, and/or shoved Reginald Mitchell into the door of a squad car, thereby disrespecting or maltreating any person, while on or off duty.

The video recording from the Loomis Food Mart (Superintendent Ex. No.1) plainly shows that the Respondent hit Mr. Mitchell’s head into both of the Food Mart’s glass doors, as he led Mr. Mitchell out of the store in handcuffs. On adverse exam, the Respondent actually denied shoving Mr. Mitchell into the doors, when this was clearly visible on video. Later, in his direct examination, he conceded that Mr. Mitchell’s head hit the doors but claims this was reasonable force, given Mr. Mitchell’s resistance. The video recording, however, does not show any resistance by Mr. Mitchell, who was handcuffed and in the custody of two police officers. Moreover, even if the Respondent needed to control Mr. Mitchell, his partner could have opened the doors. The equivocation by the Respondent on the issue of the doors seriously undercut his credibility as a witness.

The video recording from the Loomis Food Mart also plainly shows that the Respondent

repeatedly shoved Mr. Mitchell into the door of the squad car. While the Respondent contended this was necessary to get control of Mr. Mitchell as he tried to incite the crowd nearby, and to prevent him from fleeing, the video recording demonstrates that Mr. Mitchell was under control, not attempting to flee, and there was no crowd nearby, much less one threatening the officers. The Board thus does not credit the testimony of the Respondent on this point. Officer Turner's testimony that he never saw the Respondent shove Mr. Mitchell into the car is completely incredible, given the video recording. Moreover, if there was a crowd on the scene, the Board finds it was entirely unreasonable for the Respondent and his partner to physically abuse Mr. Mitchell in front of the crowd, if his goal was to prevent the crowd from becoming agitated.

None of the Board's findings in this paragraph rely upon the credibility of Mr. Mitchell. The video recording and the lack of credibility of the officers' testimony is more than sufficient to support a guilty finding on this charge.

(Board Member Conlon dissents from this finding: I do not believe that the Superintendent sustained his burden of proof that Officer Klein improperly "shoved" Reginald Mitchell into the door of the food mart or into the door of the squad car. From observations only, law enforcement encounters such as this are highly charged events where, even after being handcuffed, individuals are hard to control as an officer also seeks to control the situation. We can, in retrospect, suggest ways in which the officers might have done better; i.e., the second officer could have opened the door. There is no audio of what the video shows. Officer Klein in sometimes confused, but credible, testimony said Mitchell was resisting. The video does not refute that testimony and I will not second guess the Respondent as to what was needed to maintain control. Therefore, I do not believe that Officer Klein improperly "shoved" Mitchell into the door of the food mart or the squad car unnecessarily. )

14. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **not guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,  
in that the Superintendent did not prove by a preponderance of the evidence the following  
charge:

Count II: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein punched Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies, thereby disrespecting or maltreating any person, while on or off duty.

Mr. McKnight never claims that the Respondent punched him in the back of the squad car. While Mr. Mitchell says he was punched while handcuffed in the back of the car, his testimony is undercut by the contrary testimony of Mr. McKnight. Furthermore, Respondent's Exhibit Nos. 4-7 show that Chicago police cage cars, like the one Respondent and his partner were using on the night in question, do not have a sliding opening in the cage that exists between prisoner in the back seat and the officers. As such, Mr. Mitchell's testimony that the Respondent slid open the cage to punch and poke him while in the back seat is not credible.

While Ms. Latoya Allen Vanderhurst testified that she saw a police officer punching a prisoner in the back seat of a squad car in front of the Loomis Food Mart, and called to report the incident, the Board finds that the video recording does not corroborate her account, and further finds that she was some distance from the scene and may not have been able to clearly see what she claims to have seen. This is evident from her failure to identify the correct number on the Respondent's squad car. As such, the Board finds that there is insufficient evidence to prove that Respondent punched either Mr. Mitchell or Mr. McKnight in the back seat of the squad car.



(President Carney dissents from this finding: I find the testimony of Ms. Vanderhurst reliable and, taken together with the video recording, sufficient to find the Respondent guilty of punching Mr. Mitchell without justification.)

15. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein shoved Reginald Mitchell into the Loomis Food Mart's doors, and/or shoved Reginald Mitchell into the door of a squad car, thereby engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

See the findings set forth in paragraph no. 13 above, which are incorporated here by reference.

(Board Member Conlon dissents from the finding. See paragraph no. 13 above.)

16. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **not guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count II: On or about August 28, 2010, at approximately 12:01 AM, at or near the Loomis Food Mart, located at 6859 South Loomis Boulevard, Officer Klein punched Reginald Mitchell and/or Christopher McKnight about their heads and/or bodies, thereby engaging in

any unjustified verbal or physical altercation with any person, while on or off duty.

See the findings set forth in paragraph no. 14 above, which are incorporated here by reference.

(President Carney dissents from the finding. See paragraph no. 14 above.)

17. The Respondent, Police Officer Donald Klein, Star No. 12446, charged herein, is **guilty** of violating, to wit:

Rule 30: Leaving duty assignment without being properly relieved or without proper authorization,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about August 28, 2010, at approximately 12:01 AM, Officer Klein left his district of assignment when he transported Reginald Mitchell and/or Christopher McKnight from the vicinity of Loomis Food Mart, located at 6859 South Loomis Boulevard, to an area outside the 7<sup>th</sup> District, thereby leaving duty assignment without being properly relieved or without proper authorization.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

(Board Members Conlon and Sweeney dissent from this finding. See paragraph no. 7 above.)

18. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation.

The Respondent clearly used excessive force when he shoved Reginald Mitchell into the store's doors and into the squad car door; the Respondent also transported Mr. Mitchell and

Christopher McKnight outside the 7<sup>th</sup> District without justification and failed to document his actions as required. Nonetheless, the Board finds that discharging the Respondent from the Chicago Police Department is not warranted. He has more than nine years on the job working in a very difficult district, during which time he has earned numerous awards (including a Life Saving Award, three Department Commendations, and 24 Honorable Mentions) and, according to the credible testimony of several Department members (a lieutenant, two sergeants, and two police officers), he has earned a positive reputation for hard work and character.

Based on the nature of the misconduct of which the Respondent is guilty, and based on the Respondent's record and years of service to the Department, the Board finds that a suspension of thirty days is a justified penalty on the facts of this particular case.

### **POLICE BOARD DECISION**

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By a vote of 6 in favor (Demetrius E. Carney, William F. Conlon, Michael Eaddy, Susan L. McKeever, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board **denies** the Respondent's Motion to Strike and Dismiss;

By votes of 5 in favor (Carney, Eaddy, McKeever, Rodriguez, and Sweeney) to 1 opposed (Conlon), the Board finds the Respondent **guilty** of violating Rule 1, Rule 2 (Count I), Rule 6 (Count I), Rule 8 (Count I), and Rule 9 (Count I);

By votes of 4 in favor (Carney, Eaddy, McKeever, Rodriguez) to 2 opposed (Conlon and

Sweeney), the Board finds the Respondent **guilty** of violating Rule 2 (Counts II and IV) and Rule 30;

By votes of 6 in favor (Carney, Conlon, Eaddy, McKeever, Rodriguez, and Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 2 (Count III), Rule 5, and Rule 6 (Count II); and

By votes of 5 in favor (Conlon, Eaddy, McKeever, Rodriguez, and Sweeney) to 1 opposed (Carney), the Board finds the Respondent **not guilty** of violating Rule 8 (Count II) and Rule 9 (Count II).

As a result of the foregoing, the Board, by a vote of 5 in favor (Carney, Conlon, Eaddy, McKeever, and Sweeney) to 1 opposed (Rodriguez), hereby determines that cause exists for suspending the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days, from June 4, 2014, to and including July 3, 2014.

**NOW THEREFORE, IT IS HEREBY ORDERED** that the Respondent, Police Officer Donald Klein, Star No. 12446, as a result of having been found **guilty** of charges in Police Board Case No. 14 PB 2866, be and hereby is **suspended** from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days, from June 4, 2014, to and including July 3, 2014.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, William F. Conlon, Michael Eaddy, Susan L. McKeever, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20<sup>th</sup> DAY OF NOVEMBER, 2014.

Police Board Case No. 14 PB 2866  
Police Officer Donald Klein

Attested by:

/s/ DEMETRIUS E. CARNEY  
President

/s/ MAX A. CAPRONI  
Executive Director

**DISSENT**

I hereby dissent from the Decision of the majority of the Board. I find that a longer suspension is a more fitting penalty on the facts of this particular case.

/s/ ELISA RODRIGUEZ

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RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

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GARRY F. McCARTHY  
Superintendent of Police