BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST POLICE OFFICER JASON BURG, STAR No. 12143, DEPARTMENT OF POLICE, CITY OF CHICAGO,	)	**No. 19 PB 2953**
RESPONDENTS.	)	**(CR No. 1037527)**

FINDINGS AND DECISION

On January 3, 2019, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Jason Burg, Star No. 12143 ("Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the several Rules of Conduct:

A hearing on the charges against the Respondent took place before Hearing Officer Allison L. Wood on August 13 and 14, 2020, via Zoom video conferencing. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer's Report and the Superintendent's response to this report[1] (the Respondent did not file a response), and viewed the video-recording of the entire evidentiary hearing. Hearing Officer Wood made an oral report to and conferred with the Board before it rendered its findings and decision.

[1]The Hearing Officer Report sets forth a summary of the evidence presented at the hearing. The report is not meant to be a comprehensive statement of the evidence. Each party's response to the report is limited to addressing any material omissions or inaccuracies in the report (Police Board Rules of Procedure, Section III-G.) The Board considers only those portions of a response that comply with its Rules of Procedure.

POLICE BOARD FINDINGS

As a result of its hearing on the charges, the Police Board 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. A copy of the charges filed, and a notice stating the date, place, and time the initial status hearing would be held, were personally served upon the Respondent not fewer than five (5) days before the date of the initial status hearing for this case.

3. At the hearing on the charges the Respondent appeared and was represented by legal counsel.

Introduction

4. Respondent has been with the Chicago Police Department since 1998. He has been on disability/inactive duty since 2015.

The events of this case occurred on June 26, 2010, at or near the Pavilion Apartments located at 5421 North East River Road, Chicago, Illinois. On that date, Respondent responded to a real-time disturbance call. He was the first police officer to arrive on the scene, and upon his arrival he observed Luis Cordero on the ground severely injured and bleeding. Mr. Cordero's now-wife, Heather Rzany, was present and had a slight injury. It is undisputed that Mr. Cordero and Ms. Rzany were assaulted by an offender who was later identified to be Chicago Police Officer Chris Gofron. Officer Gofron used the butt of his gun to strike Mr. Cordero repeatedly, and also struck Ms. Rzany's hand.

The series of events that occurred after Respondent arrived on the scene are in dispute and primarily relies on findings of credibility as to the witnesses who testified at the hearing. Respondent testified that when he arrived, the offender (who he said he only later learned was

Officer Gofron) was no longer at the scene. Respondent testified that he did not see or speak to Officer Gofron at the scene. Ms. Rzany testified, however, that when Respondent arrived on the scene, Officer Gofron was standing near her and yelling at Mr. Cordero, who was severely injured on the ground. Ms. Rzany allegedly told Respondent that Officer Gofron was the offender who had assaulted her and Mr. Cordero. According to Ms. Rzany, Officer Gofron showed Respondent his badge and told Respondent that he was a police officer. Respondent then allegedly told Officer Gofron to leave the premises, which he did. Ms. Rzany's testimony was corroborated in significant respects by Angel De La Rosa's sworn testimony in a deposition which the Board allowed into evidence due to Mr. De La Rosa's death.

Officer Gofron was never arrested or charged with assaulting Mr. Cordero or Ms. Rzany. There was a civil lawsuit filed against both Officer Gofron and Respondent that settled in 2012. Years later, Officer Gofron resigned from the Chicago Police Department.

Respondent is charged with three counts: (1) allowing Officer Gofron to leave the scene without arresting him or taking down his information; (2) making false representations in the Original Case Report that the offender was unknown and failing to properly document his encounter with Officer Gofron; and (3) making false representations to the Independent Police Review Authority (IPRA) that the offender was gone before Respondent arrived at the scene.

The Board observed the testimony of the witnesses during the course of the hearing and finds, based on the evidence presented, that the testimony of Ms. Rzany was credible and corroborated by other evidence, but that the testimony of Respondent was not. The Board therefore concludes that the Superintendent presented evidence sufficient to prove that Respondent allowed the offender to leave the scene of a crime without arresting him or taking down his information. Because the Board credits the testimony of Ms. Rzany, the evidence

presented also thus establishes that Respondent falsely represented in his Original Case Report that the offender was unknown, and falsely represented to the IPRA that the offender was gone before Respondent arrived at the scene. Accordingly, the Board finds Respondent guilty of violating the Rules of Conduct listed herein.

Motion to Dismiss the Charges

5. Officer Burg filed a Motion to Dismiss requesting that the charges filed against him be dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the Superintendent's delay in bringing charges against them violated General Order G08-01; and (c) the charges should be barred by laches.

The arguments raised by Respondent have been previously considered and rejected by the Board. Indeed, the Illinois Appellate Court has in two cases affirmed the Board's decisions to deny motions to dismiss that make essentially the same arguments as put forth by the Respondent. *Orsa et al. v. Police Board*, 2016 IL App (1st) 121709, ¶¶39, 42, 44-45 (2016); *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶¶15, 17, 19 (2014). Based on *Orsa* and *Chisem*, and for the reasons set forth below, the Respondent's Motion shall be **denied**.

Due Process

The Due Process clause of the Constitution 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." Respondent claims - - with citation *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004) - - that the Superintendent's filing of charges against him more than 8 years after the underlying incident violates his due process rights. However, Respondent's reliance on *Lyon* is misplaced: *Lyon* involved a delay in *adjudication* of allegations of misconduct after the

plaintiff had been suspended without pay—not delay in the *investigation* leading to the initial suspension. *See Lyon*, 209 Ill.2d at 282-84 (finding a violation of the due process rights of 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 fundamentally different from *Lyon*, as the Respondent 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 ordered suspended without pay. This difference is important because the due-process analysis in *Lyon* is triggered by the state's decision to deprive the teacher of his job, thus preventing him from working for a prolonged period of time before he was accorded the opportunity to have a hearing and decision to clear his name.

Here, by contrast, Respondent was working and was being paid his full salary and benefits from the time of the incident until he went on disability Moreover, Respondent was not ordered suspended without pay from his job until *after* the charges against him were filed. Under these circumstances, any delay in bringing the charges did *not* result in a violation of the Respondent's due process rights. Consequently, the Board - - consistent with the Illinois Appellate Court prior holdings - - rejects Respondent's due process argument. *See Orsa*, 2016 IL App (1st) 121709, ¶39; *Chisem*, 2014 IL App (1st) 132389, ¶15.

General Order G08-01

The Respondent argues that the Superintendent failed to follow Chicago Police Department General Order G08-01, which requires a prompt and thorough investigation (Section II.B.), and that his failure to follow this Order requires the dismissal of the charges against Respondent.

The Board disagrees. Even if the Independent Police Review Authority/Civilian Office of Police Accountability or the Superintendent violated General Order G08-01, the Order does not set any absolute deadline and the violation of the Order does not provide a basis for automatic dismissal of charges against an officer. *See Orsa*, 2016 IL App (1st) 121709, ¶42; *Chisem*, 2014 IL App (1st) 132389, ¶17; *In re: Poulos,* 17 PB 2932, at 5-6 (February 28, 2018); *In re: Haleas,* 14 PB 2848, at 5 (August 21, 2014). For these reasons, the Board "has not dismissed charges in cases where investigations have taken several years," *In re: Poulos,* 17 PB 2932, at 5. Consequently, although the Board does not condone the protracted and long investigation in this case, the Board will not dismiss the charges against Respondents for this reason.

Laches

"Laches is an equitable doctrine that precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *Orsa,* 2016 IL App (1st) 121709, ¶44. 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, 90 (1994), hold that laches can only be invoked against a municipality under "compelling" or "extraordinary" circumstances. *See also Hannigan v. Hoffmeister,* 240 Ill. App. 3d 1065, 1075 (1st Dist. 1992) ("*laches* is applied sparingly to public bodies"). In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice, *Hannigan,* 240 Ill. App. 3d at 1074, and speculative claims of prejudice are insufficient. *Orsa,* 2016 IL App (1st) 121709, ¶45.

In this case, Respondent asserts that laches should apply because the delay in bringing

charges "has severely prejudiced Officer Burg in that the unfortunate death of the main witness, Delarosa, has caused Officer Burg to lose the opportunity to cross-examine him and explore whether Officer Burg even had contact with the off-duty officer that evening." Motion, paragraph 11. Respondent also argues that because of the delay he "cannot locate witnesses due to the passage of time (off-duty officer), [and] cannot obtain crime scene evidence (videos, physical evidence or otherwise)." Motion, paragraph 16.

It is well-settled that "[a] mere time lapse from the accrual of a cause of action to the filing of a lawsuit does not support a laches defense." *Orsa*, 2016 IL App (1st) 121709, ¶44; *Hannigan,* 240 Ill. App. 3d at 1074 ("To assert the defense of laches, a party must show more than a mere passage of time"). Indeed, "courts have refused to apply laches where there was no showing of prejudice and the parties could obtain a fair trial notwithstanding the delay in bringing suit." *Van Milligan,* 158 Ill.2d at 92. Thus, the delay between the occurrence of the underlying incident and the filing of charges is not - - standing alone - - a "compelling circumstance" as a matter of law.

To establish the applicability of laches, Respondent must show that the Superintendent displayed "an unreasonable delay in bringing th[is] action *and* that such delay materially prejudiced" him. *Hannigan,* 240 Ill. App. 3d at 1074 (emphasis added). Respondent's attempt to rely on laches fails because he has not demonstrated that the delay caused him the material prejudice that he is required to prove.

While Angel De La Rosa was not available to testify in this matter because of his death, he did provide sworn testimony in a deposition at which Officer Burg's counsel had an opportunity to question him. Respondent has not carried the burden of showing that De La Rosa's unavailability materially prejudiced Respondent.

Respondent has also not met the burden of proving his claims that the delay prevented him from locating witnesses or obtaining crime-scene evidence. The investigation of this matter began immediately and was extensive, and Respondent's claims that other witnesses or evidence would have come to light but for the delay are speculative.

Finally, Respondent has failed to identify any "extraordinary" or "compelling" circumstance warranting the application of laches against the Superintendent. For these reasons, Respondent has failed to meet his burden of proof and his laches defense fails.

Charges Against the Respondent

6. Police Officer Jason Burg, Star No. 12143, is **guilty** of violating Rules 2, 3, 5, 6, and 21 in that the Superintendent proved by a preponderance of the evidence the following charges:

> On or about June 26, 2010, at or around 5421 North East River Road, Chicago, Police Officer Jason Burg allowed a suspect (later identified as Police Officer Chris Gofron) to leave the scene after Luis Cordero and/or Heather Rzany and/or Angel De La Rosa had identified him as the offender who had just struck Cordero and/or Rzany, including with the use of a handgun. Officer Burg allowed Officer Gofron to walk away without arresting him and/or taking down his information. Officer Burg thereby violated:
>
> a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
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> b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
>
> c. Rule 5, which prohibits failure to perform any duty;
>
> d. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that he disobeyed General Order 04-01; and
>
> e. Rule 21, which prohibits failure to report promptly to the Department any information concerning any crime or other unlawful action.
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> See the findings set forth in Section No. 4 above, which are incorporated herein by

reference.

As set forth above, much of the evidence in this case was presented by the Superintendent by way of the testimony of Ms. Rzany. She provided a narrative of the events of the assault on her and Mr. Cordero that the Board finds credible. Specifically, she testified that she was living in Chicago with Mr. Cordero at the time of the incident. They went for a walk around the neighborhood and decided to walk through the picnic area of the Pavilion Apartments. At some point, Ms. Rzany stopped to fix her shoe when a Pavilion security truck pulled up to her and Mr. Cordero. There were two men in the truck (later identified as security guard Angel De La Rosa and Officer Gofron). Mr. De La Rosa asked Ms. Rzany and Mr. Cordero to leave because the picnic area was closing. They agreed to leave and as they were leaving the area, the individual later identified as Officer Gofron exited the vehicle, stumbling and carrying a beer bottle. He was yelling and screaming. He showed them his badge. He went back to the vehicle and retrieved his gun. Mr. Cordero put his hands behind his head. Officer Gofron then started attacking Mr. Cordero with the butt of the gun striking him repeatedly. Ms. Rzany was screaming. Officer Gofron chased her and grabbed her by the neck and put the gun in her mouth. He struck her hand. Mr. Cordero screamed for Gofron to get off Ms. Rzany. As a result, Officer Gofron went back to Mr. Cordero and pinned him down to the ground. At that point, Ms. Rzany started screaming again and someone on a balcony apartment nearby started screaming, at which point Officer Gofron stopped the assault. Officer Gofron and Mr. De La Rosa returned to the security vehicle and drove away. Mr. Cordero was suffering from significant bleeding and so Ms. Rzany took Mr. Codero's cell phone out of his pocket and called 911.

Ms. Rzany further testified regarding what occurred when police officers arrived in response to her call. She noted that she approached the first police officer who arrived on the

scene and described him as tall, dark hair, with a tribal tattoo on his arm. She later learned the identity of this officer to be Respondent when she brought a lawsuit against the City. A few seconds after Respondent arrived at the scene, according to Ms. Rzany, the security truck pulled up again with Mr. De La Rosa and Officer Gofron. When Ms. Rzany realized that Officer Gofron had exited the truck and was walking toward her and Respondent, she screamed to Respondent that Officer Gofron was the offender and that he had a gun. Officer Gofron approached Respondent, told him he was a cop, and showed him a badge. Ms. Rzany testified that Respondent told Officer Gofron to "get out of here" and Officer Gofron left the area.

While Respondent admits that he never arrested Officer Gofron, nor did he take down his information, Respondent's testimony differed from Ms. Rzany's in almost every other aspect. Respondent stated that when he arrived on the scene, he observed Mr. Cordero on the ground—bleeding with severe injuries—and Ms. Rzany standing off to the left side on the phone. Respondent testified that shortly after he arrived, a Pavilion security vehicle pulled up next to him and that security agent Angel De La Rosa got out of the truck. Respondent denied that Officer Gofron was also in the security vehicle. He denied that Ms. Rzany was screaming that Officer Gofron had a gun, or that she screamed that Officer Gofron had pistol-whipped her boyfriend. Respondent testified that after he saw Ms. Rzany on the phone, she walked away from the area. Respondent testified that the offender was already gone by the time he arrived, and that he neither knew Officer Gofron nor saw him at the scene that night.

The Board finds Ms. Rzany's testimony credible and convincing. Her demeanor throughout her testimony was singularly serious and self-contained. She did not waiver in her recollection of what was clearly a traumatic experience for her and Mr. Cordero. She was unwavering in her resolve that Respondent was the officer she spoke to at the scene, and that she

learned of his identity when she filed a lawsuit against the City. She was also able to identify Respondent during the hearing itself.

Her testimony was also corroborated in significant respects. Ms. Rzany's testimony that both Mr. De La Rosa and Officer Gofron were in the security vehicle when it returned to the premises and pulled up near where she was standing next to Respondent was corroborated by deposition testimony of Mr. De La Rosa, which was entered into evidence. In his deposition, Mr. De La Rosa stated that he returned to the scene with Officer Gofron in the vehicle. Her testimony that Officer Gofron exited the vehicle and walked over to where she was standing next to Respondent was similarly corroborated by Mr. De La Rosa, who also testified in his deposition that Officer Gofron exited the vehicle and walked over toward Ms. Rzany and a police officer. Mr. De La Rosa also corroborated Ms. Rzany's testimony when he testified that she started screaming when she realized that Officer Gofron was walking toward her. Mr. De La Rosa further testified that one of the officers who he described as "Caucasian, 6ft or over and large", spoke with Officer Gofron at the scene and that Officer Gofron walked away from the scene. Ms. Rzany's testimony was further corroborated by the transcript of her 911 call. During that call, she reported that an off-duty officer had assaulted her and her boyfriend. And while she was still on the call, she can be heard stating, "He has a gun. He has a gun. He has a gun. He has a passenger ….he has a gun and he pistol whipped my boyfriend on the ground," which is a compelling real-time corroboration of her account. In addition, a police-recorded Radio Zone call during which Ms. Rzany is heard yelling in the background while Respondent tells the dispatch to slow down and send no more cars.

Respondent's testimony, on the other hand, was not credible. He was uncertain during his testimony. Although he had given previous statements that he was responding to an in-

progress call and that he was the first officer to arrive at the scene, he could not remember these two facts at the hearing. He gave an inconsistent statement about where Ms. Rzany was standing when he arrived at the scene. He testified that he didn't know who she was on the phone with, but in a previous statement he stated that she was on the phone with 911. His testimony that he only noticed one man in the security truck was refuted by both Ms. Rzany and Mr. De La Rosa, who testified that Officer Gofron was in the security truck when it pulled up next to Respondent and Ms. Rzany. And given the 911 call and the testimony of Mr. De La Rosa, it simply is not credible that Respondent did not hear Ms. Rzany screaming when she realized that Officer Gofron was walking toward them. He provided no explanation as to why, after responding to an in-progress call, he believed the offender was long gone immediately after he arrived on the scene, and his decision to direct dispatch to slow down and not send any additional cars almost ensured that the offender would be able to avoid being apprehended.

Respondent also testified during the hearing that Mr. Cordero provided him with a description of the offender; however, in his statement to the IPRA, Respondent stated that Mr. Cordero never said a word to him. Respondent testified during the hearing that other police officers responded to the disturbance call and arrived at the scene, while he testified that only he and Sergeant Robert Colella responded to the call in his deposition testimony. And both Ms. Rzany and Mr. De La Rosa testified that other officers arrived on the scene, but that they arrived after Officer Gofron left the area. Mr. De La Rosa only identified one officer who spoke to Officer Gofron and his description of that officer fits Respondent. Finally, when Respondent was asked whether he received the update from dispatch that the offender was still in the area, he could not recall if he had received that update. Given the number of inconsistencies, purported failure in memory, and incredible explanations, the Board does not credit Respondent's

testimony.

The Board therefore finds that the Superintendent met his burden to prove Respondent guilty of Specification No. 1.

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7. Police Officer Jason Burg, Star No. 12143, is **guilty** of violating Rules 2, 3, 5, 6, 14, and 21 in that the Superintendent proved by a preponderance of the evidence the following charges:

> On or about June 26, 2010, at or around 5421 North East River Road, Chicago, Police Officer Jason Burg completed an Original Case Incident Report for aggravated battery for victims Luis Cordero and/or Heather Rzany and wrote "UNK" (unknown) for the name of the "SUSPECT" even though Cordero and/or Rzany and/or Angel De La Rosa had pointed out the suspect (later identified as Police Officer Chris Gofron) and/or Officer Burg himself had engaged in a conversation with Officer Gofron. Officer Burg further failed to document his encounter with Officer Gofron in the Original Case Incident Report by writing that the offender fled the scene upon Officer Burg's arrival, or words to that effect, when in fact Officer Burg had personally encountered Officer Gofron on the premises. Officer Burg thereby violated:
>
> a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
>
> b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
>
> c. Rule 5, which prohibits failure to perform any duty;
>
> d. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that he disobeyed General Order 04-01, Special Order 09-05-01, and/or Field Reporting Manual;
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> e. Rule 14, which prohibits making a false report, written or oral; and
>
> f. Rule 21, which prohibits failure to report promptly to the Department any information concerning any crime or other unlawful action.

See the findings set forth in Section Nos. 4 and 6 above, which are incorporated herein by reference.

Respondent acknowledged that he must be truthful in making reports and that he is prohibited from making false statements. Nevertheless, in the Original Case Incident Report, Respondent wrote "UNK" (unknown) for the name of the suspect when he in fact knew that the suspect was Officer Gofron. As described above, the Board credits Ms. Rzany's testimony that she told Respondent that Officer Gofron was the offender who had assaulted her and Mr. Cordero, and that Respondent spoke to Officer Gofron at the crime scene. Thus, by failing to identify Officer Gofron as the suspect in the Original Case Incident Report and by claiming that the offender fled the scene upon Respondent's arrival, Respondent made intentional and material false statements in the Original Case Incident Report.

8. Police Officer Jason Burg, Star No. 12143, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges:

> On or about May 6, 2011, during an interview with an Independent Police Review Authority investigator regarding Officer Burg's response to a call on or about June 26, 2010, at or around 5421 North East River Road, Chicago, Officer Burg stated that the offender suspect was "gone by the time I got there" and/or "he was long gone," or stated words to that effect, when in fact Officer Gofron was on the premises when Officer Burg arrived and/or Officer Burg had a conversation with him. Officer Burg thereby violated:
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> a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
>
> b. Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 4, 6, and 7 above, which are incorporated herein by reference.

During his interview with the IPRA, Respondent stated that the offender was no longer at the scene by the time Respondent arrived. However, as described above, the Board credits

testimony establishing that Respondent had a conversation with Officer Gofron, the offender, shortly after Respondent arrived at the scene. Respondent understands that he is prohibited from making false statements. However, by telling IPRA investigators that the offender was "long gone" by the time Respondent arrived on the scene—when in actuality Respondent spoke with the offender shortly after Respondent arrived on the scene—Respondent intentionally made a false material statement to IPRA investigators.

The Dissent

9. The majority respectfully wishes to address the arguments raised in our colleague's dissent. The dissent suggests that there is inadequate evidence for the majority to have reached its conclusion. The majority believes the refutation of the majority opinion does not provide sufficient evidence to support its conclusions.

While we wholeheartedly agree with his point that the delay in this case is unconscionable, the failures of the accountability system--which we have frequently criticized in our decisions—should not be used to suggest that the evidence is not sufficient to support the ruling of the majority nor a reason to overlook the strong case outlining the Rule violations of the Respondent. While the Board, for example, was not able to hear the testimony of Mr. De La Rosa, a key witness, the Board read his testimony and there was no dispute that the Respondent's counsel had total opportunity to raise questions about the testimony at the time it was given. The points raised in the dissent were not raised in that deposition; had the Respondent's counsel thought he could have uncovered some of the inconsistency relied on in the dissent, he would have raised them.

As the majority opinion documents, in spite of the delay in the case coming before the

Board, there is more than adequate evidence that the Respondent told Officer Gofron, the perpetrator of the beating of Mr. Cordero and Ms. Rzany, to leave the scene and then filed a false report. The dissent does not refute the elements laid out in the majority opinion: the testimony of Ms. Rzany has been consistent through the investigation and hearing and is convincing in its detail and sincerity; the 911 tape of Ms. Rzany imploring the Respondent to take notice of the perpetrator's gun was clear; and Mr. De La Rosa's testimony that the perpetrator was in the security truck with him when the Respondent—and only the Respondent – no other police officer--- on the scene spoke to the perpetrator is unambiguous (hearing transcript, p.51, lines 6-13). In contrast, the Respondent's testimony throughout the course of the investigation and hearing has been inconsistent, vague, and riddled with contradictions.

The dissent speculates that the scene was "too hectic and the environment too chaotic" for the victim of the beating to see or hear what she has testified under oath a number of times that she witnessed. Later in the dissent, the chaos is also the purported reason that the Respondent would not have noticed that the Office Gofron left the scene. There is no evidence in the record that at the time that the Respondent let Office Gofron leave the scene that it was hectic or chaotic. While we highly respect the life experience of the author of the dissent and frequently rely on his insights about the practical aspects of policing, there is absolutely no evidence to support this claim.

To support its conclusions, the dissent uses quotes from De La Rosa's testimony to suggest that the Respondent and Officer Gofron were not on the scene at the same time; these are disproven by the very quotes from that testimony used in the dissent (Mr. De La Rosa's testimony is clear: they were together, although perhaps not for long: "Not long, less than a minute"; but long enough for the Respondent to see him.) Citing absolutely no evidence, the

dissent suggests the Respondent is not guilty because it was "more likely that one of the officers on the scene may have been the one that approached the offender." However, Ms. Rzany, throughout the entire investigation was able to provide specific and detailed descriptions of the Respondent when referring to the person she saw letting Office Gofron leave the scene.

On one thing the majority and the dissent agree: "It does not make sense that Respondent would arbitrarily let a possible offender walk away, simply because the offender claimed he was an off-duty officer." The majority believes that that is precisely what happened, and it makes no sense that a competent officer would do such a thing.

Disciplinary Action

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

Respondent has an extensive history of commendations over many years with the Chicago Police Department. Since his appointment in 1998, Respondent has earned a total of 87 awards, including a Life Saving Award, 2 Department Commendations, a Unit Meritorious Performance Award, and 70 Honorable Mentions. He has no sustained complaints on his disciplinary history.

However, Respondent's years of service and accomplishments as a police officer do not outweigh the seriousness of his misconduct in this case. The Board finds that Respondent's misconduct is incompatible with continued service as a police officer and warrants his discharge from the Chicago Police Department.

Respondent allowed a fellow police officer who had just committed a battery against a civilian to leave the scene without arresting him or taking down his information. Respondent's

disregard for his duties is antithetical to the type of behavior expected of law-enforcement officers. His giving a fellow officer a "pass" brought discredit upon the Chicago Police Department, thereby undermining public confidence in the judgment of its officers. This conduct warrants his discharge from the Chicago Police Department.

Permitting Respondent to continue to serve as a Chicago police officer would impair the Department's mission. Effective law enforcement depends upon a high degree of cooperation between the police department and the public it serves. Conduct such as Respondent's fosters public distrust and a lack of confidence in police officers, thereby impeding the Department's efforts to achieve the important goals of preventing crime, preserving the public peace, identifying and arresting those who commit crimes, and promoting respect and cooperation of all Chicagoans for the law and those sworn to enforce it.

In addition, Respondent attempted to cover up his actions by intentionally completing a false police report and by knowingly making a false material statement to the IPRA. Respondent's dishonesty relates directly to his public duties as a police officer, and renders him unfit to hold that office. Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer. The duties of a police officer include making arrests and testifying in court, and a police officer's credibility is at issue in both the prosecution of crimes and in the Police Department's defense of civil lawsuits. A public finding that an officer has intentionally falsified a police report and knowingly made a material false statement to an investigator is detrimental to the officer's ability to perform his responsibilities, including his credibility as a witness, and, as such, is a serious liability to the Department. See *Rodriguez v. Weis*, 408 Ill.App.3d 663, 671 (1st Dist. 2011).

The Board finds that Respondent's conduct is sufficiently serious to constitute a

substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for him to no longer occupy his office.

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POLICE BOARD DECISION

The members of the Police Board of the City of Chicago hereby certify that they have read and reviewed the record of proceedings, viewed the video-recording of the entire evidentiary hearing, received the oral report of the Hearing Officer, and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. The Police Board hereby adopts the findings set forth herein by the following votes.

By a vote of 8 in favor (Ghian Foreman, Paula Wolff, Matthew C. Crowl, Michael Eaddy, Steve Flores, Jorge Montes, Rhoda D. Sweeney, and Andrea L. Zopp) to 1 opposed (John P. O'Malley Jr.), the Board **denies** the Respondent's motion to dismiss the charges.

By votes of 8 in favor (Foreman, Wolff, Crowl, Eaddy, Flores, Montes, Sweeney, and Zopp) to 1 opposed (O'Malley), the Board finds Respondent **guilty** of the charges in Specification Nos. 1 – 3, as set forth in Section Nos. 6 – 8 above.

As a result of the foregoing and for the reasons set forth in Section No. 10 above, the Board, by a vote of 8 in favor (Foreman, Wolff, Crowl, Eaddy, Flores, Montes, Sweeney, and Zopp) to 1 opposed (O'Malley), hereby determines that cause exists for discharging Respondent from his position as a police officer.

NOW THEREFORE, IT IS HEREBY ORDERED that Respondent Police Officer Jason Burg, Star No. 12143, as a result of having been found **guilty** of all charges in Police Board Case No. 19 PB 2953, be and hereby is **discharged** from his position as a police officer and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Matthew C. Crowl, Michael Eaddy, Steve Flores, Jorge Montes, Rhoda D. Sweeney, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF DECEMBER, 2020.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

I hereby dissent from the findings of the majority of the Board with regard to Respondent Jason Burg, and from the decision to discharge him from the Chicago Police Department. I find there is insufficient evidence to find him guilty of Rules 2, 3, 5, 6, 14, and 21 in both Specifications 1 and 2. I also find that there is insufficient evidence to find him guilty of Rules 2 and 14 in Specification 3.

Officer Burg was charged in Specifications 1 and 2 based on an incident that happened in June 2010, almost ten and-a-half years ago. The investigation into this matter was conducted by the IPRA and was essentially completed by February 2014, almost four years after the incident and over six years before any hearing in this case was heard by the Board.

The majority relied heavily on the statements and testimony of Heather Rzany, 911 calls, and the deposition testimony of now-deceased Security Officer Angel De La Rosa that was taken in the federal civil case in April 2011. The evidence in this case comes down to a few key elements and corroborating factors that either back up the credibility of Ms. Rzany, Mr. De La Rosa, and Respondent, or cause doubt. The only evidence that could have possibly corroborated Ms. Rzany's contention that Respondent was the one who let the offender leave the scene of a battery are the 911 calls and the eyewitness testimony of De La Rosa . However, I do not believe that this evidence corroborates Ms. Rzany's testimony.

Ms. Rzany testified that the offender showed Respondent his badge and that Respondent subsequently told him to leave the scene. It is my opinion that the scene was too hectic and the environment too chaotic for Ms. Rzany to see this occur, let alone overhear a conversation between Respondent and the offender. It is clear by the evidence presented at the hearing that she was in an extremely excited state. The 911 calls confirm her excited state (which was reasonable,

considering her boyfriend was physically attacked and was suffering from serious injuries).

Ms. Rzany also testified that she told Respondent that the on-scene offender was reportedly an off duty police officer and was armed. Respondent testified at the hearing that he could not hear what Ms. Rzany was saying, as she walked away from the area where he was positioned numerous times. He also testified that he was focused on the victim, who was suffering from serious injuries. Respondent stated that if he had heard her mention someone had a gun, he would have responded in a completely different manner. This testimony resonated with me due to my experience as a former law enforcement officer and knowing that if an officer is told there is a gun on the scene, or sees there is a gun at a scene, the reaction would have been much different than the way Respondent reacted.

It is very clear from the evidence presented at the hearing that numerous other officers responded to the scene of the incident, including a supervisor named Sergeant Colella. Sergeant Colella testified that he was never told by Ms. Rzany, nor anyone else at the scene, that the offender was let go, and that he certainly was not told that the offender was let go by Respondent.

In the deposition given by De La Rosa, he testifies that he witnessed the offender strike the victim and that the offender ended up in the passenger seat of his security vehicle. He drove away from the scene and soon after he radioed his supervisor to call 911, the police arrived near

the Cabana Bar area of the apartment complex—a distance of possibly 100 yards away from the scene of the assault. He testifies that he stopped the vehicle, jumped out and approached the police. He was asked the following questions and gave the following answers:

Q. What did you do when you jumped out?

A. I went to the police.

Q. How far away were the police from you at that point?

A. Just a few feet away.

Q. And how many police officers were there at that moment?

A. Two to my left, and then there was another, like a patty wagon, that was right under the Cabana.

Q. How many total police officers did you observe at this time?

A. I think it was like five.

De La Rosa was also asked questions about the victim. De La Rosa testified that the victim and Ms. Rzany arrived at the location where he was talking with the police officers after De La Rosa arrived, because he drove with the offender and Ms. Rzany and Mr. Cordero had to walk to the area.

In another crucial question and answer segment, De La Rosa's testimony focuses on the moment where Respondent allegedly let the offender go. The following questions and answers put a hole in the Superintendent's case singling out Respondent as the officer who instructed the offender to leave the scene, which is the basis for all charges.

Q. You observed the offender walking away?

A. I observed him walking away when the female (Rzany) that was with the victim Cordero says to the police that he is walking away.

Q. To who did she say that, all of the officers?

A. Yes.

There is no follow up questioning or focus on Respondent proving that he was involved in this conversation or heard that exchange. It is my opinion that the burden was not met and that too many questions are unanswered as to who heard what and who took what action. Placing the

blame on Respondent for letting the offender leave the scene is not supported by the evidence.

The charges allege that Respondent knew the offender was on the scene after Ms. Rzany, and/or Mr. Cordero, and/or Mr. De La Rosa identified him as the offender. It is my opinion that it is more likely that one of the officers on the scene may have been the one that approached the offender, confirmed he was a police officer, and made the terrible decision to let him leave the scene of a potential felony without Respondent's knowledge. It is my opinion that the supervisor at the scene should have taken more of a leadership role and contained the crime scene so that everyone who was present was detained until a more complete investigation could be conducted.

In Specification 2, Respondent is charged with failing to identify the offender as a police officer on his case incident report, even though he was told the offender was a police officer. It is again my opinion that the Superintendent did not meet the burden showing Respondent knew the identity of the offender at that time.

In Specification 3, Respondent is charged with rule violations based on his May 2011 IPRA interview, where Respondent reportedly stated that the offender "was gone by the time I got there," or words to that effect. It is my opinion that Respondent was not falsifying his answers and could have reasonably believed the offender had already left based on the chaotic scene and his attention focused on the victim. The deposition testimony of De La Rosa supports this conclusion. He was asked the following questions and gave the following answers:

Q. You mentioned the that the female (Rzany) who was with Cordero told the officers that she screamed that he had a gun and that the offender had hit Cordero....After she said that how many minutes longer was the offender present before he walked away?

A. Not long, less than a minute.

It is my opinion that the offender could have walked away after speaking with other

officers and left the area quickly before Respondent even realized that the potential offender was still on the scene. It does not make sense that Respondent would arbitrarily let a possible offender walk away, simply because the offender claimed he was an off duty officer. Respondent testified that he did not see the offender on scene. Once the identity of the offender was known, Respondent testified that he never knew the identified officer and would have no reason to simply excuse the offender from the scene. The evidence presented showed that Respondent was attending to the victim and that his focus was on that aspect of the incident. The scene was rich with noise, many people on the scene talking at once, and a victim who was seriously injured.

The evidence at the hearing or the IPRA investigation never ruled out whether the other officers on the scene may have known the offender and were the ones who let the offender leave. Ms. Rzany is looking for someone to blame and the blame here fell upon Respondent. In my view, it is possible the offender may have already fled before the respondent officer saw him or realized he was on scene due to the nature of the chaos, the excited state of Ms Rzany, and his attention to the wounded victim. It was also not made clear that Ms Rzany was speaking directly to the respondent officer and therefore it is again my opinion that the evidence did not meet the burden to show it was he who spoke to and allowed the offender to leave the scene. Ms Rzany does give a description of the officer who she says spoke with the offender and let the offender go. While this description does in some way match the respondent Officer, in my opinion does not do enough to equivocally state it was the respondent Officer who was responsible. Again Ms Rzany was in a very excited state and she may recall the respondent Officer because of his tattoos and the fact he was attending to her boyfriend.

It is my opinion that due to the delay in bringing these charges, the Board was not allowed to hear the testimony of eyewitness De La Rosa who could have helped corroborate or

contradict other testimony and evidence. His deposition testimony was allowed as evidence but never pointed directly to Respondent, thereby casting doubt as to whether or not it was he who was involved in allowing the offender to leave the scene, or if Respondent in fact even saw the offender at the scene. The delay hindered not only the superintendent's case but the ability for the respondent officer to properly defend the case The consequences of this inexcusable delay weighed heavily against the Respondent.

Based on all the evidence presented at the hearing, it is my opinion that the Superintendent never met his burden of finding Respondent guilty of the charges, and therefore Respondent is not guilty of any of the charges presented. It is also my opinion that bringing charges over ten years after alleged rule violations took place, and six years after the investigation was completed, is unconscionable.

JOHN P. O'MALLEY JR.

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THESE FINDINGS AND DECISION

THIS _____ DAY OF _____, 2020.

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DAVID O. BROWN
Superintendent of Police