

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTERS OF CHARGES FILED AGAINST)
)
POLICE OFFICER JAIME GAETA,) **No. 17 PB 2928**
STAR No. 17317, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
)
AND)
)
DETECTIVE HARRY MATHEOS,) **No. 17 PB 2929**
STAR No. 21386, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1073693)**
RESPONDENTS.)

FINDINGS AND DECISIONS

On February 2, 2017, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Jaime Gaeta, Star No. 17317, and Detective Harry Matheos, Star No. 21386 (hereinafter sometimes referred to as “Respondents”), recommending that each Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- 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 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

On April 18, 2017, Hearing Officer Thomas E. Johnson ordered these cases consolidated for hearing without objection from the parties. A hearing on these charges against the Respondents took place before Hearing Officer Johnson on August 22, 23, and 31, and September 19, 20, and

25, 2017.

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 Eva-Dina Delgado, Ghian Foreman, and Rhoda D. Sweeney recused themselves from these cases 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. Each Respondent was at all times mentioned herein employed as a sworn 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 each Respondent not fewer than five (5) days before the date of the initial status hearing for these cases.
3. Throughout the hearing on the charges each Respondent appeared in person and was represented by legal counsel.

Introduction

4. On February 7, 2015, Officer Jaime Gaeta fired three shots and Detective Harry Matheos fired two shots, all into the side of Antwon Golatte's Lincoln Aviator. One shot hit Mr. Golatte, causing a serious injury. Mr. Golatte's vehicle had been stopped by these officers and two

other officers, Matthew Dercola and James Whigham. The shots were fired when Mr. Golatte refused to exit his vehicle and drove past the officers in an attempt to flee. After hearing and considering all of the evidence in this case, the Board finds that these officers had no basis for stopping or arresting Mr. Golatte, and knew that they had no basis to stop him. Therefore, Mr. Golatte was not seeking to defeat a lawful arrest. As such, the provisions of General Order G03-02-03, Section II(A)(2) (Supt. Ex. No. 21) do not apply to the facts of this case, and the respondent officers are not guilty of violating the charges alleging a violation of Rule 2 (Count I), Rule 3 (Count I), Rule 6 (Count I) and Rule 38 (Count I). The Board, however, finds that these officers are guilty of violating the charges alleging a violation of Rule 2 (Count II), Rule 3 (Count II), Rule 6 (Count II) and Rule 38 (Count II), as they used deadly force, in firing into Mr. Golatte's moving vehicle, when it was not necessary to prevent death or great bodily harm to these officers or another person.

The Undisputed Facts

There is much in this case that is not in dispute. In particular, the evidence shows that Antwon Golatte lived at 11541 South Lafayette Avenue, Chicago, at the time of these events, and owned a 2005 Lincoln Aviator. Sometime during the week before February 7, 2015, Officer Gaeta and Detective Matheos (who at the time held the rank of police officer) encountered Mr. Golatte outside his home. The officers investigated the Lincoln Aviator and found that the car was not stolen but owned by Mr. Golatte. They did not find contraband or weapons in Mr. Golatte's vehicle. Officer Dercola and his partner that day, Officer Gariby, were also on the scene during this encounter.

On February 7, 2015, Officer Gaeta and Detective Matheos arranged for Officers Dercola

and Whigham to stop Mr. Golatte's car as it was traveling west bound near 310 West 115th Street in Chicago at about 2:30 p.m. This was a Saturday afternoon, and the neighborhood is a mixed residential and commercial neighborhood. While Officer Gaeta and Detective Matheos claim they observed Mr. Golatte engaged in drug sales on February 7, 2015, prior to this stop, the Board finds (as discussed below) that the Respondents' testimony on this point is not credible. It is not disputed that apart from this testimony, there was no basis for the stop of Mr. Golatte's car, as the officers conceded he did not violate any traffic rules prior to the stop and he was driving his own car. Once stopped, Mr. Golatte provided the officers with his license and registration.

Officers Dercola and Whigham, later assisted by Officer Gaeta and Detective Matheos, ordered Mr. Golatte to exit his car. There is no dispute that Mr. Golatte refused to exit his vehicle when confronted by the four officers. After some back and forth, Officer Gaeta jumped on the running board of Mr. Golatte's car and broke the driver's side window. Mr. Golatte then reversed his vehicle and struck the Chevrolet Impala that Officers Dercola and Whigham had positioned behind and to the left of Mr. Golatte's vehicle. It is also not disputed that Mr. Golatte then drove his vehicle forward and to the left, past the four officers in an effort to leave. In doing so, Mr. Golatte evaded the Ford Explorer that Officer Gaeta and Detective Matheos had positioned at a 45-degree angle in front of Mr. Golatte's vehicle. There is no dispute that Mr. Golatte was not armed and the only force Mr. Golatte used consisted of driving his vehicle away from the scene.

Mr. Golatte's vehicle did not hit any of the officers. Neither Officer Dercola nor Officer Whigham unholstered their weapons and so did not fire any shots at the car. The forensic evidence shows that Officer Gaeta fired three shots from his weapon and Detective Matheos fired two shots from his weapon as Mr. Golatte drove past them. All of the shots entered the vehicle from the driver's side, and Mr. Golatte was struck by one bullet, after which he crashed his vehicle into a

building on the south side of 115th Street. He survived. Officer Gaeta and Detective Matheos conceded that their shots would not have stopped the vehicle after Mr. Golatte sped forward and to the left.

It is also not disputed that at the time of these events, Mr. Golatte had been working as a confidential informant for the Chicago Police Department in connection with the investigation and arrest of drug dealers. He was managed, for the most part, by Sergeant Kathy Schmidt. He had been serving in this capacity under a contract with the Chicago Police Department since 2011 or 2012. Mr. Golatte, however, at the time of the February 7, 2015, shooting was in possession of marijuana. Confidential informants are not allowed, by contract, to be in possession of illegal drugs (other than in the context of a controlled buy). After this incident, Mr. Golatte was terminated from the confidential informant program.

Mr. Golatte was charged with aggravated battery as a result of the incident with these officers on February 7, 2015, but was acquitted in criminal court.

Was There a Basis to Stop Antwon Golatte on February 7, 2015?

There is a dispute about what transpired between Officer Gaeta, Detective Matheos, and Antwon Golatte during the week before the February 7, 2015 shooting. Mr. Golatte testified that the police officers abused him physically, while the officers contend this was a brief and non-consequential stop. The Board does not credit either account of what transpired. Mr. Golatte's testimony is not corroborated by anyone else, though he said there were witnesses to the event and even a cell phone videotape, none of which was produced. The officers' account of what occurred is undermined by the many serious inconsistencies in their testimony, including but not limited to:

- 1) the officers claim that an anonymous informant told them that a man was selling drugs from a

car that matched the Lincoln Aviator's description, but the officers could not agree on whether the tipster was male or female, and failed altogether to document this encounter; 2) the officers' account of immediately finding the Aviator is not credible, and their account about what they saw when they observed the Aviator is inconsistent—Officer Gaeta claiming it was speeding and they planned to ticket the vehicle, while Detective Matheos claims the Aviator was parked on Lafayette when it was spotted; 3) Gaeta claimed the front driver's side door of the Aviator was closed, but Matheos said it was open, and that he then searched the inside of the car, including a gym bag, without a warrant; 4) both officers suggested the car might have been stolen, but even though they ran the plates and determined it was not, Detective Matheos searched the car and the gym bag inside; 5) Matheos said the whole incident occurred in the space of 1 to 1.5 minutes; Gaeta says it took 20 minutes; and 6) the Board finds it incredible that Officer Dercola and his partner happened to appear on the Lafayette side street, at the same time all of this was occurring.

There is no dispute, however, that during this incident the week before February 7, 2015, Officer Gaeta and Detective Matheos found that the Lincoln Aviator was not stolen, and belonged to Mr. Golatte. Nor is there any dispute that the officers found no basis to further investigate Mr. Golatte. Neither drugs, a gun, or any other contraband was found in the Aviator.

Shortly thereafter, on February 7, 2015, Officer Gaeta and Detective Matheos testified that they were observing the Aviator outside Mr. Golatte's residence. They claim they saw a hand-to-hand drug transaction occur between Mr. Golatte and another man. Mr. Golatte denies this occurred. More importantly, the Board notes that Officer Gaeta and Detective Matheos admit they were sitting in their car 250 to 275 yards away from the purported hand-to-hand drug transaction, and did not use binoculars or any other assistive device to observe what was going on. They admit that they did not observe any drugs, did not see the actual transaction, did not recall what anyone

was wearing, and that the transaction coincidentally occurred right after they began their surveillance. The Board finds this testimony by Officer Gaeta and Detective Matheos to be incredible and therefore gives it no weight.

Officer Gaeta and Detective Matheos also testified that as Mr. Golatte proceeded southbound on Lafayette and turned westbound on 116th Street, they observed him pick up another man and then drop him off shortly thereafter. They do not say they observed any drug transaction going on between Mr. Golatte and this individual, but suggest—without any evidence—that this was also a drug transaction. The Board does not credit this testimony either.

Though there was no probable cause to do so, Officer Gaeta and Detective Matheos nonetheless called Officers Dercola and Whigham to request that they stop Mr. Golatte. They used their cell phone to request this stop, which could suggest they wanted to avoid the Department's radio and dispatch system, which would have recorded the actual conversation. Regardless, the Board finds that Officer Gaeta and Detective Matheos (as well as Officers Dercola and Whigham) had no probable cause for stopping Mr. Golatte's vehicle. Nonetheless, the officers stopped Mr. Golatte's car on 115th Street, a decision that led to the shooting in this case.

Were the Respondents Reasonably in Fear for Their Lives or the Lives of Another Person, and Did Respondents Have an Opportunity to Move Out of Mr. Golatte's Vehicle's Path?

When Officers Dercola and Whigham stopped Mr. Golatte's vehicle, he supplied the officers with his license and registration. They insisted that he get out of the car for reasons that were unclear. When he did not do so, Officer Gaeta and Detective Matheos intervened. Officer Gaeta jumped on the running board of Mr. Golatte's car. Officer Gaeta, even by his fellow officer Whigham's testimony, tried to wiggle the driver's side window down, causing it to break. It is clear to the Board that the officers exacerbated the situation by the way in which they handled the

stop of Mr. Golatte's vehicle. The actions of Officer Gaeta, in particular, in climbing on the running board of the vehicle and breaking the driver's side window of the car could not be consistent with Department policy or tactical training. The Board also finds that Mr. Golatte's refusal to exit his vehicle, and his decision to back his car into Officer Dercola and Whigham's vehicle and then take off from the scene cannot be excused. Mr. Golatte's actions were reckless and seriously contributed to the escalation of an already dangerous scene.

The question before the Board, however, is whether Officer Gaeta's and Detective Matheos's use of deadly force was authorized in this case. Department policy at the time was set forth clearly in General Order G03-02-03, Section II(B). This policy provided that:

Firing at or into a moving vehicle is only authorized to prevent death or great bodily harm to the sworn member or another person. When confronted with an oncoming vehicle and that vehicle is the only force used against them, sworn members will move out of the vehicle's path.

In this case, the Board finds that when Mr. Golatte reversed his vehicle and then sought to drive away from the officers, he did not hit any of the four officers on the scene with his vehicle. Nor were any of the officers ever directly in front of Mr. Golatte's vehicle at the time that it was in motion, such that it was pointed at them. The two-part test, however, is whether the officers were objectively in fear of death or great bodily harm to themselves or other persons and whether the officers had an opportunity to move out of the path of Mr. Golatte's vehicle.

Carefully reviewing the testimony and other relevant evidence, it is clear to the majority of the Board both Officer Gaeta and Detective Matheos had an opportunity to avoid being in the path of Golatte's vehicle, no other officer or civilian was in danger at that time, and as a result, their decisions to fire into Golatte's car was not reasonable and violated Departmental policy as set forth in General Order G03-02-03, Section II(B). The evidence establishes the circumstances at the time that Golatte moved his vehicle gave the officers time and distance to get out of the way of

Golatte's vehicle.

The Ford Explorer that Officer Gaeta and Detective Matheos drove was 16.4 feet long, and they parked it at a 45-degree angle in front of Mr. Golatte's vehicle when the stop was made, about 1-2 feet off of the north curb of 115th Street. As such, the Ford Explorer blocked 15-17 feet of 115th Street, from north to south. Mr. Golatte's Lincoln Aviator was 6 feet wide, so the Board finds there was 9-11 feet of room to the left of the Aviator that represented a safe zone for the officers. In addition, Officer Gaeta's testimony (and the physical evidence in the case, in the form of photographs of the scene) demonstrate that the Chevrolet Impala driven by Officers Dercola and Whigham was parked 3-6 feet from the north curb of 115th Street behind and to the left of Mr. Golatte's vehicle, after they executed the stop. The Impala's emergency lights were activated throughout the stop. The Impala was 6 feet wide, so it blocked 9 to 12 feet of 115th Street, and alerted passers-by that a police action was underway.

The Board further finds that after Mr. Golatte backed his car into the Impala, Mr. Golatte's car was 20 to 50 feet from the Ford Explorer that blocked his car to the west. This distance was not measured by investigators, which is inexplicable, but Officer Gaeta testified the distance was 30-50 feet; Officer Whigham put it at 20-30 feet; Officer Dercola said it was 20 feet, and a photo (Supt. Ex. No. 17) of the north side of the street (with the Explorer and Impala still in their original positions) suggests the distance was about 30 feet. The defense expert (Mr. Farrell) testified the Aviator was 16 feet long. This means that the Aviator had room to evade the Ford Explorer by moving forward and to the left. More importantly, it means that Detective Matheos, who was at the front left headlight of the Aviator when it began moving backward, and Officer Gaeta, who fell backwards off the running board as the Golatte vehicle moved backwards, both had a safe space in which to retreat. Further, Golatte's reversal of the Aviator before moving forward gave the officers

additional time to move away from the Aviator and out of its path.

Officer Gaeta's and Detective Matheos's ability to find safe space out of the path of Golatte's vehicle is confirmed by the actions of Officers Dercola and Whigham. Officer Dercola was next to (directly east of) Officer Gaeta and right near Mr. Golatte's vehicle when Golatte put his car into reverse. Officer Dercola fell back to the safe area and never felt the need to even unholster his weapon, much less shoot at the car. Officer Whigham, who was near Golatte's car but further toward its back (*i.e.*, east), also found safe space as the car moved backwards and then forward. Officer Whigham too never unholstered or fired his weapon. Based on the officers' own testimony (and discounting Mr. Golatte's self-serving testimony altogether), the Board is convinced that Officer Gaeta and Detective Matheos could have safely moved out of the way of the Golatte vehicle. Their decision to shoot at the vehicle was not only futile, in that it would not have stopped the vehicle in its path, but also dangerous to civilians who may have been at the scene on a Saturday afternoon. There is no question that the officers could have arrested Mr. Golatte later, as they had his personal identification, knew the car he was driving and knew where he lived. The Board credits the expert opinion of Ronald Janota that Officer Gaeta and Detective Matheos were not justified in firing their weapons into the side of Golatte's moving vehicle.

The Board does not fully credit the opinion of the Respondents' expert, Mr. Farrell that the officers had no safe place to retreat. He testified, using the Force Science Institute publication, that Officer Gaeta and Detective Matheos were in fear for their lives, as they had no safe place to retreat, and only fired into the side of Mr. Golatte's vehicle because of the time it took to respond to the threat the vehicle posed to them. Mr. Farrell testified that if the car was moving at 10 mph (14.6 feet/second), it would take the officers between 1.16 and 1.41 seconds to draw their weapons, track their target, and then stop shooting. Mr. Farrell, however, never meaningfully

accounts for the safe space available to the officers, based on the location of the various vehicles. Moreover, while the Superintendent did not offer a competing study, on its face, the Force Science Institute data Farrell relied upon is not peer-reviewed, reliable, or sufficiently explained in the publication, as experimental psychologist Lisa Fournier convincingly testified.

The Board finds that Officer Gaeta and Detective Matheos had an opportunity to retreat to safety when Mr. Golatte drove his car backward and then forward and to the left, as the conduct of their fellow officers confirms. Under Department policy, this was their obligation. Drawing and firing their weapons was unnecessary and caused injury to Mr. Golatte, as well as a threat to civilians in the area. The Board finds the use of deadly force here to have been improper.

Charges Against the Respondents

5. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta used deadly force without justification in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Gaeta or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference. General Order G03-02-03, Section II(A)(2) authorizes officers to use deadly force under certain circumstances when a civilian is seeking to prevent an arrest from being defeated by

resistance and escape. The Respondents here, however, had no basis for arresting Antwon Golatte, and they knew they had no basis for arresting him when they stopped him. As such, Mr. Golatte was not seeking to resist a lawful arrest and Section II(A)(2) has no application to this case.¹ As the foregoing allegation charges a violation of this irrelevant subsection of General Order G03-02-03, the charge must be dismissed and a finding of not guilty entered in favor of the Respondents. This finding is not inconsistent with the later guilty findings related to General Order G03-02-03, Section II(B), which governs the circumstances of this case.

6. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, 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 February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta fired at or into a moving vehicle without authorization in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Officer Gaeta and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Gaeta or another person, thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference. For the reasons set out above, the Board is convinced that Officer Gaeta and Detective Matheos had ample opportunity to move out of the way of Mr. Golatte's vehicle. The Respondents' obligation was to move out of the vehicle's path and, once out of the path, not to

¹While state law speaks to the circumstances as to when a police officer may use deadly force, see 720 ILCS 5/7-5, the Department has the right to adopt General Orders that are less expansive than state law, and has done so here, as well as in later iterations of its Use of Force Policy. Nonetheless, even 720 ILCS 5/7-5, by its terms governs only "efforts to make a lawful arrest," and the stop of Mr. Golatte was quite clearly not lawful.

shoot. The Respondents' use of deadly force, under the circumstances, violated General Order G02-02-03, Section II(B), and therefore impeded the efforts of the Department to achieve its policy and goals, and brought discredit upon the Department. Their conduct further failed to promote the Department's effort to implement its policy and accomplish its goals, and resulted in an unnecessary use of their weapons.

7. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **not guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta used deadly force without justification in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Gaeta or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

8. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count II: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West

115th Street, Chicago, Illinois, Officer Gaeta fired at or into a moving vehicle without authorization in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Officer Gaeta and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Gaeta or another person, thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

9. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **not guilty** of violating, to wit:

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

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta used deadly force without justification in violation of General Order 03-02-03 in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Gaeta or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

10. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, 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 February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta fired at or into a moving vehicle without

authorization in violation of General Order 03-02-03 in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Officer Gaeta and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Gaeta or another person.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

11. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **not guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Gaeta or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

12. The Respondent, Police Officer Jaime Gaeta, Star No. 17317, charged herein, is **guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

Count II: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Officer Gaeta unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Officer Gaeta and firing at or into the

vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Gaeta or another person.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

13. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos used deadly force without justification in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Detective Matheos or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

14. The Respondent, Detective Harry Matheos, Star No. 21386, 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 February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos fired at or into a moving vehicle without authorization in that he fired one and/or more shots at or into a moving vehicle driven by

Antwon Golatte when the moving vehicle was the only force used against Detective Matheos and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Detective Matheos or another person, thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

15. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **not guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos used deadly force without justification in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Detective Matheos or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

16. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count II: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West

115th Street, Chicago, Illinois, Detective Matheos fired at or into a moving vehicle without authorization in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Detective Matheos and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Detective Matheos or another person, thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

17. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **not guilty** of violating, to wit:

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

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos used deadly force without justification in violation of General Order 03-02-03 in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Detective Matheos or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

18. The Respondent, Detective Harry Matheos, Star No. 21386, 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 February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos fired at or into a moving vehicle without

authorization in violation of General Order 03-02-03 in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Detective Matheos and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Detective Matheos or another person.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

19. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **not guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

Count I: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at Antwon Golatte hitting him in the abdomen with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Detective Matheos or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

20. The Respondent, Detective Harry Matheos, Star No. 21386, charged herein, is **guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

Count II: On or about February 7, 2015, at approximately 1436 hours, at or around 310 West 115th Street, Chicago, Illinois, Detective Matheos unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at or into a moving vehicle driven by Antwon Golatte when the moving vehicle was the only force used against Detective Matheos and firing

at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Detective Matheos or another person.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

Penalty

21. The Police Board has considered the facts and circumstances of each Respondent's conduct, and the evidence presented in mitigation, including each Respondent's complimentary and disciplinary histories.

The Respondents' failure to abide by the Police Department's use of force policy, as set out in General Order G03-02-03, Section II(B), resulted in a significant injury to Antwon Golatte. Their decision to use deadly force in a commercial and residential neighborhood on a Saturday afternoon also had the potential to endanger civilians in the area. As such, their misconduct here was extremely serious and unjustified.

The Respondents, however, each offered evidence in mitigation, which the Board has considered thoroughly. Each Respondent called several supervisors who testified credibly regarding his respective positive job performance, character, and reputation. In addition, each Respondent has an exemplary complimentary history over many years with the Chicago Police Department. Officer Gaeta was appointed in 1999 and has earned a total of 127 awards, including the Superintendent's Award of Valor, 5 Department Commendations, and 107 Honorable Mentions. Detective Matheos was appointed in 1995 and has earned a total of 186 awards, including 4 Police Officer of the Month Awards, 5 Joint Operations Awards, 11 Department Commendations, and 141 Honorable Mentions. Detective Matheos has no sustained complaints on his disciplinary history, and Officer Gaeta has one, which resulted in a two-day suspension.

Based on the nature of the misconduct of which the Respondents are guilty and the circumstances in which it took place (including the limited time they had to react to a dynamic situation), and based on each Respondent's record and years of service to the Department, the Board finds that a suspension of each Respondent for a period of one year is a justified penalty on the facts of these particular cases.

The Board also recommends to the Superintendent that each Respondent receive training on proper techniques and tactics to use in vehicle stops to facilitate officer, suspect, and civilian safety. This training should occur before Officer Gaeta and Detective Matheos are authorized by the Superintendent to resume regular duty. The Board requests that the Superintendent report back to the Board about the completion of this training as soon after its completion as possible.

[The remainder of this page is left blank intentionally.]

POLICE BOARD DECISIONS

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in these cases, 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 votes of 6 in favor (Lori E. Lightfoot, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, and Andrea L. Zopp) to 0 opposed, the Board finds Respondent Police Officer Jaime Gaeta **not guilty** of violating Rule 2 (Count I), Rule 3 (Count I), Rule 6 (Count I), and Rule 38 (Count I);

By votes of 5 in favor (Lightfoot, Eaddy, Flores, Simpson, and Zopp) to 1 opposed (O'Malley), the Board finds Respondent Police Officer Jaime Gaeta **guilty** of violating Rule 2 (Count II), Rule 3 (Count II), Rule 6 (Count II), and Rule 38 (Count II);

By votes of 6 in favor (Lightfoot, Eaddy, Flores, O'Malley, Simpson, and Zopp) to 0 opposed, the Board finds Respondent Detective Harry Matheos **not guilty** of violating Rule 2 (Count I), Rule 3 (Count I), Rule 6 (Count I), and Rule 38 (Count I); and

By votes of 5 in favor (Lightfoot, Eaddy, Flores, Simpson, and Zopp) to 1 opposed (O'Malley), the Board finds Respondent Detective Harry Matheos **guilty** of violating Rule 2 (Count II), Rule 3 (Count II), Rule 6 (Count II), and Rule 38 (Count II).

As a result of the foregoing, the Board, by votes of 5 in favor (Lightfoot, Eaddy, Flores, Simpson, and Zopp) to 1 opposed (O'Malley), hereby determines that cause exists for suspending each Respondent from his position as a sworn officer with the Department of Police, and from the services of the City of Chicago, for a period of one (1) year.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Jaime Gaeta, Star No. 17317, as a result of having been found **guilty** of certain charges in Police Board Case No. 17 PB 2928, 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 one (1) year, from March 17, 2017, to and including March 16, 2018.

Police Board Case Nos. 17 PB 2928 & 2929
Police Officer Jaime Gaeta & Detective Harry Matheos

IT IS FURTHER ORDERED that the Respondent, Detective Harry Matheos, Star No. 21386, as a result of having been found **guilty** of certain charges in Police Board Case No. 17 PB 2929, be and hereby is **suspended** from his position as a detective with the Department of Police, and from the services of the City of Chicago, for a period of one (1) year, from March 17, 2017, to and including March 16, 2018.

These disciplinary actions are adopted and entered by a majority of the members of the Police Board who participated in these cases: Lori E. Lightfoot, Michael Eaddy, Steve Flores, John H. Simpson, and Andrea L. Zopp. (Board Members Eva-Dina Delgado, Ghian Foreman, and Rhoda D. Sweeney recused themselves from these cases pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JANUARY, 2018.

Attested by:

/s/ LORI E. LIGHTFOOT
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

I dissent from certain Findings and from the Decisions in these cases.

The majority states that Officer Gaeta and Detective Matheos had an opportunity to retreat to safety when Mr. Golatte drove his car forward and to the left, mainly because the other two officers on scene made the decision to do so. It was part luck that the other two officers on scene moved to a location of safety. Nobody, including the driver of that vehicle, Mr. Golatte, had any idea where that vehicle was going or where it would ultimately end up. The Superintendent and the IPRA investigators want time to slow down in this case. They want the situation to unfold in slow motion and only feel the officers would be justified if the front grill of the vehicle was perfectly aligned and heading directly into the path of the officers.

The evidence showed that both Respondents may not have had the opportunity to safely move out of the way and believed their own lives and the lives of the other officers on scene were in jeopardy. The evidence showed they may have thought that Officer Whigham had been hit or killed by Mr. Golatte when he forcefully backed into Officer Whigham's police vehicle.

Each officer on scene was in a different position and processed the situation individually. The situation and the environment surrounding the event were chaotic. It was described by the Superintendent's own expert witness as "rich." Meaning the situation was dangerous, filled with loud sounds to include other visual and audio distractions such as loud verbal commands by some or all of the officers, screeching tires, Mr. Golatte's vehicle smashing into the police vehicle, other outside noises, etc.

The majority also found that when Mr. Golatte reversed his vehicle and then sought to drive away from the officers, he did not hit any of the four officers on the scene with his vehicle, nor were any of the officers ever in front of Mr. Golatte's vehicle. In my opinion, a person does not

have to actually hit the officers, nor does the vehicle have to be pointed directly at them, before they have to make the split-second decision to use deadly force to stop or eliminate the threat.

The testimony of Officer Gaeta highlighted the fact that he believed he was in fear for his life. I found his testimony extremely credible and believe that he absolutely was in fear for his life and made the decision to use deadly force.

The majority credits the expert opinion of the Superintendent's use of force witness Ronald Janota that Officer Gaeta and Detective Matheos were not justified in firing their weapons into the side of Golatte's moving vehicle. Conversely, the majority does not credit the opinion of the Respondents' use of force expert, Mr. Farrell. Mr. Farrell partly relied on information provided by the Force Science Institute and his own experience of investigating numerous of officer-involved shootings, and opined that Officer Gaeta and Detective Matheos were justified in their actions. He estimated they had between 1.16 and 1.41 seconds to draw their weapons, track their target, and then stop shooting. I agree with his assessment and would add that the Respondents actually exercised restraint by stopping their fire as soon as they felt there was no longer a threat.

The majority also states the Force Science Institute data Mr. Farrell relies upon is not peer-reviewed or reliable based on the testimony of expert witness and environmental psychologist Lisa Fournier. I draw from my own experience of 25 years in law enforcement, where I made split-second decisions to use or not use deadly force, and do not automatically discredit data and testing from the Force Science Institute. I also find it odd that the Superintendent's expert, Ronald Janota, was not even aware of the Force Science Institute and its studies of officer-involved shootings. Whether or not you agree with the Force Science Institute, I don't know how you can claim to be a use of force expert and not even be aware of the Force

Science Institute.

The majority also calls into the question the validity of the stop that ultimately led to the shooting in this case. The officers were not charged with making an unwarranted stop. The events that took place after the stop resulted from Mr. Golatte's decision to not comply with the officers' verbal commands once the stop was initiated. Mr. Golatte should bear some responsibility in this case. He could have complied with the verbal commands of the officers as bound to do so by law, and complained later if he felt he was not being treated fairly or legally.

These two officers have a combined 41 years on the Chicago Police Department and are highly-decorated officers with over 250 awards and commendations for various activities in law enforcement. They are both obviously extremely experienced. They made a decision to use deadly force when they feared for their lives and could have reasonably believed a forcible felony had just occurred when Mr. Golatte placed his car into reverse and smashed violently into the police vehicle. They could have reasonably believed Officer Whigham was seriously injured or killed by Mr. Golatte's action. A decision, that once made, lasted less than two seconds. We are casting judgement on less than two seconds on an 18-year career and 23-year career.

Based on all the factors presented in this case, I find that the Superintendent did not meet the burden of proving by a preponderance of the evidence any of the charges, and I find both Respondents not guilty as charged on all counts.

/s/ JOHN P. O'MALLEY JR.

RECEIVED A COPY OF

THESE FINDINGS AND DECISIONS

THIS _____ DAY OF _____, 2018.

EDDIE T. JOHNSON
Superintendent of Police