

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER RAOUL MOSQUEDA,) **No. 17 PB 2935**
STAR No. 13662, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1042532)**
RESPONDENT.)

FINDINGS AND DECISION

On August 8, 2017, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Raoul Mosqueda, Star No. 13662 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct, which set forth expressly prohibited acts:

- 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: Failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 14: Making a false report, written or oral.

A hearing on these charges against the Respondent took place before Police Board Hearing Officer Jeffrey I. Cummings on March 20 and 21, 2018. 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 Cummings made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

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

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. 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. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

Introduction

4. This case arises out of sequence of events that began on January 6, 2011. Respondent Raoul Mosqueda was on duty on that date and assigned to the 7th District in Englewood. While on patrol, Officer Mosqueda monitored his police radio, which was set to receive dispatches from the radio zone for the 7th District (Zone 6). At 10:00 p.m., Officer Mosqueda heard a Zone 6 radio dispatch concerning a terminated traffic pursuit of a 1998 Oldsmobile Aurora with a temporary license plate that took place southeast of Englewood within a different radio zone (Zone 8) and police district (District 4) in the vicinity of 8300 South Marquette. Less than a minute later, Officer Mosqueda heard a separate Zone 6 radio dispatch reporting shots fired at Garfield and Damen near the northern boundary of the 7th District.

At around 1:30 a.m. on January 7, Officer Mosqueda spotted a 1998 Oldsmobile Aurora with temporary plates and signaled for the driver to pull over. A confrontation ensued that

resulted in Officer Mosqueda being knocked to the ground as the Oldsmobile backed up, Officer Mosqueda and his partner firing their weapons, the driver of the car (Darius Pinex) being shot and killed by Officer Mosqueda, and the passenger (Matthew Colyer) sustaining an injury.

A few hours later on the morning of January 7, Officer Mosqueda gave a statement to the Independent Police Review Authority (“IPRA”) regarding the traffic stop and shooting. In his IPRA statement, Officer Mosqueda stated that he and his partner decided to stop the Oldsmobile Aurora because it matched the description of a car (namely, an Oldsmobile Aurora by make and model and dark color that was wanted for shots fired) identified in a prior radio dispatch.

In 2012, Mr. Colyer and the estate of Darius Pinex sued Officer Mosqueda, his partner, and the City of Chicago alleging that the officers used excessive force in firing their weapons. One of the defense attorneys prepared Officer Mosqueda for his deposition by playing him a recording from a radio dispatch that was broadcast on Zone 8 on the night of January 6, 2011. The Zone 8 dispatch concerned the pursuit of a black 1998 Oldsmobile Aurora with rims and temporary plates in the vicinity of 8300 South Marquette, indicated that the car was wanted for fleeing and eluding, and assumed that there was a weapon in the car. The defense attorney did not play the Zone 6 dispatch for Officer Mosqueda even though Officer Mosqueda stated that the dispatch that was played for him was not what he heard on the night of the incident.

During his June 13, 2013, deposition, Officer Mosqueda testified that his attention was drawn to the Oldsmobile Aurora because it met the description of the police radio dispatch that he had heard (namely, a dark Aurora with temporary plates and rims that was fleeing from the 4th District, had a gun in the car, and may have had something to do with shots fired). The Culyer lawsuit proceeded to trial in 2015 and Officer Mosqueda testified on February 25, 2015, that his attention was drawn to Mr. Pinex’s car because he had heard a radio dispatch about a

dark colored vehicle with rims, temporary plates that had fled the 4th District officers, could possibly be armed, and had something to do with a shooting. Officer Mosqueda “stood by” his 2011 IPRA statement and his testimony during the 2013 deposition and at trial on February 25, 2015, when he gave two statements to IPRA in 2016 after the actual Zone 6 dispatch he heard had been identified and played for him.

The Superintendent’s charges do not concern whether Officer Mosqueda made a lawful stop of the Oldsmobile Aurora or whether Officer Mosqueda used excessive force when he shot Mr. Pinex. Instead, the Superintendent alleges that Officer Mosqueda violated Rule 2, Rule 3, and Rule 14 by making false, misleading, and/or inconsistent statements regarding the radio dispatch he heard on January 6, 2011, during his 2011 IPRA statement, his 2013 deposition, and his February 25, 2015, trial testimony. After giving careful consideration to the testimony and evidence submitted by the parties during the hearing and to their closing arguments,¹ the Board finds that Respondent Officer Mosqueda is not guilty of all charges that have been filed against him.

A. Factual Findings

Officer Mosqueda testified at the hearing as an adverse witness and on direct and cross-examination. The parties also introduced excerpts from Officer Mosqueda’s three statements to IPRA (dated January 7, 2011, September 12, 2016, and November 14, 2016), his two depositions (dated June 13, 2013 and July 29, 2015²), and his trial testimony from February 25 and February

¹ The Board denies Officer Mosqueda’s motion to strike certain portions of the Superintendent’s counsel’s closing arguments.

² There is confusion in the record about the date that Officer Mosqueda’s second deposition took place. At the hearing, the parties indicated that this deposition took place on August 13, 2015. However, the deposition transcript itself (Exhibit 6) indicates that the deposition took place on July 29, 2015, but that

27, 2015. Both parties relied almost exclusively on Officer Mosqueda's sometimes conflicting statements and testimony and the transcriptions of the Zone 6 and Zone 8 dispatches to support their respective positions. The evidence establishes the following.

Respondent Mosqueda became a Chicago police officer on November 27, 2006, and he was assigned to the 7th District in Englewood for the first seven years of his career. In early January 2011, Officer Mosqueda worked as a "midnight officer" on the first watch - - which begins at 9:00 p.m. and ends at either 6:00 a.m. or 7:00 a.m. Officer Mosqueda worked the first watch on January 5, 2011. Although he was scheduled to check off at 7:00 a.m. on January 6, he actually stayed on duty for approximately twenty-two hours until approximately 6:00 – 7:00 p.m. that evening to complete the processing of an armed robbery arrest. Officer Mosqueda then went home, changed, and reported back to the 7th District at 9:00 p.m. to begin his January 6 tour of duty on the first watch.

On the evening of January 6, Officer Mosqueda was partnered with Officer Gildardo Sierra and they went on patrol in a Chevy Tahoe. While on duty, Officer Mosqueda monitored his radio for notifications and dispatches that might alert him to emergencies. All police officers do not receive the same dispatches because the City of Chicago is divided into radio zones that are assigned to the different police districts. In 2011, the 7th District was assigned to Zone 6 and Officer Mosqueda's radio was set to receive dispatches from that zone.

Around 10:00 p.m. on January 6, Officer Mosqueda heard the following Zone 6 dispatch:

Zone 8 traffic pursuit at 8300 South Marquette. They were chasing a 8378 Mary 393, '98 Olds Aurora. Last seen at 9300 South East End traveling westbound. 420 terminated it. 1998 Olds Aurora, 378 Mary 393.

Officer Mosqueda understood at the time he heard this dispatch that it referred to a traffic pursuit

the transcript was "printed on" August 13, 2015.

in the South Chicago neighborhood within the 4th District that involved a 1998 Oldsmobile Aurora with a temporary license plate. Officer Mosqueda also understood that a sergeant terminated the pursuit as the car was at 9300 South East End heading westbound. This was the only radio dispatch that Officer Mosqueda heard that evening that had anything to do with an Oldsmobile Aurora. Twenty-five seconds later, Officer Mosqueda heard a separate Zone 6 dispatch stating:

shots fired at Garfield and Damen, use caution in the area. Garfield and Damen, shots heard.

This incident occurred within Englewood near the northern boundary of the 7th District and it had no connection with the pursuit of the Oldsmobile Aurora in the 4th District.

At around 1:30 a.m. on January 7, Officer Mosqueda (who was driving) saw a dark green 1998 Oldsmobile Aurora with temporary plates in the vicinity of 1119 West Marquette Road. Although the car was driving approximately 15 – 20 m.p.h. and was not committing any traffic violations, Officer Mosqueda signaled for the car to pull over and stop. After Officer Mosqueda pulled the Tahoe in front of the car, he and Officer Sierra got out with weapons drawn. As Officer Mosqueda approached the Oldsmobile, the driver (Darius Pinex) knocked Officer Mosqueda to the ground as he backed his car into a tree. As the car then began moving forward, both officers fired their weapons and Officer Mosqueda shot and killed Mr. Pinex. The passenger in the car (Matthew Colyer) was also injured during the incident.

After the incident, Officer Mosqueda's supervising sergeant drove him to the hospital to get checked out because he had been struck by the Oldsmobile and they wanted to make sure that he did not have any internal injuries. Officer Mosqueda remained at the hospital for one to two hours and his sergeant then drove him to Area 1 Headquarters. While at the Area 1, Officer Mosqueda met with several officers or detectives and then he provided a statement to an IPRA

investigator. During his IPRA statement, Officer Mosqueda told the IPRA investigator that while on routine patrol he observed a vehicle that matched the description of an all call dispatch over the radio that referred:

To a vehicle Oldsmobile Aurora by make and model and dark colored that was wanted for shots fired.

He told Officer Sierra that the car matched the description and that they should check out the vehicle.

In 2012, Mr. Colyer and the estate of Mr. Pinex filed separate and later consolidated federal lawsuits (hereinafter, the “Colyer lawsuit”) against Officers Mosqueda and Sierra and the City of Chicago alleging the officers acted unreasonably and used excessive force in firing their weapons. Defendants were represented by attorneys from the City of Chicago’s Corporation Counsel’s Office. One of these attorneys (Tom Aumann) prepared Officer Mosqueda for his deposition. Officer Mosqueda told attorney Aumann that he had heard a message about a vehicle, and he saw a vehicle that matched the description of the vehicle that was in the radio dispatch. Attorney Aumann played Officer Mosqueda a recording from a January 6, 2011, radio dispatch that was broadcast on Zone 8 (which encompassed the 4th District). Like the Zone 6 dispatch, the Zone 8 dispatch concerned the pursuit of a 1998 Oldsmobile Aurora with temporary plates in the vicinity of 8300 South Marquette. However, the Zone 8 dispatch provided further details about the car (such as its color and the fact that it had rims), indicated that the car was wanted for fleeing and eluding, and assumed that there was a weapon in the car given the amount of shootings in the area and the way the driver was driving.

Attorney Aumann played the Zone 8 dispatch one or two times for Officer Mosqueda on June 12, 2013, although he did not tell him that the dispatch was from Zone 8. Moreover, although Officer Mosqueda told attorney Aumann that this was not the dispatch that he had

heard on January 6, Attorney Aumann did not play the Zone 6 dispatch for Officer Mosqueda.³

During his June 13, 2013, deposition, Officer Mosqueda testified that his attention was drawn to the Oldsmobile Aurora driven by Mr. Pinex because it met the description of the radio dispatch that he had heard earlier during his tour. Specifically, Officer Mosqueda testified that:

- “I remember that the message that I heard said something about the vehicle fleeing from the Fourth District and that it may have something to do with shots being fired”;
- the dispatch “[s]aid a dark Aurora, four-door with temporary plates and rims”; and
- he “knew that there was a gun in the car because dispatch had earlier notified everyone that this particular car that matched the description could be armed.”

Officer Mosqueda admitted at the hearing that the additional facts he had not included in his 2011 IPRA statement but that were included in his 2013 deposition testimony came from the radio dispatch that was played for him during his deposition preparation.⁴

³ During the hearing, Officer Mosqueda provided a much more expansive description of what occurred during his preparation for his pre-trial deposition. In particular, Officer Mosqueda testified that two other Assistant Corporation Counsels (Jordan Marsh and Dana Pesha) were involved in his deposition preparation, Attorney Marsh played the Zone 8 dispatch recording for him and the two discussed it, he instructed his attorneys to go back and find the dispatch he actually heard, and his attorneys told him that the recording of the dispatch he heard did not exist because it was destroyed after thirty days. This testimony conflicts with the testimony that Officer Mosqueda gave during his July 29, 2015, deposition. At his 2015 deposition, Officer Mosqueda testified that he had no recollection of any specifics of his preparation for his 2013 deposition other than the details stated above in the body of the text.

The Board finds that Officer Mosqueda’s 2015 deposition testimony about his 2013 deposition preparation to be more credible. The 2015 deposition was focused entirely on Officer Mosqueda’s discussions and dealings with Assistants Corporation Counsel regarding the Zone 6 and Zone 8 dispatches and it occurred much closer in time to when Officer Mosqueda was prepared for his 2013 deposition. Even so, Officer Mosqueda recalled few details of his preparation session. Moreover, Officer Mosqueda provided no explanation at the hearing for the inconsistencies between his testimony during the 2015 deposition and his testimony at the hearing. Officer Mosqueda likewise provided no explanation for why he is now in 2018 able to recall details about his deposition preparation in 2013 that he could not recall in 2015.

⁴ Officer Mosqueda called retired Sergeant Thomas Cepeda to provide evidence that there was additional information about an Oldsmobile Aurora that was circulating within the 7th District on the evening of January 6, 2011. In particular, Sergeant Cepeda testified that the Watch Commander (Lieutenant George Aguston) advised the officers during the roll call “that there had been earlier shots fired from a[n] Oldsmobile Aurora, dark in color, possibly black.”

In 2015, the Culyer lawsuit proceeded to a jury trial federal court. Officer Mosqueda testified at trial on February 25, 2015. Officer Mosqueda was again questioned about what drew his attention to Mr. Pinex's car and about the radio dispatch that he had heard on January 6, 2011. With respect to the radio dispatch, Officer Mosqueda testified as follows:

So earlier in the day I heard a message that came over our radio and the message was something about a dark colored vehicle with rims and a yellow, obviously yellow temporary plates that had fled the Fourth District officers and that it possibly could be armed and that it had something to do with a shooting.

Officer Mosqueda further testified that he heard this dispatch on the Zone 6 radio.

However, at the time Officer Mosqueda testified on February 25, neither he nor the plaintiffs' counsel nor the federal judge handling the Culyer lawsuit (the Honorable Edmond Chang) were aware that there was a recording of the actual Zone 6 dispatch that Officer Mosqueda heard on January 6, 2011. On February 26, defense counsel produced the recording of the Zone 6 dispatch to the plaintiffs⁵ and they also played the Zone 6 dispatch to Officer Mosqueda. This was the first time that Officer Mosqueda had heard the Zone 6 dispatch since

The Board gives no weight to Sergeant Cepeda's testimony on this point for three reasons. First, Officer Mosqueda does not claim that he heard - - or even possibly heard - - the reported announcement by Lieutenant Aguston. If Officer Mosqueda was unaware of Lieutenant Aguston's announcement, the announcement is irrelevant to Officer Mosqueda's knowledge and intent at the time he provided statement and testimony at issue. Second, it is not clear that Officer Mosqueda and Sergeant Cepeda attended the same roll call on January 6. Sergeant Cepeda (who began his tour at 10:30 p.m.) testified that he was the sergeant for the "late cars" and that Officer Mosqueda (who began his tour at 9:00 p.m.) was assigned to an "early car" that evening. It stands to reason that those officers who began their tour of duty at 9:00 p.m. and were assigned to "early cars" would have already been out on patrol before the roll call for the officers who began their tours at 10:30 p.m. and were assigned to the "late cars" occurred. Finally, Sergeant Cepeda admitted on cross-examination that he was not sure that the announcement even mentioned an Oldsmobile Aurora and that no written documentation or other corroboration for this announcement exists.

⁵ Defense counsel's belated production of the Zone 6 dispatch recording had severe consequences. Judge Chang granted plaintiffs' motion for a new trial and found that attorneys Marsh and Aumann engaged in "misconduct that thwarted Plaintiffs' trial preparation and trial efforts" and warranted the imposition of sanctions. See *Matthew Culyer v. City of Chicago, et al.*, No. 12 C 04855, Memorandum Opinion and Order, at 4 (N.D.Ill. Jan. 4, 2016).

the evening of January 6, 2011.

On February 27, Judge Chang allowed plaintiffs' counsel to recall Officer Mosqueda to the witness stand so that they could question him about the Zone 6 dispatch. Plaintiffs' counsel confronted Officer Mosqueda with the discrepancies between his February 25 trial testimony about the radio dispatch that he heard (which included details about a dark colored vehicle with rims that could be armed and had something to do with a shooting) and the actual Zone 6 dispatch that he heard on January 6, 2011 (which did not contain those details). Officer Mosqueda explained that he testified as he did on February 25 because:

I had never heard that transmission (the Zone 6 dispatch) other than the original time that I heard it over four years ago, so as I remember it, that is what I remembered, so that is what I thought actually happened. So that is why I said that.

Plaintiffs' counsel also sought to get Officer Mosqueda to admit that his testimony on February 25 was not true. Officer Mosqueda acknowledged the differences between his February 25 testimony and the Zone 6 dispatch but nonetheless testified that "I gave the best information that I believed." Officer Mosqueda also testified that he believed that the car had been involved in a crime because it had fled the other officers and did not initially stop for him. Finally, he reiterated his belief that the car had a weapon even though the Zone 6 dispatch did not mention anything about a weapon.

On September 12, 2016, Officer Mosqueda was called to IPRA to make a statement pertaining to the allegations that had been made against him. The IPRA investigator asked Officer Mosqueda to confirm that the statements that he had made in his 2011 IPRA statement, his 2013 deposition, and his February 25, 2015, trial testimony regarding the radio dispatch that he heard on January 6, 2011. Officer Mosqueda stood by his prior statements and testimony and did not choose an explanation to add or change anything.

On November 4, 2016, he was called back to IPRA to make a statement pertaining to the allegations that he had initiated a traffic stop of Mr. Pinex's car without legal justification based on the Zone 6 dispatch and that he violated Department policy when he fired his weapon at Mr. Pinex. The IPRA investigator asked Officer Mosqueda to confirm that the statements that he had made in his 2011 IPRA statement, his 2013 deposition, and his February 25, 2015, trial testimony regarding the traffic stop of Mr. Pinex on January 7, 2011, and the amount and type of force used on Mr. Pinex on that same date. Officer Mosqueda once again stood by his prior statements and testimony and did not choose to add or change anything. No charges were filed against Officer Mosqueda based on the allegations concerning the traffic and the fatal shooting of Mr. Pinex.

Charges Against the Respondent

5. The Respondent, Police Officer Raoul Mosqueda, Star No. 13662, charged herein, is **not guilty** of violating Rule 2, Rule 3, and Rule 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges:

On or about January 7, 2011, Officer Raoul Mosqueda made a false, misleading, and/or inconsistent statement to the Independent Police Review Authority by stating that he heard an all-call message over his squad-car radio pertaining to a vehicle that was an "Oldsmobile Aurora by make and model and uh dark color that was uh wanted for shots fired," or words to that effect, thereby:

- a. Engaging in any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department, in violation of Rule 2;
- b. Failing to promote the Department's efforts to implement its policy or accomplish its goals, in violation of Rule 3; and/or
- c. Making a false report, written or oral, in violation of Rule 14.

See the findings set forth in paragraph no. 4A above, which are incorporated here by reference.

Chief Eddie Welch of the Bureau of Internal Affairs testified that proof of a Rule 14 violation requires the Superintendent to establish that a respondent officer (here, Officer Mosqueda) willfully made a false report, written or oral, that was material to the issues in question. Proof of a violation of Rule 2 and Rule 3 in the context of the charges here requires the Superintendent to establish Officer Mosqueda made a false, misleading, and/or inconsistent statement that either impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department (Rule 2) or fails to promote the Department's efforts to implement its policy or accomplish its goals (Rule 3). A good faith but mistaken statement that is factually inaccurate or misleading would not suffice to prove the charges at issue here.

The Zone 6 dispatch that Officer Mosqueda heard on January 6, 2011, did not make any reference to the color of the 1998 Oldsmobile Aurora and or to the fact that it was wanted for shots fired. Consequently, Officer Mosqueda's 2011 IPRA statement is factually inaccurate and misleading in part because his statement indicates that Oldsmobile was a "dark color" and "wanted for shots fired." Officer Mosqueda's 2011 IPRA statement is also material because he asserted that he and his partner decided to make a traffic stop of Mr. Pinex's car because of what he heard on the radio dispatch.

The parties dispute Officer Mosqueda's motivation in making the statement. The Superintendent asserts Officer Mosqueda deliberately falsified his statement by embellishing it with additional details to bolster his justification for stopping Mr. Pinex's car. The Superintendent also relies on the fact that Officer Mosqueda stood by his 2011 IPRA statement when he gave additional statements to IPRA in September and November of 2016. Officer Mosqueda attributes the discrepancies in his statement to the fact that he had experienced the stress of shooting and killing Mr. Pinex and had been on continuous duty (with the exception of a

two-hour break) for more than forty hours over a two-day period prior to giving his IPRA statement.

The Board finds that Officer Mosqueda's argument is more persuasive. First, the Board does not find that Officer Mosqueda made his 2011 IPRA statement with the intent of embellishing the information he received from the radio dispatch so as to justify his traffic stop of Mr. Pinex's car. The Zone 6 dispatch identified a 1998 Oldsmobile Aurora with temporary plates that fled from officers in the 4th District. Mr. Pinex was driving a 1998 Oldsmobile Aurora - - a vehicle that Officer Mosqueda testified without contradiction was "very distinctive" and "not a common car" - - with temporary plates. Moreover, Officer Mosqueda believed that the Oldsmobile had been involved in a crime because it fled the other officers and did not initially stop when he tried to pull it over. Thus, regardless of whether the traffic stop of Mr. Pinex's vehicle was legally justified, Officer Mosqueda certainly believed that he had a sufficient justification to make the stop based on information that did *not* include the details that rendered his IPRA statement factually inaccurate.

Second, the Board agrees that the fact that Officer Mosqueda had worked for nearly forty hours straight prior to giving his IPRA statement and that he had been through the highly stressful situation of being knocked down by a car and fatally shooting Mr. Pinex could have caused him to mistakenly include additional details within his statement. Even the Superintendent's counsel acknowledged in her closing argument that "[m]emory is a tricky thing, and at least in January of 2011, Officer Mosqueda was an intense - - he was in an intense, frightening, high-stakes situation. There's no question about that." Here, Officer Mosqueda heard a second Zone 6 dispatch that mentioned "shots fired" just twenty-five seconds after he heard the Zone 6 dispatch regarding the 1998 Oldsmobile Aurora. It is easy to imagine that the

fatigued, highly stressed Officer Mosqueda could have mistakenly conflated the two Zone 6 dispatches and included information about “shots fired” in his IPRA statement.

Third, the Board rejects the Superintendent’s argument that Officer Mosqueda’s motivation and intent when he made his 2011 IPRA statement can be determined by examining his motivation at the time he made his 2016 IPRA statements. Knowledge and intent must be determined at the time a false statement is made. *See, e.g., People v. Boyd*, 81 Ill.App.3d 259, 261 (3d Dist. 1980) (“An essential element of the crime of perjury is knowledge of falsity of the statements at the time of utterance.”);⁶ *People v. Drake*, 63 Ill.App.3d 633, 635 (4th Dist. 1978) (same). Thus, although the Board agrees that Officer Mosqueda’s decision to “stand by” his early statements in his 2011 IPRA statement, his 2013 deposition, and his February 25, 2015, trial testimony without acknowledging that they were, based on the physical evidence, factually incorrect, is troubling, his actions in 2016 do not provide proof of his motivation and intent in 2011 when he made his first IPRA statement.

6. The Respondent, Police Officer Raoul Mosqueda, Star No. 13662, charged herein, is **not guilty** of violating Rule 2, Rule 3, and Rule 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges:

On or about June 13, 2013, Officer Raoul Mosqueda made a false, misleading, and/or inconsistent statement during sworn deposition testimony by stating, “I remember that the message that I heard said something about the vehicle fleeing from the 4th District and that it may have something to do with shots being fired,” and “It said a dark Aurora, four-door, with temporary plates and rims,” and “I knew that there was a gun in the car because dispatch—dispatch had earlier notified—notified everyone that this particular car that matched the description could be armed,” or words to that effect, thereby:

⁶ The Board acknowledges that Officer Mosqueda is not charged with perjury but it finds that this legal principle is equally applicable to the charges brought against Officer Mosqueda in this case.

Police Board Case No. 17 PB 2935
Police Officer Raoul Mosqueda

- a. Engaging in any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department, in violation of Rule 2;
- b. Failing to promote the Department's efforts to implement its policy or accomplish its goals, in violation of Rule 3; and/or
- c. Making a false report, written or oral, in violation of Rule 14.

See the findings set forth in paragraphs nos. 4A and 5 above, which are incorporated here by reference.

The Zone 6 dispatch that Officer Mosqueda heard on January 6, 2011, did not make any reference to the color of the 1998 Oldsmobile Aurora, the fact that it had rims, the fact that it was wanted for shots fired, or the fact that a car that matched this description could be armed. Consequently, Officer Mosqueda's 2013 deposition testimony is factually inaccurate and misleading in part because his testimony included the above details in his description of what he heard on the Zone 6 radio dispatch. Officer Mosqueda's deposition testimony is also material because he asserted that he and his partner decided to make a traffic stop of Mr. Pinex's car because of what he heard on the radio dispatch.

The parties dispute Officer Mosqueda's motivation in providing this deposition testimony. Officer Mosqueda explains that he mistakenly incorporated the above additional details in his description of the radio dispatch that he heard because one of his attorneys played the Zone 8 dispatch for him during his deposition preparation the day before he gave his deposition on June 13, 2013. The Superintendent agrees that the additional details that Officer Mosqueda included in his description of the radio dispatch he heard were present in the Zone 8 dispatch. However, the Superintendent argues that Officer Mosqueda willfully - - and not mistakenly - - included these additional details in his testimony because he knew at the time of his 2013 deposition that the radio dispatch that his counsel played for him was not the radio

dispatch that he heard on the night of January 6, 2011.

The Board disagrees. Although Officer Mosqueda knew that his counsel played him a different radio dispatch than he had heard, there is no evidence that Officer Mosqueda recalled at that time *how* the dispatch he heard differed from the dispatch his counsel played for him. At that time, Officer Mosqueda had heard the Zone 6 dispatch only once and that was two and a half years before his 2013 deposition. Officer Mosqueda's counsel did not tell him that the radio dispatch that he played for him was from Zone 8. Moreover, the Zone 6 and Zone 8 dispatches shared many common and important details (namely, they both concerned a 1998 Oldsmobile Aurora - - a very distinctive and uncommon car - - with temporary plates that had fled from officers). Officer Mosqueda could have justifiably even if mistakenly assumed that his counsel would not have played a radio dispatch for him during his deposition preparation that materially differed from the dispatch he actually heard.

7. The Respondent, Police Officer Raoul Mosqueda, Star No. 13662, charged herein, is **not guilty** of violating Rule 2, Rule 3, and Rule 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges:

On or about February 25, 2015, Officer Raoul Mosqueda made a false, misleading, and/or inconsistent statement during sworn trial testimony by stating, "So earlier that day I heard a message that came over our radio, and the message was something about a dark colored vehicle with rims and a yellow, obviously yellow temporary plate that had fled the 4th District officers, and that it possibly could be armed, and it had something to do with a shooting," or words to that effect, thereby:

- a. Engaging in any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department, in violation of Rule 2;
- b. Failing to promote the Department's efforts to implement its policy or accomplish its goals, in violation of Rule 3; and/or
- c. Making a false report, written or oral, in violation of Rule 14.

See the findings set forth in paragraph nos. 4A, 5, and 6 above, which are incorporated here by reference.

The Zone 6 dispatch that Officer Mosqueda heard on January 6, 2011, did not make any reference to the color of the 1998 Oldsmobile Aurora, the fact that it had rims, the fact that it was wanted for shots fired, or the fact that a car that matched this description could be armed. Consequently, Officer Mosqueda's February 25, 2015, trial testimony is factually inaccurate and misleading in part because his testimony included the above details in his description of what he heard on the Zone 6 radio dispatch. Officer Mosqueda's February 25, 2015, testimony is also material because he asserted that he and his partner decided to make a traffic stop of Mr. Pinex's car because of what he heard on the radio dispatch.

The parties dispute Officer Mosqueda's motivation in providing this trial testimony. The Superintendent points to Officer Mosqueda's later trial testimony on February 27, 2015, during which Officer Mosqueda was questioned for the first time *after* he heard the Zone 6 dispatch that he had heard on the evening of January 6, 2011. The Superintendent's stated in her closing argument that Officer Mosqueda "begrudgingly acknowledged that the Zone 6 call did not say what he said it said, but he offered no explanation at all for why he testified otherwise." However, Officer Mosqueda *did* offer an explanation for his testimony. In particular, he testified on February 27 that his prior trial testimony was what he believed that he remembered and that he gave the best information that he believed.

There is no question that Officer Mosqueda's belief was mistaken but that fact - - in itself - - is not sufficient to prove the charges against him. *See, e.g., Drake*, 63 Ill.App.3d at 635 ("A conviction for perjury cannot be predicated on a belief even though the belief is unfounded in fact and law"); *People v. McCulloch*, 404 Ill.App.3d 125, 131 (2d Dist. 2010) (citing to *Drake*).

Police Board Case No. 17 PB 2935
Police Officer Raoul Mosqueda

The Superintendent, whose counsel acknowledged that “[m]emory is a tricky thing,” has not proven that Officer Mosqueda did not actually believe what he claimed that he remembered. *See Drake*, 63 Ill.App.3d at 635. (“This general rule . . . that a charge of perjury may not be based upon belief or opinion, is subject to the qualification that such a statement of belief or opinion may constitute perjury when, as a matter of fact, the witness had no such belief or opinion.”)

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POLICE BOARD DECISION

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

By votes of 8 in favor (Foreman, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, the Board finds the Respondent **not guilty** of violating Rule 2, Rule 3, and Rule 14 as set forth in paragraph nos. 5, 6, and 7 above.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Raoul Mosqueda, Star No. 13662, as a result of having been found **not guilty** of all charges in Police Board Case No. 17 PB 2935, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective August 12, 2017.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 14th DAY OF JUNE 2018.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2018.

EDDIE T. JOHNSON
Superintendent of Police