BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST POLICE OFFICER THOMAS SHERRY, STAR No. 14103, DEPARTMENT OF POLICE, CITY OF CHICAGO,	)	**No. 20 PB 2982**
	)	**(CR No. 310780)**
RESPONDENT.	)	

FINDINGS AND DECISION

On November 23, 2020, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Thomas Sherry, Star No. 14103 ("Respondent"), recommending that Respondent be discharged from the Chicago Police Department ("Department" or "CPD") for violating the Department's Rules of Conduct.

A hearing on the charges against Respondent took place before Hearing Officer Allison L. Wood on June 27–28 and July 15, 2022. Following this evidentiary hearing, the members[1] of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer's Report and the parties' responses to this report, 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.

POLICE BOARD FINDINGS

As a result of its hearing on the charges, the Police Board finds and determines that:

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

[1]Board Member Nanette Doorley recused herself from this case to avoid the appearance of a conflict of interest.

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 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 Respondent appeared and was represented by legal counsel.

Introduction

4. Respondent became a CPD officer in 1997. In June of 2004, Respondent was assigned to work in the CPD's Special Operations Section ("SOS"). His regular partner in the SOS was Officer Carl Suchocki.

On July 27, 2004, Respondent was assigned to work with Officer Jerome Finnigan for the day due to a last-minute change in assignment. This was the first time Respondent ever worked with Finnigan. Respondent testified that he had not met Finnigan prior to July 27, 2004.

On that date, four officers in the SOS unit, Officer Keith Herrera, Officer John Hurley, Officer Matthew Riley, and Officer Timothy McKeon, met up to discuss a tip about a man who lived near California Avenue who the officers believed had guns and narcotics. The man was Anthony Castro and he lived at 3930 North California Avenue. It is undisputed that Officers Herrera and Hurley asked Officers McKeon and Riley to meet up at an initial location to discuss the tip. Officer McKeon testified that Officers Sherry and Finnigan also showed up at the initial location at some point.[2] Respondent testified, however, that he never met with anyone to discuss

[2]Officer McKeon testified he had a vague recollection of the day and relied heavily on his statements from prior FBI interviews to refresh his recollection. Officer McKeon did not appear to rely on his prior statements for his testimony that Sherry was present at the initial location. The referenced portions of Officer McKeon's prior statements seem to suggest it was only Officers Herrera, Hurley, McKeon and Riley at the initial location. Officer Herrera did not

Castro and only became involved in the Castro incident, and learned that Castro might possess guns and narcotics, when he showed up at Castro's residence with Officer Finnigan.

All six officers went to Castro's house at 3930 North California Avenue. At some point after the officers arrived, a search was conducted of Castro's home by at least some of the officers, resulting in the recovery of a firearm and narcotics. It is not clear from the testimony who first entered and began searching Castro's apartment. Officer Herrera testified that, upon arrival, he and his partner, Officer Hurley, waited outside the back of the residence. There, Officer Herrera encountered the building owner of the residence, who gave him consent to search the property. At that point, Officer Herrera entered the residence; other officers were already inside. Officer McKeon testified that he and Officer Riley also went to the rear of the building when they arrived, while other officers went to the front. Officer McKeon testified that he encountered Castro in the backyard, detained him, and brought Castro into the apartment where the search was already taking place. Respondent testified that he and other officers encountered Castro outside the apartment, and that Respondent and some other officers escorted Castro up the front stairs to his residence.

It is disputed whether Respondent ever went beyond the foyer area of Castro's apartment and into the actual apartment. Throughout his testimony, Respondent maintained that he did not go inside Castro's apartment. Respondent testified that he only went to the front door/foyer area of the residence to hand Castro off, and never went inside the actual residence. Respondent testified that other officers were already inside the apartment. According to Respondent, Officer Finnigan greeted Respondent and Castro at the front door, and that was the end of Respondent's

---

testify regarding the initial meeting.

involvement during the search of Castro's residence. Officer Herrera testified, however, that Respondent was inside the apartment.

Respondent further testified that he "absolutely did not participate in the search of the apartment." Neither Officer McKeon nor Officer Herrera could recall whether Respondent participated in the search. Officers McKeon and Herrera both admitted to partaking in the search themselves, with Herrera recovering a firearm. Officer Herrera testified that he was aware at the time that another officer had also recovered narcotics. Officer McKeon testified that he was not aware at the time that officers found anything (neither the firearm nor narcotics) during the search. Respondent testified that he learned, late in the day when he was completing his time slip at the end of his shift, that a firearm was recovered during the search.

Each officer testified that they understood, or assumed, the search to be legal. Officer Herrera testified that he understood the search was legal and proper because he obtained consent to search. Officer McKeon testified that he assumed the search was legal and appropriate and a search warrant was obtained. Respondent testified that he assumed consent must have been obtained by the officers leading the investigation.

Officer Herrera testified that Castro was arrested in the apartment at the time of the search. Both Officer McKeon and Respondent, however, testified that they did not believe Castro had been arrested. Respondent testified that he did not learn Castro was arrested until the end of the night when completing his overtime slip.

There is no dispute that, after the search, Castro rode with the six officers in one or more of their squad cars, as they picked up sandwiches and got gas about a mile from Castro's house at Belmont and Western, and then traveled to Grand and Harlem Avenue, where Castro told officers he believed a man named "Primo" would also have guns or narcotics. Officer Herrera

testified that Castro was only in his and Officer Hurley's squad car for the entire ride, from the time they left Castro's residence to the time Officers Herrera and Hurley took Castro to the district for booking. Respondent testified that Castro was in his and Officer Finnigan's squad car at various times. Respondent recalled Castro giving up information about Primo while Castro was in his car, and that they drove around with Castro in his backseat while Castro looked for Primo's apartment. Respondent testified that he believed Castro was giving officers information voluntarily and was not under arrest during the car ride.

Once Castro identified Primo's building, Respondent and other officers set up surveillance in the area. At some point after Castro identified the residence, Officers Herrera and Hurley took him to the 25th District for processing. Respondent testified that he then went around on foot for a couple of hours trying to collect information that could be used in a search warrant. Officer McKeon testified that he and Officer Riley sat in their squad car a couple of blocks away from the building awaiting instruction from other officers. Around 9:00 or 9:30 p.m., Officers McKeon and Riley left to sign out for the day.

While conducting foot surveillance, Respondent entered the apartment building and started banging on walls and announcing that he was looking for Primo. Respondent encountered a man (later identified as Jose Hermosillo) in the stairway who responded when Respondent called out the name "Primo." When Respondent identified himself as police, Hermosillo ran. Respondent gave chase and followed Hermosillo into an apartment unit. Respondent subdued Hermosillo on the kitchen floor after a struggle and placed him in handcuffs. According to Respondent, as soon as Respondent subdued Hermosillo, Officer Finnigan showed Respondent a shoebox containing narcotics that Finnigan said he had just located a few feet away. Respondent testified that he learned years later, however, that the

shoebox had been recovered from Castro's residence. Respondent testified that he never searched Hermosillo's residence. Respondent and Officer Finnigan arrested Hermosillo and took him to the 25th District for processing. As Respondent and Officer Finnigan walked out of the apartment building with Hermosillo, they encountered Officer Herrera and Hurley, who had just finished processing Castro back at the station.

Respondent testified that after Hermosillo was arrested, Respondent completed an inventory report for the shoebox and its contents. It is undisputed that the inventory report contains false statements. A vice case report and an arrest report—both of which also contained false statements—were also prepared. The case report includes a signature on Respondent's behalf. Respondent testified, however, that the signature is not his, and that he did not review the case report. Additionally, though the arrest report identifies Respondent as an arresting officer, Respondent stated that he did not review the arrest report following the arrest. Respondent testified that he did not find out that the narrative of the arrest report was false and that the shoebox containing narcotics was found at Castro's house until years later. Respondent testified that he relied on what Finnigan told him about where the shoebox was recovered.

Respondent is charged with illegally searching Castro's residence and excessively detaining him (Specification Nos. 1 and 2); unlawful entry and illegally searching Hermosillo's residence (Specification No. 3); authoring and submitting a false and/or misleading original case report, arrest report, and inventory report (Specification Nos. 4 – 6); and failure to notify the Department of the misconduct engaged in by the other officers associated with the arrests of Castro and Hermosillo (Specification No. 7).

Charges Against Respondent

5. Police Officer Thomas Sherry, Star No. 14103, is **not guilty** of violating Rules 1, 2, 3, and 6, in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 1:

> On or around July 27, 2004, at 3930 North California Avenue in Chicago, Officer Thomas Sherry illegally searched the residence of Anthony Castro without a search warrant or valid consent to search. Officer Sherry thereby violated:
>
> a. Rule 1, which prohibits violation of any law or ordinance, in that he violated the Fourth Amendment to the United States Constitution and the Fourth Amendment of the Constitution of the State of Illinois[3];
>
> b. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department;
>
> c. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
>
> d. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that he disobeyed CPD Special Order S01-07, which was in effect on July 27, 2004.

Nearly two decades passed between the day that Anthony Castro's residence was searched by members of the SOS team and the day that the Superintendent brought charges against Respondent seeking his separation from CPD. Memories fade, and evidence or

[3]The Fourth Amendment of the United States Constitution states that "the right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but on probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. Amend. IV. "The Fourth Amendment protects a person's reasonable expectation of privacy in a variety of settings, but the chief evil against which the amendment is directed is the physical entry of the home." *Payton v. New York*, 445 U.S. 585, 589 (1980). Entering a person's home without a warrant to arrest him, where no exigent circumstances exist, violates the Fourth Amendment. *See United States v. Berkowitz*, 927 F.2d 1376 (7th Cir. 1991). The identical mandate is set forth in the Constitution of the State of Illinois at Article I, Section 6, which is entitled, "Searches, Seizures, Privacy and Interceptions."

testimony that was available years ago may no longer be available. But even with that passage of time and the deterioration of available evidence—both of which, in part, can be placed at the Superintendent's feet—it remains the Superintendent's burden to prove that it is more likely than not that Respondent engaged in the misconduct set forth above. *See generally Clark v. Bd. of Fire & Police Comm'rs of the Vill. of Bradley*, 613 N.E.2d 826 (Ill. App. Ct. 1993). At the close of the evidence and after three days of testimony, the Superintendent offered little evidence to establish what really happened while the officers were at Castro's residence—and Respondent's role (if any) during any search of Castro's residence. Accordingly, the Superintendent has not carried his burden as to the charges outlined in this Specification.

It is undisputed that Respondent was one of a group of officers, all members of the SOS, that went to the home of Anthony Castro on July 27, 2004, to follow up on a tip that guns or narcotics would be found in his home. The officers did not have a search warrant, and there is no evidence in the Record that exigent circumstances existed that would have justified a warrantless search of Castro's home. Indeed, Respondent himself testified that he had not received any information about an imminent threat or a suspect threatening someone with a gun.

But outside those few undisputed facts, there is little evidence in the Record before the Board that is relevant to these charges. In fact, there is *no* evidence to show that Respondent knew that Castro's residence was illegally searched or that Respondent participated in any such search. After combing the Record, the most damning piece of evidence in support of these charges is testimony from a single officer. That is, Officer Herrera testified that Respondent was "inside [Castro's] apartment."

That testimony, however, is consistent with Respondent's version of the events.[4] Respondent testified that he was "greeted at [Castro's] front door" by Officer Finnigan, which was the "end of [his] interaction" with Castro. Respondent admitted that he went into "the foyer area" of the apartment, but no further. Indeed, there is no testimony that Respondent did anything more while at Castro's residence. Respondent repeatedly testified that he "absolutely did not participate in the search of the apartment." Though Officer Herrera testified that Respondent was inside the apartment, Officer Herrera had no specific memory of Respondent searching the apartment. The only other officer who was present that night and that testified before the Board, Officer McKeon, also did not have a recollection of Respondent participating in the search. Importantly, the Superintendent offered no direct testimony from any witness to show that Respondent actually searched the residence. The evidence shows that Respondent was inside the foyer area of the apartment—but it takes more to prove that Respondent participated in any search.

The only other piece of evidence relevant to these charges is Respondent's fingerprints on a shoebox recovered from Castro's residence. The presence of Respondent's fingerprints on the shoebox certainly supports an inference that Respondent touched it at some point during the day. But, importantly, the Superintendent offered *no* testimony to show that Respondent was the officer that first found the shoebox at Castro's residence, or that Respondent recovered the shoebox only after he himself searched Castro's residence. The mere presence of the fingerprints is insufficient evidence upon which the Board might so infer. It is just as likely that

[4]Respondent's testimony is also consistent with prior statements Respondent made to the FBI, when he admitted he was inside the apartment.

Respondent's fingerprints are on the shoebox because he took possession of it later in the day and transported it for processing.

Accordingly, to find Respondent guilty of this charge (with no testimony or evidence in the Record showing that Respondent actually searched Castro's residence) the Board must rely solely on inferences to fill in gaps in the Superintendent's case. And those inferences would contradict the most relevant evidence before the Board: the officers' repeated testimony that they have no recollection of Respondent participating in any search of Castro's residence. The Board must decide these charges based on the evidence in the Record before it. And based on the paucity of that evidence, the Board finds that the Superintendent has not met his burden of showing that Respondent participated in any illegal search of the Castro home.

The Board therefore finds Respondent not guilty of the charges set forth in this Specification.

6. Police Officer Thomas Sherry, Star No. 14103, is **not guilty** of violating Rules 1, 2, and 6, in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 2:

> On or around July 27, 2004, after the arrest of Anthony Castro, Officer Thomas Sherry excessively detained Anthony Castro in a police vehicle from approximately 1600 hours to 2200 hours. Officer Sherry thereby violated:
>
> a. Rule 1, which prohibits violation of any law or ordinance, in that he violated the Fourth Amendment to the United States Constitution and the Fourth Amendment of the Constitution of the State of Illinois;
>
> b. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department; and
>
> c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral,

> in that he disobeyed CPD General Order G02-03, Addendum 1, which was in effect on July 27, 2004.[5]

Based on the evidence before the Board, it is unclear whether Castro was arrested at the time the group left Castro's residence. There is no testimony that Respondent knew Castro was arrested at the time the group left Castro's residence, and Respondent testified that he did not know Castro had been arrested until the end of the night. Nor is there testimony that Respondent knew Castro was not free to leave. Only two other officers who were present testified—and one of them, Officer McKeon, testified that he also was not aware of officers finding anything during the search of Castro's residence.[6] Officer McKeon, too, believed that Castro was not under arrest when he encountered Castro outside of the apartment and detained him.

It is clear, however, that after the group left Castro's residence, Castro was voluntarily cooperating. It is also clear that Castro was not transported to the district immediately after that cooperation began: Officers stopped for gas and sandwiches with Castro in their vehicle and drove Castro around until he could identify Primo's apartment building.

Even assuming that Castro was voluntarily cooperating off a charge and was indeed detained, based on the testimony that the Superintendent offered, the Superintendent has not

[5]General Order G02-03, Addendum 1, which was in effect in 2004, is entitled "Field Arrest Procedures." Section II.C. states, "Members will transport an arrestee in a vehicle equipped with a protective divider or request a squadrol as soon as possible for transportation to the district of arrest unless circumstances would make this unreasonable." In addition, General Order G06-01, which was also in effect in 2004, is entitled "Processing Persons Under Department Control." Section II.A.2 states in part that, "Arrested persons will be booked, charged, and made eligible for bond in that order. This process will be completed without unnecessary or unreasonable delay."

[6]Notably, unlike Respondent, it is undisputed that Officer McKeon actively participated in the search of Castro's home, yet he testified he was unaware at the time that either a gun or shoebox were recovered.

carried his burden of showing that that detention runs afoul of the General Order. Unlike Specifications Four, Five, and Six, which charge Respondent with violations of Rule 14, the Superintendent did not offer *any* testimony interpreting General Order G02-03 or, more specifically, showing that it prohibited the officers' actions here. The General Order might have required the officers to transport Castro to the station earlier on in his detention. But maybe not. Castro was voluntarily cooperating throughout his detention, and the General Order does not require immediate transport to the district when "circumstances would make this unreasonable." From afar, the latter interpretation appears better: it would be unreasonable to expect officers to immediately process any individual that is voluntarily cooperating. That interpretation would allow officers freedom to pursue information immediately with the help of a cooperating witness, would allow officers to use their best judgment to conclude when transport to the district is reasonable, and would allow individuals the opportunity to cooperate with law enforcement before word of their arrest makes its way to the public. Surely, if an individual in Castro's position decides to stop cooperating during their detention, the officers should then immediately transport the individual for processing unless other circumstances would make immediate transport unreasonable.

But in any event, it is not the Board's role to interpret the meaning of the General Order. And for good reason. If the Board were to interpret the General Order here—without the aid of testimony from any representative of CPD—and conclude that Respondent violated the General Order, the Board would effectively make a rule requiring *immediate* processing even when an individual wants to voluntarily and proactively cooperate with CPD. Such a rule could handicap officers' abilities to pursue leads in investigations and do their jobs effectively, while simultaneously removing from detainees the ability to cooperate, which could enable them to

receive reduced charges or reduced sentences should they be charged.

In short, the Superintendent did not put forward any testimony showing what it is that the General Order exactly requires, and what "circumstances would make [immediate transport] unreasonable." The Superintendent wholly failed to present any testimony that would allow the Board to determine whether voluntary cooperation is an instance in which prolonged detention is prohibited. Without that testimony, the Superintendent now asks the Board to fill in that gap in his case and to find that the length of detention here was, as a matter of law, too long. It is not the Board's role to do so. Accordingly, the Board therefore finds Respondent not guilty of the charges set forth in this Specification.

7. Police Officer Thomas Sherry, Star No. 14103, is **not guilty** of violating Rules 1, 2, 3, and 6, in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 3:

> On or around July 27, 2004, at 2217 North Harlem Avenue in Chicago, Officer Thomas Sherry unlawfully entered the residence of Jose Hermosillo and illegally searched said residence without a search warrant or valid consent to search. Officer Sherry thereby violated:
>
> a. Rule 1, which prohibits violation of any law or ordinance, in that he violated the Fourth Amendment of the United States Constitution and the Fourth Amendment of the Constitution of the State of Illinois;
>
> b. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department;
>
> c. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
>
> d. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that he disobeyed CPD Special Order S01-07, which was in effect on July 27, 2004.

The Superintendent has failed to prove the charges set forth in this specification as they are written. Specification No. 3 alleges that Respondent "unlawfully entered the residence of Jose Hermosillo *and* illegally searched said residence without a search warrant or valid consent to search." (Emphasis added.) The Superintendent presented sufficient evidence to show that Respondent unlawfully entered Hermosillo's residence: the Superintendent showed that the officers did not have a warrant to search Hermosillo's apartment, that the officers did not have consent to enter the apartment, and that no exigent circumstances existed that otherwise would have justified Respondent's entry. But this Specification charges Respondent with unlawfully entering *and* illegally searching Hermosillo's residence, and the Superintendent has failed to prove that Respondent participated in any subsequent search of Hermosillo's apartment.

There is next-to-no evidence that Respondent unlawfully searched Hermosillo's residence; in fact, Respondent's own testimony—that he did *not* participate in any subsequent search—is the only piece of evidence presented that is even marginally relevant to this portion of these charges. The other two individuals who were present (Hermosillo and Officer Finnigan) did not testify. And the only other piece of evidence that is even marginally relevant is Officer Herrera's testimony (who was not actually in Hermosillo's apartment) that after he processed Castro and returned to Hermosillo's apartment, Respondent and Officer Finnigan were coming out of Hermosillo's apartment. Accordingly, to find Respondent guilty of this charge—with *no* evidence in the Record that Respondent actually searched Hermosillo's residence—the Board must rely solely on impermissible inferences. First, the Board must speculate that Respondent must have known that narcotics had been recovered from Castro's residence at the time Respondent left Castro's residence, or that Officer Finnigan must have informed Respondent that he recovered narcotics from Castro's residence. Next, the Board must speculate that, since the

officers had been surveilling the area to recover guns and narcotics, Respondent must have searched Hermosillo's residence. And finally, the Board must further speculate that, when no guns or narcotics were found at Hermosillo's residence, Respondent and Finnigan must have decided to charge Hermosillo with the narcotics recovered from Castro's residence. There is no evidence to support these conclusions.

The Superintendent should use precision when drafting charges against respondent police officers. As each opinion in this case makes clear, the Superintendent's attention to detail (or lack thereof) matters. Because the Superintendent has not shown that Respondent participated in any search of Hermosillo's apartment, he has not proven the dual charges set forth in Specification No. 3.

8. Police Officer Thomas Sherry, Star No. 14103, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 4:

> On or around July 27, 2004, Officer Thomas Sherry authored and submitted a false and/or misleading original case report (HK520087) stating, among other falsehoods, that officers had received information that Hermosillo would be transporting narcotics and set up surveillance of his residence, when in fact they were not searching for Hermosillo but were searching for someone named "Dre" or "Andre"; and/or stating that the suspect narcotics had been recovered when Hermosillo dropped a Nike shoe box containing suspect narcotics upon encountering Officers Sherry and Finnigan, when in fact those suspect narcotics and the Nike shoe box were not recovered from Jose Hermosillo but from the residence of Anthony Castro; and/or failing to document the search of Hermosillo's residence. Officer Sherry thereby violated:
>
> a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department; and
>
> b. Rule 14, which prohibits making a false report, written or oral.

Lieutenant Flores, who has been with the Chicago Police Department since 1994, provided credible testimony about the requirements of Rule 14, based on his current position with the Bureau of Internal Affairs (BIA). Part of his role with BIA includes investigating violations of CPD rules or general orders. He testified that Rule 14 prohibits making a false report, either oral or written. To sustain a Rule 14 violation, Respondent's action must be *willful* (meaning that it is intentional and not a mistake or an error) and *material* (meaning that it is an important factor that is substantive to the subject matter). Arrest reports, inventory reports, and vice case reports are all examples of the kind of reporting that is referenced in Rule 14. Officers are responsible for the accuracy of the information of the reports they make and that have their names on them.

A case report is required whenever narcotics are recovered, and a case report was completed that describes recovery of narcotics from Hermosillo. The narrative section in the case report reads:

> *R/Os received information that the offender would be transporting a large amount of narcotics to his residence. R/Os set up surveillance of the residence and observed a subject matching the supplied description walking toward the address of occurrence carrying an orange + brown shoebox. Upon approaching the subject who was entering the building, R/Os announced their office, at which time the offender fled up the stairs and attempted to enter his residence, dropping the described shoebox. R/Os observed the box to contain numerous clear bags, each containing white powder suspect cocaine, the offender was placed into custody and advised of Miranda, at which time the offender stated, "that's not mine it's Dre's, he lives downstairs". R/Os transported the offender into the 025th District for processing. The offender informed R/Os he is on Federal Protection for PCS. Prob. Ofc. Juan (full last name unintelligible). U.S. Probation Officer and Parole Officer.*
>
> *Recovered: 01 Orange + Brown shoe box-Nike shoes containing 09 clear plastic ziplock bags each containing white powder suspect cocaine est $100,000.*

It is undisputed that this narrative is demonstrably false—Respondent admitted as much. The officers knew of no information that Hermosillo would be transporting narcotics to his

residence. Hermosillo did not drop a box containing narcotics while Respondent chased Hermosillo into his residence. Hermosillo did not make statements that the narcotics found on him belonged to someone else who lived downstairs. It is also undisputed that these false statements were material. These false statements directly impacted the narcotics charge brought against Hermosillo.

The Board's decision on these charges thus turns on whether the false statements in this report were willful. And given that these statements were *blatantly* false, that decision is again tied to the credibility of Respondent's own testimony. During his testimony, Respondent acknowledged that he was aware that any time narcotics were recovered, a vice case report must be prepared, and that he knew those reports contained a signature field. Respondent testified that it was common practice for one officer to sign those reports on another's behalf. But Respondent acknowledged that—prior to giving such permission—Respondent should have reviewed the report to ensure that it was accurate. More explicitly, Respondent testified that he would not have allowed someone to sign a report on his behalf without first reading or reviewing the report.

Yet here, Respondent testified that that is exactly what happened. Respondent testified that, though his signature is on the report, he neither authored, signed, nor reviewed the report—Officer Finnigan did. In support, Respondent submitted signature exemplars to show that the report was not in his handwriting. Respondent never asked to look at the report and testified that he never did. That stated, Respondent noted that he had no reason to believe that "anything [in the report] was misleading or false[.]"

The Board simply cannot credit this portion of Respondent's testimony. Respondent knew that a report had to be completed after narcotics were recovered—he admitted as much.

To credit Respondent's story, the Board must not only find that Officer Finnigan wrote the report and then signed Respondent's name, but also that Respondent did not ask to review the report, did not in fact review the report, did not know of the other officers' misconduct, and had no reason to know of that misconduct. The night in question was the very first night that Respondent partnered with Officer Finnigan. Even if Respondent had no reason to believe "anything was misleading or false," it does not follow that Respondent—contrary to his common practice—would have so easily trusted Officer Finnigan that he would not have reviewed the report on that particular night. Indeed, Respondent acknowledged that he and Officer Finnigan did not "see eye-to-eye." But more, the false narrative of this report is the same false narrative Respondent provided in the inventory report that he admits he prepared. Respondent's story is not credible.[7]

Accordingly, the Board finds that the Superintendent has met his burden of showing that Respondent's actions violated Rules 2 and 14.

9. Police Officer Thomas Sherry, Star No. 14103, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 5:

> On or around July 27, 2004, Officer Thomas Sherry authored and submitted a false and/or misleading arrest report of Jose Hermosillo (CB15894756) stating, among other falsehoods, that suspect narcotics had been recovered when Hermosillo dropped a Nike shoe box containing suspect narcotics upon encountering Officers Sherry and Finnigan, when in fact

[7]As noted above, Respondent submitted signature exemplars in support of his argument that he did not author the inaccurate portions of the reports at issue. The Board analyzed Respondent's signature exemplars and considered them alongside Respondent's testimony. The Board did not find the exemplars submitted by Respondent persuasive or sufficient to outweigh the remaining evidence in the case.

those suspect narcotics and the Nike shoe box were not recovered from Jose Hermosillo but from the residence of Anthony Castro; and/or failing to document the search of Hermosillo's residence. Officer Sherry thereby violated:

a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department; and

b. Rule 14, which prohibits making a false report, written or oral.

The narrative in the arrest report for Hermosillo reads as follows:

Arrestee in custody after fleeing from A/Os and dropping a box containing (09) nine clear plastic bags each containing white powder suspect cocaine, arrestee advised of Miranda and trans into 025 Dist for processing.

It is undisputed that the narrative in the arrest report is false. This narrative contains the same inaccurate statements as the case report and the inventory report, that Respondent recovered narcotics from Hermosillo.

And as above, Respondent's role in authoring or approving those falsehoods is the core issue underlying these charges. Respondent's name appears on the report as the second arresting officer, and Respondent admitted that he wrote portions of the report itself. According to Respondent, however, the portions of the report that he wrote were limited to "[t]he heading and the first line in the narrative, which is basic information for every report that was completed." The remaining portions of the report, including the inaccurate narrative, were "not [in Respondent's] handwriting," and instead were written by Officer Finnigan. Respondent admitted that he is nonetheless "supposed to review all reports that [his] name appear[ed] on." Moreover, Respondent stated that as the second arresting officer, he was "responsible for the contents of the arrest report, even if [he] didn't write it [himself]." Respondent also admitted that he also had access to the report and could have read it.

This question is close, but for reasons similar to those discussed previously, the Board

finds that the Superintendent has carried his burden to prove the charges set forth in this Specification. It is not credible that Respondent, on his first night working with Officer Finnigan, did not review this report *and* did not know the report's contents. Respondent claims that he only wrote the accurate parts of the report—and it was those parts of the narrative that were repeated elsewhere by Respondent (including in his timecard). But even that story cuts both ways. Though Respondent repeated the same accurate lines elsewhere, the Board logically must conclude from that fact that Respondent knew about Officer Finnigan's actions, ceded to Officer Finnigan's pressure by burying his head in the sand, and intentionally did not fill out the rest of the report, instead leaving it to another officer to complete the report in a manner that was consistent with the cover-up narrative developed to protect the police officers. Respondent's explanations that he neither ultimately reviewed the report (on his first night working with Officer Finnigan) nor knew about the report's falsehoods (though Respondent and Officer Finnigan did not see "eye-to-eye") are hard to believe.

For those reasons, the Board finds that the Superintendent has met his burden of showing that Respondent's actions violated Rules 2 and 14.

10. Police Officer Thomas Sherry, Star No. 14103, is **guilty** of violating Rules 2, 6, and 14 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 6:

> On or around July 27, 2004, Officer Thomas Sherry authored and submitted a false and/or misleading inventory report (10379257) stating, among other falsehoods, that officers had recovered the narcotics from arrestee Jose Hermosillo on or around 2217 North Harlem Avenue in Chicago, when in fact the narcotics were not recovered from Jose Hermosillo but were recovered from the residence of Anthony Castro. Officer Sherry thereby violated:
>
> a. Rule 2, which prohibits any action or conduct which impedes the Department's

efforts to achieve its policy and/or goals and/or brings discredit upon the Department;

b. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that he disobeyed CPD Special Order S98-13, which was in effect on July 27, 2004; and

c. Rule 14, which prohibits making a false report, written or oral.

For similar reasons, the Board finds that the Superintendent has carried his burden of proving the charges set forth in this Specification. The inventory report contains the same false statements that the narcotics found at Castro's home were found on Hermosillo. Respondent admitted that he prepared the inventory report. As indicated above, the statements listed on the inventory report were material, helping form the basis on which Hermosillo was arrested.

And though the dissent argues elsewhere that it is unclear that Respondent's actions were willful, it is all the more evident that Respondent's actions here were willful. As noted above, many portions of Respondent's testimony are simply not credible, including that Respondent was innocently blind to many of the things going on around him. But even putting that credibility aside, here, Respondent himself admitted that he wrote an inaccurate inventory report. Under Respondent's own version of the events, his actions were unacceptable. That is, even if Officer Finnigan recovered the shoebox, as Respondent claims, Respondent's inventory report was inaccurate, listing Respondent's own name as the recovering officer. That inaccuracy is serious, too—it would have "implication[s] for chain of custody" in a potential prosecution. Whether Respondent's testimony is credited or not, his actions violated CPD Rules.

Accordingly, the Superintendent has met his burden to show that Respondent's actions violated Rules 2, 6, and 14.

11. Police Officer Thomas Sherry, Star No. 14103, is **guilty** of violating Rules 2, 21, and

22 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 7:

> On or about July 27, 2004, Officer Thomas Sherry failed to promptly notify the Department of misconduct by Jerome Finnigan, Keith Herrera, and/or John Hurley and/or the other officers associated with the arrests of Anthony Castro and Jose Hermosillo, including but not limited to search without a valid warrant or consent to search; and/or arresting Jose Hermosillo for possession of narcotics when in fact those narcotics had been recovered from the residence of Anthony Castro and not Jose Hermosillo; and/or recovering narcotics and failing to properly inventory them. Officer Sherry thereby violated:
>
> a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and/or goals and/or brings discredit upon the Department;
>
> b. Rule 21, which prohibits failure to report promptly to the Department any information concerning any crime or other unlawful action; and
>
> c. Rule 22, which prohibits failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

Respondent did not report any of the events related to the arrests of Castro or Hermosillo to the Department and/or the BIA. The question before the Board then is, largely, whether Respondent knew anything that he should have reported.

Respondent repeatedly testified that there "was nothing to report" at the time, as he "wasn't aware of any illegal activity[.]" The Board finds that repeated testimony disingenuous. Respondent admitted that there was no warrant to search Castro's home and that officers entered the Castro home. Respondent himself may not have searched the home as he alleges—but it is another thing to find that Respondent knew nothing of the other officers' actions. Respondent admitted that, after placing Castro in their vehicle, Respondent and Officer Finnigan stopped for gas and sandwiches and searched parts of the City before Castro was processed. Respondent admitted that he entered Primo's house without a warrant. And as noted above, even under Respondent's version of events as it relates to the inventory report, Respondent failed to correct a

mistake he knew about. Any one of those events were questionable and should have given Respondent pause. If, as Respondent claims, he was an unwilling participant in the events, that would have been an even stronger reason to report the events. Respondent chose not to do so.

Accordingly, the Superintendent has met his burden of showing that Respondent's actions violated the directives of the CPD.

Disciplinary Action

12. The Police Board considered the facts and circumstances of Respondent's conduct,[8] the evidence presented in mitigation, and Respondent's complimentary and disciplinary histories.

Respondent presented three mitigation witnesses. The first mitigation witness, a sergeant who supervised Respondent in CPD's Alternate Response Section, testified that Respondent has a good reputation for truthfulness and veracity, and that Respondent is a highly motivated, honest "go-to guy." A second witness, a former commanding officer of the Alternate Response Section, testified that she believed that Respondent was truthful and that she could trust Respondent; this officer ultimately asked Respondent to join her administrative staff. The third witness, a current sergeant who worked with Respondent when he was in the SOS unit from 2005 through 2006, testified that Respondent was "pleasant to work with" and a "very good" team player.

The Board also considered Respondent's complimentary and disciplinary histories (hereby made part of the record as Hearing Officer Exhibit No. 1). Since joining the CPD in

[8]As noted above, over 16 years passed between the date at issue, July 27, 2004, and the date that the Superintendent filed charges against Respondent, November 23, 2020. The passage of time did the Superintendent's case no favors, and the Superintendent failed to prove serious allegations that he brought against Respondent. The Board's disciplinary action is therefore limited solely to the charges that the Superintendent has proven.

1997, Respondent has earned 69 total awards, including one Special Commendation, three Department Commendations, one Unit Meritorious Performance Award, two Problem Solving Awards, and 55 Honorable Mentions. There are no sustained complaints on his disciplinary history report.

But, after thoroughly considering the whole Record, the Board finds that Respondent's accomplishments as a police officer and the mitigation witnesses' positive evaluations do not outweigh the seriousness of Respondent's misconduct. Respondent intentionally falsified official police reports. Such conduct is antithetical to what is expected and required of CPD officers, who, at all times, have a duty to act with honesty and integrity. 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.

And more, the false reports described above (an arrest report, an inventory report, and a vice case report) had grave consequences for the victim and would have grave consequences for the Department if repeated elsewhere. As to the victim, the false reports directly impacted the narcotics charges brought against Hermosillo. But more generally, Respondent's admitted shortcomings could seriously affect any criminal prosecution based on CPD investigations. For example, Respondent inaccurately listed himself as the recovering officer on an inventory report—an inaccuracy so serious that it would have implications for chain of custody and jeopardize a prosecution. Any false report is out of line with what is required of CPD officers, but the Board notes that the consequences resulting from these false reports were particularly egregious.

Respondent's dishonesty directly relates to his duties as a police officer and ultimately renders him unfit to hold that office. Trustworthiness, reliability, good judgment, and integrity

are all material qualifications for any job—but especially one as a police officer. One duty of an officer (of numerous that require the foregoing qualifications) is testifying in court: an 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 a police officer falsified official reports is detrimental to the officer's credibility as a witness and, as such, is a serious liability to the Department. *See, e.g.*, *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.

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

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 the 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 votes of 6 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Michael Eaddy, and Jorge Montes) to 0 opposed, the Board finds Respondent **not guilty** of the charges in Specification Nos. 1 and 2, as set forth in Section Nos. 5 and 6 above.

By a vote of 4 in favor (Foreman, Wolff, Block, and Cusack) to 2 opposed (Eaddy and Montes), the Board finds Respondent **not guilty** of the charges in Specification No. 3, as set forth in Section No. 7 above.

By votes of 5 in favor (Foreman, Wolff, Cusack, Eaddy, and Montes) to 1 opposed (Block), the Board finds Respondent **guilty** of the charges in Specification Nos. 4 – 7, as set forth in Section Nos. 8 – 11 above.

As a result of the foregoing and for the reasons set forth in Section No. 12 above, the Board, by a vote of 5 in favor (Foreman, Wolff, Cusack, Eaddy, and Montes) to 1 opposed (Block), hereby determines that cause exists for discharging Respondent from his position as a police officer with the Department and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that Police Officer Thomas Sherry, Star No. 14103, as a result of having been found **guilty** of charges in Police Board Case No. 20 PB 2982, be and hereby is **discharged** from his position as a police officer with the Department 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, Mareilé B. Cusack, Michael Eaddy, and Jorge Montes. (Board Member Nanette Doorley recused herself from this case to avoid the appearance of a conflict of interest.)

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF DECEMBER, 2022.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENTS

Board Member Steven A. Block

I hereby dissent from certain findings and the decision of the majority of the Board for the following reasons.

The scandal involving officers of CPD's Special Operations Section ("SOS") is a blackeye on CPD and the officers involved. Respondent is charged here with violating various CPD Rules for actions he allegedly took on July 27, 2004, when he had been part of SOS for about one month. According to the charges brought by the Superintendent, Respondent and other members of SOS allegedly unlawfully entered and searched two residences, and detained an individual who lived at the first residence.

Both parties agreed throughout the proceeding that the SOS team, including Finnigan and Herrera, acted unlawfully on the night Castro's apartment was searched. Neither party, however, actually admitted any evidence (or stipulated for that matter) as to what, in fact, occurred, nor any evidence regarding Respondent's role and whether he knowingly or willfully engaged in misconduct. The Board's decision on the charges against Respondent must be based on the facts that are before it and the acts that the Superintendent has proven Respondent himself took. *See generally Clark v. Bd. of Fire & Police Comm'rs of the Vill. of Bradley*, 613 N.E.2d 826 (Ill. App. Ct. 1993). Respondent's unfortunate assignment to this unit is not sufficient evidence to prove his own corruption, even by the lower burden of proof applicable to this proceeding. To be sure, the passage of time has done the Superintendent no favors. Indeed, there were only three people present during Respondent's alleged search of the second residence, including Respondent—and two of them did not testify before the Board. Moreover, other officers who did testify noted that their memories are, at this point, (understandably) hazy.

Accordingly, there are gaps in the Superintendent's case. No officer testified that he remembered Respondent searching the first residence, and it is not clear what acts, if any, Respondent took to do so. Though Respondent admitted that he entered the second residence in pursuit of a fleeing individual, it is not clear what additional acts, if any, Respondent took to search the second residence. More, where the limited facts before the Board are clear—that the officers detained an individual and that Respondent entered the second residence without a warrant—it is unclear whether Respondent's actions were even improper under CPD guidelines, as the Superintendent failed to present a witness that testified to the meaning of those guidelines.

Though the passage of time has created unique challenges for the Superintendent, it is not the Board's role to fill in the gaps in the Superintendent's case. For that reason, I agree with the majority's conclusion that the Superintendent has failed to prove the charges set forth in Specification Nos. 1 – 3. But that reasoning applies to the remaining charges, too. The Superintendent has presented little admissible evidence in support of the remaining charges. At the close of the evidence, guilt by association remains the greatest reason to believe that Respondent committed the actions outlined in the charges. Because the Board must decide the charges based on the evidence before it, and because the evidence the Superintendent has presented begs more questions than it answers, I would find Respondent not guilty of the charges set forth in Specification Nos. 4 – 7.

Each of these Specifications is addressed in turn:

Specification No. 4

I agree with many of the initial points the majority makes as to Specification No. 4. It is undisputed that the narrative in the case report is false. It is also undisputed that these false statements were material. And given that the statements in the report were glaringly false, I

agree with the majority that this decision (and whether Respondent acted willfully) is largely tied to Respondent's credibility. But because of the evidence Respondent has presented in support, and the lack of evidence presented by the Superintendent, I find Respondent's version of events credible.

Respondent acknowledged that he was aware that any time narcotics were recovered, a vice case report must be prepared, and that he knew those reports contained a signature field. But Respondent testified, repeatedly and consistently (both in front of the Board and in front of the BIA), that he neither authored nor signed the report—Officer Finnigan did. In support, Respondent submitted signature exemplars *showing* that the report was not in his handwriting. The majority breezes past this critical piece of evidence. After comparing Respondent's signature exemplars with handwriting on the case report, it is clear, in my opinion, that the signatures are not the same; another individual signed Respondent's name. It is difficult to see how one could conclude otherwise. Therefore, contrary to the majority, I find Respondent's testimony credible.

Having found that Respondent did not author the false report, the remaining evidence in support of these charges again becomes Respondent's own testimony. After disregarding the signature exemplars, the majority discredits that testimony, finding that it is not credible that Respondent would not have reviewed the case report on the first night he was partnered with Officer Finnigan. The majority ultimately speculates that Respondent could not have trusted Officer Finnigan so easily that he would not have reviewed the report on that night, as Respondent and Officer Finnigan did not "see eye-to-eye" (whatever that means).

I do not believe that that is enough to arrive at the conclusion that Respondent acted willfully. Importantly, Respondent noted that he had no reason to believe that "anything [in the

report] was misleading or false"—testimony that is again bolstered by the hard evidence Respondent submitted in support. Respondent nonetheless acknowledged that he should have reviewed the report. And more, though Respondent and Officer Finnigan did not "see eye-to-eye," Respondent stated that he "didn't have a whole lot of interaction with Officer Finnigan prior to or including that day." A scenario that is just as likely, then, is one in which Officer Finnigan hid his deceptive and illegal behavior from Respondent. Respondent acknowledged that the group of officers present that night was "[Finnigan's] crew." Respondent acknowledged that he did not know about Officer Finnigan's corrupt practices at that time—and it follows that Officer Finnigan may not have known much about Respondent. With his "crew" working that night, Officer Finnigan did not need to keep Respondent in the know. And why would he? Respondent had just joined the SOS unit a month earlier, and the two had never worked together before. Instead, he could have relied on his "crew" and, in an effort to conceal his unlawful actions, hid his deception from an officer who may have reported such behavior.

Importantly, neither of those scenarios—Officer Finnigan hiding his deception from Respondent or Respondent choosing to ignore it—is supported by the evidence in the Record before the Board. To find that Respondent acted willfully, the Board must ultimately speculate. I find it credible (if not obvious) that Respondent did not author this report, and that the report was false. But there is little else. And without more, the Superintendent has not met his burden of showing that Respondent's actions violated Rule 14 and the directives of the CPD.

Specification Nos. 5 and 6

For similar reasons, I do not believe that the Superintendent has carried his burden as to Specification Nos. 5 and 6. It is clear that the arrest report and inventory report contain false statements that are material. But again, as Lieutenant Flores testified, to sustain a Rule 14

violation, Respondent's actions must be willful—intentional, rather than a mistake or an error. Based on the evidence before the Board, I cannot conclude that Respondent acted willfully.

First, the arrest report. Respondent surely could have—and should have—read the arrest report as the second arresting officer. But the Superintendent has presented no reason that Respondent's actions were willful. Respondent repeatedly testified that, though he did not review the report in the moment, he thought there was "no reason for [him] to think otherwise, other than the facts that were written down what happened in [his] perspective." Importantly, Respondent "didn't believe there was anything untoward or illegal about what [his] partner was doing at the time." The Superintendent presented no evidence to refute Respondent's testimony on these points.

Second, the inventory report. Respondent admitted that it was inaccurate to identify himself as the "found by" officer as stated on the inventory report. He denied that any of the other false statements on the report were willful because, as discussed above, he did not learn of their falsity until years later. Respondent testified that "if [he] was holding on to the property that he [was] inventorying, then [he] would have probably put [his] name on it as [he] was completing the form." Respondent's actions were sloppy and he should have taken better care preparing the report. But there is no real evidence before the Board, indeed no reason (outside of guilt by association), for the Board to conclude that Respondent acted willfully when identifying himself as the "found by" officer. I will also note that the Superintendent did not even include this fact in Specification No. 6. The false statements included as the basis for Specification No. 6 are, "that officers had recovered the narcotics from arrestee Jose Hermosillo on or around 2217 N. Harlem Avenue in Chicago when in fact the narcotics were not recovered from Jose Hermosillo but were recovered from the residence of Anthony Castro." The specification says

nothing about the "found by" notation supporting the charge in Specification No. 6. In any event, for all the reasons set forth above, there is no evidence in the record to support a finding that Respondent knew that the narcotics were found at Castro's residence and not Hermosillo's residence; therefore, he could not have willfully made this false statement.

Accordingly, I do not believe that the Superintendent has met his burden of showing that Respondent's actions violated Rule 14 and the directives of the CPD.

Specification No. 7

Last, as the majority notes, Respondent did not report any of the events related to the arrests of Castro or Hermosillo to the Department and/or the BIA, and the question before the Board becomes whether Respondent knew anything that he should have reported.

I believe that there is inadequate evidence for the Board to find that he did. As an initial matter, I believe that the Superintendent has failed to carry his burden as to the preceding six specifications; this specification rises and falls with the other six. But more, Respondent's own testimony as to his knowledge was consistent and credible. Respondent repeatedly testified that there "was nothing to report" at the time, as he "wasn't aware of any illegal activity[.]" First, as to the unlawful search, Respondent's recurrent testimony was consistent. Respondent did not disclaim knowledge whatsoever; rather, Respondent noted the same, limited knowledge. For example, Respondent knew that other officers "had [an] interaction with Castro but … didn't know anything was searched." Respondent did not report officers searching Castro's residence, but Respondent noted that he "didn't spend enough time towards Castro's apartment to see officers searching it." Second, as to the delay in processing Castro, Respondent did not believe that Castro was under arrest "when he was talking with Finnigan or [Respondent] in an investigation." And last, Respondent testified that he was "absolutely not" aware that Officer

Finnigan submitted false reports that day; had he been aware, Respondent would have made it known. Moreover, Respondent's testimony is consistent with that of Officers McKeon and Herrera, who testified that they had no knowledge of any act of misconduct committed by Respondent.

There is extensive evidence in the Record related to the events that occurred that day. Respondent admitted that there was no warrant to search Castro's home. But there is no testimony that Respondent knew that the firearm and narcotics were recovered after an illegal search. Respondent admitted that he and the officers stopped for gas and sandwiches and searched parts of the City before Castro was processed. But there is no testimony that Respondent knew that Castro was under arrest or involuntarily detained during that delay. To find Respondent guilty of these charges, the Board, again, must speculate contrary to the evidence before it. Accordingly, I believe that the Superintendent has not met his burden of proving the charges underlying this Specification.

* * *

In the proceedings before this Board, the Superintendent must offer evidence showing that each individual officer committed actions that deserve discipline. These acts occurred nearly two decades ago, and the passage of time created holes in the Superintendent's case. But because the Superintendent did not fill those holes, and because it is not the Board's role to fill those holes, I would find Respondent not guilty of each of the charges against him.

STEVEN A. BLOCK

Board Members Michael Eaddy and Jorge Montes

We dissent from the majority's finding that Respondent is not guilty of the charges set forth in Specification No. 3. We find that the Superintendent presented sufficient evidence to meet the burden of proving these charges by a preponderance of the evidence.

MICHAEL EADDY

JORGE MONTES

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS _____ DAY OF _____, 2022.

_____
DAVID O. BROWN
Superintendent of Police