

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER BERNARD D. BUTLER,) **No. 21 PB 2991-2**
STAR No. 3036, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) **(CR No. 2020-0988)**

FINDINGS AND DECISION

On April 6, 2021, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Bernard D. Butler, Star No. 3036 (“Respondent”), recommending that Respondent be discharged from the Chicago Police Department (“Department” or “CPD”) for violating CPD’s Rules of Conduct.¹

A hearing on the charges against Respondent took place before Hearing Officer Michael Panter on April 11, 12 and 27, 2023. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer’s Report and the Superintendent’s response to this report (Respondent did not file a response), and viewed the video recording of the entire evidentiary hearing. The Hearing Officer made an oral report to and conferred with the Board before it rendered its findings and decision.

During the proceedings of this case, from the filing of charges through the evidentiary hearing, the Hearing Officer made rulings and entered orders. None of the Hearing Officer’s rulings and orders is overruled or reversed.

¹The charges filed on April 6, 2021, also included charges against Police Officer Melvina Bogard arising out of the same incident (Police Board Case No. 21 PB 2991-1). Bogard resigned from her position with the CPD prior to the hearing on the charges.

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 sergeant of police 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 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. On Friday, February 28, 2020, just after 4:00 p.m., rush hour, by the State & Grand subway stop, Respondent and his partner, Melvina Bogard, observed Ariel Roman cross into their moving CTA train car in violation of Chicago ordinances. They intended to cite him, so the officers asked Roman to exit the train. He did. Video of the next seven minutes shows the officers trying to control Mr. Roman with oral commands, physical force, Tasers, Oleoresin Capsicum (“OC”) spray, handcuffs, and ultimately, two gunshots. Respondent is seen struggling with Mr. Roman and trying to communicate with his partner. The CTA vestibule where they fought was crowded with commuters.

Respondent and Officer Bogard were among 43 new officers tasked with riding CTA trains to prevent minor infractions. It was Officer Bogard who, during the encounter, twice deployed OC spray and who shot Mr. Roman in the chest and back. She resigned before this hearing. Respondent is accused of failing to de-escalate the confrontation, unnecessary use of force, and complicity in the shooting. Respondent did not use his OC spray or weapon, and he

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never struck Mr. Roman. However, while struggling with Mr. Roman, he discharged his Taser three times and partially handcuffed him. Respondent also called on his partner to “shoot him.” Officers on the CTA assignment were not equipped with BWCs. Videos from the CTA and passersby were combined into a seven-minute split-screen compilation that the Board reviewed repeatedly.

The video compilation shows that when the officers saw Mr. Roman enter their moving train car, they approached him. Mr. Roman says he did not initially hear the officers’ requests to leave the train because he was listening to music to control his panic attacks. On the video, Mr. Roman can then be seen taking his headphones off and responding to Officer Bogard’s request. All three exited the train. The video then shows Respondent talking with Mr. Roman by the edge of the platform as the train is leaving. Officer Bogard is behind a column. No audio is heard. Respondent says he asked Mr. Roman for identification. He says Mr. Roman appeared fidgety and incoherent.

Mr. Roman can be seen taking off his backpack. Respondent says he was concerned about what Mr. Roman may have had in his backpack and he could not see it well. Respondent then grabs Mr. Roman. That contact was a technical use of force. Although the officers did not know it at the time, Mr. Roman was carrying felony levels of contraband, and he was highly motivated to avoid getting caught and arrested. Respondent’s contact sparked Mr. Roman’s active resistance. Respondent says he meant to move Mr. Roman to a safer location away from the tracks.

The video then shows the officers forcefully pushing and pulling Mr. Roman—who is physically larger than the two officers—across the platform into the vestibule. There is no evidence of any attempt to pause and talk, or to give Mr. Roman some space or a chance to

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figure out what was going on. On the video, the sounds of a Taser pop and the crackling of electricity can be heard. Records show Officer Bogard fired her Taser twice. Respondent is yelling, "Taser," he says, to announce the use of a Taser. Officer Bogard is seen using her Taser first, and Respondent then Tases Mr. Roman three more times. Officer Bogard can be heard repeatedly shouting "7353" into her radio to summon assistance. The police radios did not work underground and there was no back-up plan for communication.

The video and transcript depict a situation out of control and a continuing failure to de-escalate. Mr. Roman is seen on the ground in a corner and the officers are on top of him, trying to handcuff him. Mr. Roman is actively resisting. Both officers shout, "give me your hands." Mr. Roman grabs Respondent's Taser and Respondent yells, "let go of the Taser." Officer Bogard is trying to help Respondent secure handcuffs. Officer Bogard yells, "give me your fucking hands." The officers are able to get one hand cuffed but not the other. The loose handcuff can be heard dragging on the floor. The officers yell, "stop resisting." Mr. Roman yells, "I didn't do nothing to you" and "I don't want to fight you." Mr. Roman never strikes or threatens either officer. Instead, Respondent is seen struggling on the ground with Mr. Roman while Officer Bogard stands and tries to help.

Next, Respondent twice yells to his partner, "shoot him." Respondent maintains he meant for Officer Bogard to shoot Mr. Roman with OC spray. He says Mr. Roman was an imminent threat to the officers' lives because he had a loose handcuff which could be used as a weapon. Respondent says he was physically exhausted from fighting for over five minutes, and he was being overpowered. After Respondent's command, Officer Bogard sprays Mr. Roman with OC spray. Respondent then says, "mace him," and Officer Bogard sprays Mr. Roman again. The second time, OC spray went into Respondent's eye.

The video shows that while Respondent is attending to his own eye, Mr. Roman stands up. Respondent then yells again, “shoot him.” In the context of everything that had been and was happening, this instruction was ambiguous at best. Officer Bogard unholsters her gun and orders Mr. Roman to “give him your hands.” Respondent tries to handcuff him. While holding his jacket, Mr. Roman steps toward Officer Bogard. Respondent says, at the time, his eyes were burning and he was disoriented. Officer Bogard then backs up and shoots Mr. Roman in the chest. Mr. Roman flees up the escalator, and Officer Bogard shoots Mr. Roman a second time in the buttock. Mr. Roman collapses at the top of the escalator. The police radios worked at the top of the escalator and help arrived. Mr. Roman was evacuated to a hospital, and he has since had multiple surgeries.

Charges Against the Respondent

5. Police Officer Bernard D. Butler, Star No. 3036, is **guilty** of violating Rules 2 and 11 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 1:

On or about February 28, 2020, at approximately 4:11 p.m., at or near 521 North State Street in Chicago, in the Chicago Transit Authority’s (“CTA”) Red Line Train Station, Police Officer Bernard Butler, while in public, stated to his partner, Officer Melvina Bogard, “shoot him,” or words to that effect, referring to Ariel Roman, after which Officer Bogard deployed Oleoresin Capsicum Spray and/or a firearm in the direction of Roman. Officer Butler thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in Section No. 4 above, which are incorporated here by reference.

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The Board finds unacceptable Respondent's call to his partner to "shoot" Mr. Roman. While Officer Bogard is ultimately responsible for her decision to draw and fire her weapon, Respondent's conduct made a difficult situation worse. Respondent knew or should have known his partner was going to shoot her weapon, and his instructions to her, even if he meant something else, contributed to the risk of unjustified harm to others. Respondent's statement "shoot him" was unwarranted as to Mr. Roman, and it lacked consideration of the risk to others passing through that crowded vestibule.

The Board understands the officers were surprised to encounter someone determined to avoid arrest because, unknown to them, he was carrying felony-level contraband. Better training and preparation were called for, even for this typically uneventful assignment. Both officers were inexperienced and physically overwhelmed by a much larger man. The officers also did not know their detainee was under the influence of alcohol and drugs. The Board recognizes that the situation devolved rapidly. The officers could not communicate with their station, had difficulty communicating with each other, and there was not a lot of space to maneuver. Further, Officer Bogard sprayed her OC into Respondent's face and temporarily disabled him. It was Officer Bogard, not Respondent, who shot Mr. Roman two times, once in the back as he fled. Nevertheless, Respondent failed to appreciate that he had other tools, including more communication, forms of distancing or disengagement, and other de-escalation methods. Respondent's decision to tell Officer Bogard to "shoot him" failed to show the judgment required of a CPD officer, regardless of the challenges posed by a particular assignment or encounter.

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6. Police Officer Bernard D. Butler, Star No. 3036, is **guilty** of violating Rules 2, 6, 8, 9, and 11 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 2:

On or about February 28, 2020, at approximately 4:11 p.m., at or near 521 North State Street in Chicago, in the CTA Red Line Train Station, Officer Butler failed to comply with Department policy regarding Taser use when he discharged his Taser against Roman. Officer Butler thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, by disobeying General Order 03-02-04 ("Taser Use Incidents");
- c. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty;
- d. Rule 9, which prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty; and
- e. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in Section Nos. 4 and 5 above, which are incorporated here by reference.

Respondent's use of his Taser also showed poor decision-making as well as a lack of awareness of Department regulations. General Order 03-02-04 states that, when possible, the Taser is to be discharged "ideally when the member is within 7 to 15 feet of the subject.". Respondent fired from nearly point-blank range. That would not have been a sufficient distance to allow the requisite space between the darts. The General Order also prohibits an officer from deploying his Taser after another officer has already used a Taser against a subject. Respondent fired his Taser three times after Officer Bogard had already fired her Taser twice. Further, the General Order requires, when possible, a period of time after firing for the officer to reassess

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before firing again. Respondent's use of his Taser a third time after just one second was too quick to permit the reassessment. At some point, Respondent should have realized that firing Tasers into Mr. Roman was not helping and may have been aggravating the situation. Respondent's use of the Taser against Mr. Roman violated General Order 03-02-04.

7. Police Officer Bernard D. Butler, Star No. 3036, is **not guilty** of violating Rules 2, 6, 8, and 9 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 3:

On or about February 28, 2020, at approximately 4:11 p.m., at or near 521 North State Street in Chicago, in the CTA Red Line Train Station, Officer Butler grabbed Roman by his arm without justification and thus used unauthorized force against Roman. Officer Butler thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, by disobeying General Order 03-02 ("Use of Force");
- c. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty; and
- d. Rule 9, which prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

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

The Department's General Order on use of force permits holding techniques and compliance techniques against a "passive resister," which is "a person who fails to comply (non-movement) with verbal or other direction." (G03-02-01, pp. 3-4.) The Board finds that Mr. Roman was a passive resister at the point Respondent grabbed him by his arm, and thus,

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Respondent's use of force against Mr. Roman was justified and not prohibited by CPD General Orders or Rules.

(Board Members Wolff, Carr-Favors, and Cusack **dissent** from the above findings:

Respondent's grabbing Mr. Roman by his arm was reckless, and was unjustified given

Respondent's failure to use de-escalation techniques—see Section Nos. 8 and 9 below.

Respondent thereby violated General Order 03-02, which states that “Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved” and that “Members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances.”)

8. Police Officer Bernard D. Butler, Star No. 3036, is **guilty** of violating Rules 2, 8, 9, 10, and 11 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 4:

On or about February 28, 2020, at approximately 4:11 p.m., at or near 521 North State Street in Chicago, in the CTA Red Line Train Station, Officer Butler recklessly grabbed Roman by his arm while Roman was standing along the edge of the platform next to the train tracks, placing Roman in danger of falling off the platform. Officer Butler thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty;
- c. Rule 9, which prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty;
- d. Rule 10, which prohibits inattention to duty; and
- e. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

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See the findings set forth in Section Nos. 4 – 7 above, which are incorporated here by reference.

While it was technically within CPD policy for Respondent to grab Mr. Roman by his arm (see the finding in Section No. 7 above), the Board finds that his decision to use force while Mr. Roman was standing along the edge of the platform next to the train tracks was reckless. Choosing to initiate the confrontation with Mr. Roman close to the edge of the platform was the first of a series of poor decisions by Respondent. Although no one was struck by a train, that decision required Respondent to find a way to relocate Mr. Roman to continue the stop, which intensified the situation.

(Board Members Foreman, Block, and Doorley **dissent** from the above findings. Mr. Roman’s resistance prompted Respondent to grab Mr. Roman by his arm. Respondent’s use of force was not reckless, but rather necessary, based on the totality of the circumstances and was within CPD policy—see Section No. 6 above.)

9. Police Officer Bernard D. Butler, Star No. 3036, is **guilty** of violating Rules 2, 3, 6, and 11 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 5:

On or about February 28, 2020, at approximately 4:11 p.m., at or near 521 North State Street in Chicago, in the CTA Red Line Train Station, Officer Butler failed to use de-escalation techniques when he attempted to stop and/or detain Roman. Officer Butler thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral,

by disobeying General Order 03-02-01 (“Force Options”); and

d. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in Section Nos. 4 – 8 above, which are incorporated here by reference.

General Order 03-02-01 states: “Department members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances. This includes continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety.”

The Board finds that Respondent violated this provision of the General Order by failing to use sufficient de-escalation techniques during the encounter with Mr. Roman when it was safe and feasible to do so. Even if Respondent was initially justified in using force to move Mr. Roman away from the tracks (see Section 7 above), Respondent had an obligation to “continually assess[] the situation and modify[] the use of force” as appropriate. As the encounter progressed, there was no indication that Mr. Roman had any intention to use the unsecured handcuff or anything else to attack the officers. In fact, he never struck or threatened the officers in any way. Stepping back from the altercation would not only have given Mr. Roman a chance to collect himself and calm down, but it would also have given the officers an opportunity to consider their options.

Disciplinary Action

10. The Board has considered the facts and circumstances of the conduct of which it has found Respondent guilty and the evidence he presented in mitigation.

Officer Butler’s commander in CPD’s public transportation section testified that he

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displayed good policing skills and was a kind and good person. His supervising sergeant spoke of Officer Butler's professionalism, dedication, and ability to communicate with members of the public. His pastor testified positively about Officer Butler's work with the church community. Since joining the CPD in November of 2017, Officer Butler earned a total of six awards, including a Life Saving Award and three Honorable Mentions. There are no sustained complaints on his disciplinary history report.

After considering thoroughly Respondent's evidence in mitigation, the Board finds that his accomplishments and the positive evaluations of him do not fully mitigate the seriousness of his misconduct. Respondent's multiple violations of CPD's use-of-force policies and the poor judgment he displayed by stating to Officer Bogard "shoot him" were serious and unjustified failures of performance that contributed to the encounter with Mr. Roman spiraling out of control and ended with him being shot and seriously injured.

Nevertheless, despite the serious nature of Respondent's deficiencies and the serious consequences, the Board finds that discharging him from the CPD is not warranted due to a number of factors. Mr. Roman's active resistance and Officer Bogard's misconduct made a difficult situation extremely challenging, especially for a new officer such as Respondent. Throughout the struggle, he never struck or threatened Mr. Roman. Respondent testified that he has been humbled by this experience and has learned from it. He was fully cooperative in the investigation and at the hearing. The Board finds it meaningful that both his supervising commander and sergeant testified they watched the videos and still urged reinstatement. They testified that Respondent could become an excellent officer if given another chance. Respondent had been an EMT before joining the CPD, and he is training to be a deacon in his church. While critical of his conduct here, the Superintendent agreed that the "mitigation does demonstrate that

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Officer Butler is a man with positive qualities as an officer and a person.” Based on the nature of the misconduct of which the Respondent is guilty and the circumstances in which it took place, taken together with the evidence in mitigation, the Board finds that a suspension without pay for a period of one year is appropriate discipline in this particular case.

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POLICE BOARD DECISION

The members of the Police Board of the City of Chicago hereby certify that they have read and reviewed the record of 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 9 in favor (Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareil  Cusack, Nanette Doorley, Michael Eaddy, Jorge Montes, and Andreas Safakas) to 0 opposed, the Board finds Respondent **guilty** of the charges in Specification Nos. 1, 2, and 5, as set forth in Section Nos. 5, 6, and 9 above.

By a vote of 6 in favor (Foreman, Block, Doorley, Eaddy, Montes, and Safakas) to 3 opposed (Wolff, Carr-Favors, and Cusack), the Board finds Respondent **not guilty** of the charges in Specification No. 3, as set forth in Section No. 7 above.

By a vote of 6 in favor (Wolff, Carr-Favors, Cusack, Eaddy, Montes, and Safakas) to 3 opposed (Foreman, Block, and Doorley), the Board finds Respondent **guilty** of the charges in Specification No. 4, as set forth in Section No. 8 above.

As a result of the foregoing and for the reasons set forth in Section No. 10 above, the Board, by a vote of 5 in favor (Foreman, Wolff, Carr-Favors, Cusack, and Montes) to 4 opposed (Block, Doorley, Eaddy, and Safakas), hereby determines that cause exists for suspending Respondent from his position with the Department of Police and from the services of the City of Chicago for a period of one (1) year.

NOW THEREFORE, IT IS HEREBY ORDERED that Police Officer Bernard D. Butler, Star No. 3036, as a result of having been found guilty of charges in Police Board Case

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No. 21 PB 2991-2, shall be suspended without pay from his position as a police officer with the Department of Police and from the services of the City of Chicago, for a period of one (1) year (any suspension Respondent has already served while these charges were pending before the Police Board shall be counted toward the one-year suspension ordered by the Board).

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Aja Carr-Favors, Mareilé Cusack, and Jorge Montes).

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF AUGUST, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We respectfully dissent from the majority's decision to suspend Respondent for one year. We find that less severe discipline is warranted for the following reasons. Given that Mr. Roman was in the process of committing a felony and actively resisting arrest, that Respondent's partner was of limited help in controlling Mr. Roman and she actually disabled Respondent by spraying him in the eye with her OC spray, and, further, given that it was Officer Bogard who was responsible for shooting the detainee, Respondent bears some, but not the majority of the responsibility, for this stop gone amok. There is little to suggest that more de-escalation techniques would have convinced Mr. Roman to desist and surrender. Additionally, the Department needed to better prepare its officers for the possibility of trouble, even on a supposedly "easy" assignment, and pairing two inexperienced officers, both of smaller stature, with no means of communication, shows poor planning. Respondent acknowledges he has learned from this experience.

STEVEN BLOCK

NANETTE DOORLEY

MICHAEL EADDY

ANDREAS SAFAKAS

RECEIVED A COPY OF
THESE FINDINGS AND DECISION
THIS ____ DAY OF _____, 2023.

FRED L. WALLER
Interim Superintendent of Police