

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
)
POLICE OFFICER ARMANDO UGARTE) No. 22 PB 3009-1
STAR No. 15050, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
)
AND)
)
POLICE OFFICER MICHAEL ST. CLAIR II,) No. 22 PB 3009-2
STAR No. 15527, DEPARTMENT OF POLICE)
CITY OF CHICAGO,)
) (CR No. 1081079)
RESPONDENTS.)

FINDINGS AND DECISIONS

On October 28, 2022, the Superintendent of Police filed charges with the Police Board of the City of Chicago against Police Officer Armando Ugarte, Star No. 15050, and Police Officer Michael St. Clair II, Star No. 15527 (together, “Respondents”), recommending that each Respondent be discharged from the Chicago Police Department (“CPD” or the “Department”) for violating CPD’s Rules of Conduct.

A hearing on the charges against Respondents took place before Hearing Officer Lauren Freeman on July 31 – August 2, 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 (neither party filed a response to this report), 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 decisions.

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.

POLICE BOARD FINDINGS

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

1. Each Respondent was at all times mentioned herein employed as CPD police officer by the City of Chicago.
2. A copy of the charges filed, and a notice stating the date, place, and time the initial status hearing would be held, were personally served upon each Respondent not fewer than five (5) days before the date of the initial status hearing for this case.
3. Throughout the hearing on the charges each Respondent appeared and was represented by legal counsel.

FOP Motion

4. On August 11, 2023, the Fraternal Order of Police Lodge 7 filed with the Police Board a Motion to Transfer Pending Cases to the Arbitration Call or in the Alternative to Stay All Police Board Cases (“FOP Motion”). This case against Respondents is one of the 22 cases listed on the FOP Motion. On September 26, 2023, the Board entered an Order denying the FOP Motion in its entirety.

Introduction

5. The charges against Respondents stem from various statements and testimony they provided concerning the July 8, 2010, fatal shooting of William Hope in a Popeye’s Chicken parking lot at 111 W. 75th Street, Chicago. Respondents pled “not guilty” to all charges. The

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undisputed evidence presented at the hearing established the following.

Respondent Ugarte is 48 years-old and began working for CPD in January 2005. Respondent St. Clair is 51 years-old and was appointed to CPD in September 2003. On July 8, 2010, at approximately 12:45 p.m., Respondents were working patrol in plain clothes on the 006th District Tactical Team, driving eastbound on 75th Street in an unmarked black Chevy Tahoe. As they drove toward the Perry Street intersection, they observed a grey Pontiac Grand Am backed into a parking space in the Popeye's lot with no other cars around it, far from the restaurant's entrance. As they drove, they noticed that the driver of the Grand Am, later identified as William Hope, was the sole occupant of the car and was leaning back in the driver's seat. Popeye's surveillance video footage shows that Respondents passed through the intersection and drove slowly down 75th Street in the right lane. As this was a high-crime location known for narcotics activity, Respondents turned into the lot to investigate.

Respondents stopped their SUV at a T a foot or two in front of Hope's car, exited their vehicle, and walked up to Hope. As they approached, Respondent Ugarte noticed that Hope's car engine was running and both Respondents saw a large amount of cash in the front cupholder. Through Hope's partially open window, Respondent Ugarte asked Hope for his driver's license and proof of insurance but Hope handed him his driver's license and cell phone instead. Ugarte handed the cell phone back and Hope tossed it on his dashboard. Hope then immediately placed his vehicle in drive and drove forward a short distance to the left toward Ugarte, hitting Ugarte with his car. As Respondents repeatedly told Hope to stop the car, Hope shifted into reverse. Ugarte then reached through the driver's side window to try and stop the vehicle by grabbing the steering wheel, putting the car in park, or grabbing the keys. Hope again shifted and drove forward a short distance while Ugarte's upper body was still inside of the window. Respondent

St. Clair, standing several feet away and to the side of his partner, then discharged his weapon at Hope four times, causing Hope's death. A gun was later recovered from under Hope's driver's seat.

The Popeye's surveillance system filmed a portion of the parking lot before, during, and after the shooting but did not capture the shooting itself. Civilian Haji Bryant testified at the hearing that she witnessed the shooting from a distance of approximately 20 feet away.

During the incident, Respondent Ugarte sustained a laceration to one of his fingers and an unspecified injury to his leg. Later the same day, he was interviewed at Christ Hospital by Detective (now Sergeant) Brian Johnson about the shooting. In July and August, 2010, both Respondents were interviewed by IPRA investigators. In 2011 and 2012, Respondents testified about the shooting in depositions and at trial in United States District Court case number 10 C 5076. Respondents are accused of rule violations stemming from their prior interviews and testimony in the civil case.

The Superintendent now asks the Board to determine facts about a shooting that occurred more than 13 years ago and to pass judgment on the Respondents' veracity for statements they made over 11 years ago. The Board finds the Superintendent's delay in bringing these charges disturbing, yet the Board has fully assessed the evidence presented for each charge.

Respondent's Motion to Dismiss the Charges

6. On April 25, 2023, Respondents filed a Motion to Dismiss the charges against them (the "Motion") based on the doctrine of laches. The Superintendent filed his Response on May 8, 2023. Respondents did not file a Reply. The Police Board has reviewed and considered these filings and the evidence and argument presented during the hearing. For the reasons set forth

below, Respondents' Motion is denied.

In their Motion, Respondents argue that the Superintendent's delay in bringing the charges in this matter warrants dismissal, since there was no further investigation into Respondents' actions following the close of the original Independent Police Review Authority ("IPRA") file in September 2013. Respondents assert that in the nine years that passed before the Superintendent filed charges in this case, the facts did not change, and the only other action the City took was on June 24, 2020, when the City reaffirmed Respondents' prior statements. Respondents contend that they are prejudiced by this delay because the City lost or misplaced videos that were part of the civil trial, which would apparently impeach key witnesses. Additionally, the original video footage apparently no longer exists, which Respondents argue prevented their expert from forming a reliable opinion as to the timing of events presented in the video. Finally, according to Respondents, the physical attributes of the Popeyes restaurant where the shooting occurred has changed, prejudicing Respondents' investigation.

Because Respondents have shown neither the "extraordinary circumstances" that would warrant the application of laches against a governmental body nor any the prejudice that would warrants dismissal if the extraordinary circumstances were present, Respondents' Motion is denied.

Legal Standard

Laches is "an equitable doctrine that precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *Orsa v. Police Bd. of City of Chicago*, 2016 IL App (1st) 121709, ¶¶ 44. "Two elements must exist for laches to apply: (1) lack of diligence by the party asserting the claim and (2) prejudice to the opposing party resulting from the delay. A mere time lapse from the accrual of a cause of action

to the filing of a lawsuit does not support a laches defense.” Id.

Importantly, however, “as a general rule, the doctrine of laches does not apply to governmental entities absent extraordinary circumstances. This is because laches could impair the functioning of the government, which, in turn, would adversely affect the public.” *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493–94, (2009) (citations omitted). For that reason, “[t]he nonaction of governmental officials will not support a laches defense; rather, laches will only apply if the governmental officers initiated an affirmative act that induced the action of the respondent.” Id. at 494 (citations omitted).

Analysis

Despite the significant passage of time preceding the charges in this case, Respondents’ Motion to Dismiss fails, as: (1) Respondents have not shown “extraordinary circumstances” required to bar the action of a governmental entity; and (2) Respondents have not established actual prejudice resulting from the Superintendent’s delay.

On the first laches element—focused on the diligence of the party asserting the claim—Respondents’ arguments carry some weight. The incident at issue occurred in 2010, and IPRA’s investigation closed in 2013. Respondents point out that no further action was taken until 2020, when they were asked to affirm their prior statements, and the Superintendent did not file charges against Respondents until October 2022—more than 12 years after the incident. In response, the Superintendent has not challenged or otherwise offered any explanation for the extensive delay.

Even so, Respondents have not shown that the City affirmatively acted in a way that “induced an action” on the part of Respondents, which is fatal to their Motion claim. As Illinois courts have made clear, “laches will apply only if the government officials initiated an

affirmative act that induced the opposing party to act, making it inequitable to permit the government entity to retract what the government officials have done.” *Wabash Cnty. v. Ill. Mun. Ret. Fund*, 408 Ill. App. 3d 924, 933–34 (2d Dist. 2011). Compare *City of Marengo v. Pollack*, 335 Ill. App. 3d 981 (2d Dist. 2002) (city’s 13-year delay in enforcing ordinance limiting outdoor storage space was not barred by laches, even though the city had inspected the property in the interim without complaint) with *Cnty. Of DuPage v. K-Five Const. Corp.*, 267 Ill. App. 3d 266 (2d Dist. 1994) (finding that laches barred the enforcement of a zoning ordinance where a county official sent a letter related to the legality of plaintiffs’ use of the land, which resulted in plaintiffs spending approximately \$600,000 on improvements to the land). Though more than a decade passed between the time the shooting occurred and the filing of these charges, Respondents have not set forth any affirmative action by the City on which they relied. Without more, their claim laches argument fails.

Setting that failure aside, Respondents have not shown prejudice that warrants dismissal of the charges against them. In their Motion, Respondents allege that they were prejudiced in three ways: (1) video footage that would impeach an important witness had been misplaced; (2) the original video footage was not preserved, preventing Respondents’ experts from performing certain analyses; and (3) the physical characteristics of the Popeyes restaurant have changed, prejudicing Respondents’ private investigation.

The Board can easily dispose of Respondents’ first argument. Respondents initially claimed in their Motion that they were prejudiced because video footage was not produced that would challenge two witnesses’ testimony: Patricia Polk and Johnnie McGee. But neither individual ultimately testified at Respondents’ hearing, and the video footage was not needed for the impeachment purposes Respondents set forth in their Motion.

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Second, Respondents have not shown prejudice suffered because of any purported limitations to their expert's or private investigator's work that would warrant dismissal of the charges. Respondents retained an expert to form an opinion on the "timing between events" related to the shooting. At the hearing on these charges, Respondents' expert testified that he was unable to form an opinion on that issue because the video footage he analyzed was produced in proprietary format and lacked information about algorithms, compressions, and frame rate. Importantly, though Respondents' expert claims that he was unable to perform analyses regarding timing between events that occurred, he does not argue that the video itself was altered. Indeed, a witness presented by the Superintendent pointed out that after the video was extracted, it was not possible for the video's content to be modified.

Moreover, the relevant expert opinion is ancillary to the issues presented in the case. The charges here concern whether Respondents previously made false statements about the shooting of William Hope. To decide whether the Superintendent has proven the charges, the Board needs to determine when certain events occurred relative to the shooting; it does not need to determine the exact amount of time between those events. As the Superintendent points out, the Board can rely on single frames within the video footage to make those determinations. So, even if Respondents' expert had provided an opinion on the exact timing between the shooting and other actions taken, that opinion would have been, at best, only marginally helpful to the Board.

In that same vein, Respondents' arguments that they are prejudiced because their private investigator could not accurately measure distances at the scene of the shooting and perform subsequent analyses fail. Like the issue outlined above, none of the charges in this case—which focus on Respondents' allegedly false statements—turn on the placement of parking lot lines. Moreover, Respondents' arguments on this point are conclusory. They do not explain how the

parking lot lines at Popeyes prevented their private investigator from performing any analysis.

Without more, Respondents have not carried their burden of showing prejudice that warrants dismissal of these charges on the basis of laches.

Charges Against Respondent Ugarte

7. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 1:

On or about July 8, 2010, Officer Armando Ugarte falsely reported to Detective Brian Johnson during an interview at Christ Hospital in Chicago that he stopped and watched and/or continued to watch William Hope's vehicle for a short period of time before he decided to approach the vehicle and/or pulled into the Popeye's parking lot, or reported words to that effect. However, on or about October 26, 2012, during his testimony in a civil trial, case number 10 C 5076, in the United States District Court, Northern District of Illinois, Officer Ugarte admitted/testified that he did not stop and/or watch William Hope's vehicle prior to pulling into the parking lot, or stated words to that effect. Officer Ugarte 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 14, which prohibits making a false report, written or oral.

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

The Superintendent's specification contains two separate factual contentions – first that Respondent made the alleged statement to Detective Johnson and second that Respondent testified as charged during the civil trial. Both contentions required sufficient evidence for the Superintendent to sustain its burden of proof. The Superintendent failed to present any evidence proving the second contention, thereby negating the entire specification.

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Sergeant Johnson testified pertaining to the first contention. He testified that when he interviewed Ugarte, Johnson wrote a General Progress Report (“GPR”) documenting the interview. Johnson’s GPR indicates that Ugarte reported he “watched” Hope’s vehicle for a short period of time, and also that Ugarte “pulled over” to watch Hope’s vehicle for a short period of time, before pulling into the parking lot. Despite what Johnson wrote in his report, he testified that Ugarte never actually told him that he “stopped” or “pulled over” -- instead, when Ugarte told Johnson that he and Respondent St. Clair “watched the vehicle for a short period of time,” Johnson inferred that they probably pulled over and watched it for a couple of minutes. Respondent Ugarte testified at the hearing that he never told the detective he stopped or pulled over before he and his partner entered the lot.

The Board will not attempt to divine the exact words Respondent used during an unrecorded interview that took place more than 13 years ago, especially taking into account Johnson’s admission that he memorialized his own inferences rather than quote Respondent’s actual words. The Board need not make that determination in light of the Superintendent’s deficient proof regarding the second portion of the specification, that during Respondent’s civil trial testimony, “he admitted/testified that he did not stop and/or watch William Hope’s vehicle prior to pulling into the parking lot, or stated words to that effect.” During the Superintendent’s adverse examination of Ugarte, the Superintendent never asked him whether he testified at trial that he “stopped” or “pulled over.” Additionally, while the Superintendent entered specific portions of past interviews and transcripts as exhibits in other charges against Respondents, he did not do so here.

The Superintendent bears the burden of proving by a preponderance of the evidence all facts alleged in each specification of the charges. Only then may the Board determine whether

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the specified conduct violated Department rules. Here, Since the Superintendent failed to establish this second portion of Specification No. 1, the Superintendent did not prove the Respondent guilty.

8. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 2:

On or about July 8, 2010, Officer Armando Ugarte falsely reported to Detective Brian Johnson during an interview at Christ Hospital in Chicago that he attempted to remove himself from the window of William Hope's vehicle but was stuck in between the frame of the door and the window at the time he heard gunshots from his right side, or reported words to that effect. Officer Ugarte 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos.5 and 7 above, which are incorporated here by reference.

In order to prove that Respondent violated Rule 14, the Superintendent was required to establish four principal elements: 1) that Respondent made the charged statement; 2) that the statement was false; 3) that the statement was material to the issue in question (the shooting investigation); and 4) that Respondent's statement was willfully false – Respondent knew the statement was false when he made the statement. The Board finds that the Superintendent proved the first three elements but failed to prove the last – that Respondent knew his statement was false when interviewed by Detective Johnson.

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In finding that Respondent's statement was false, the Board credits the testimony of independent eyewitness Haji Bryant, as well as Popeye's video footage that corroborates her testimony. Ms. Bryant testified that she lived at 7511 S. Perry, next to the Popeye's parking lot. She left her house to retrieve something from her car and saw a man (Hope) parked in the lot with his seat reclined. While walking back from her car, she saw Respondents' black unmarked SUV pull up to Hope's car and she stood on the driveway by the parking lot to see what was happening. Two plain-clothed officers, one Hispanic (Respondent Ugarte) and one African-American (Respondent St. Clair), exited their SUV and asked Hope for an ID. He handed it to them but was putting his car in drive, trying to drive forward. He then reversed and backed up, like he was trying to maneuver around them, jerking the car backward and forward, but the respondents' SUV was very close and he was having a hard time getting completely around it. Respondent Ugarte then reached into the car to try to put it in park. As Ugarte was reaching in the window, he was taken maybe a few steps forward by Hope's car but was not dragged because the officers' SUV was in front of the car. She could not recall whether Ugarte succeeded in putting the car in park but the car wasn't moving when she saw Respondent St. Clair fire at Hope. She believes that when St. Clair fired, Respondent Ugarte was out of Hope's car and had stepped back about a foot.

Ms. Bryant further testified that she never looked down or looked away from the incident. However, on cross-examination, she acknowledged that when she testified at the civil trial in 2012, she told the jury that she had looked away, did not see the first shot, and then looked back toward the gunfire. She then testified at the hearing that while she may not have seen the first shot, she remembers that both officers were standing up before she looked away and that Ugarte had stepped back about a foot from the Grand Am.

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The Popeye's surveillance video footage of the parking lot supports Ms. Bryant's testimony that Ugarte freed himself right before Respondent St. Clair fired. It shows that Respondents' Tahoe travels slowly eastbound on 75th Street and then turns right to enter the lot, drives through the lot at a normal rate of speed, and then stops. The footage does not show Hope's car and only shows the rear of Respondents' Tahoe. Respondent Ugarte exits the Tahoe's driver's side, walks behind it, and then walks off-camera. A non-testifying male civilian stands by his parked car near the restaurant's entrance and begins looking in the direction of Respondents' and Hope's vehicles. At approximately 12:43:25 on the video footage, the civilian makes what the Board believes is a flinching motion, as if the civilian was startled by something. Although the footage was filmed without sound and the civilian did not testify at the hearing to explain why he flinched, the Board finds it likely that the civilian recoiled when he heard the gun shots. Respondent Ugarte can be seen entering the same frame and beginning to run from Hope's car, indicating, as Ms. Bryant testified, that Ugarte had freed himself from the window the moment before St. Clair began shooting.¹

While Haji Bryant's testimony and the Popeye's video footage establish that Respondent Ugarte's statement was false, the same testimony and video footage corroborate the Respondents' testimony about the shooting in nearly every other way. Indeed, Ms. Bryant's testimony confirms important details of Respondents' accounts of the shooting -- that Hope jerked his car back and forth to try to escape, that Ugarte reached into the car to try and stop him, and that Ugarte was still in the window and traveled forward as Hope drove forward. Perhaps

¹ The Board is not persuaded by Respondent's position that the Popeye's video footage is unreliable. Respondent's expert, Marc Robinson, testified that that he was retained by Respondents to determine the timing between events depicted in the video footage. On cross-examination, he admitted that digital video footage does not create images that aren't there. His testimony did not cast doubt on the reliability of what was shown in a single frame and the timing between events was not germane to our analysis.

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most importantly, according to Bryant, Respondent was only about a foot away from Hope's car when she looked back after hearing the first shot. Ugarte must have been very close to Hope's car when St. Clair fired.

These details suggest that even if Respondents were mistaken about the exact moment Ugarte freed himself, everything happened so quickly that Respondents could have reasonably perceived Ugarte was still stuck in the window. The Superintendent fell short of proving they perceived otherwise.

In addition, the Superintendent never established that Respondents had an adequate opportunity to get their stories straight. The only evidence in the record shows that neither officer recalled speaking to one another after the shooting and the responding units arrived quickly. Respondent St. Clair testified that he was so traumatized after shooting that when he radioed the dispatcher, he wasn't able to give them the correct street address for the Popeye's. It is unlikely that Respondents had time to talk to each other and agree on a false narrative.

Because the Superintendent failed to prove by a preponderance of the evidence that Respondent Ugarte knew his statement to be false, the Board finds Respondent Ugarte not guilty of the charges set forth in Specification No. 2.

9. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 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 July 28, 2010, Officer Armando Ugarte falsely stated in an interview with the Independent Police Review Authority ("IPRA") during IPRA's investigation into the fatal shooting of William Hope, that he was still in the front part of the window of William Hope's vehicle when he heard the gunshots, or reported words to that effect. Officer Ugarte thereby violated:

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- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in Sections Nos. 5, 7, and 8 above, which are incorporated here by reference.

The Superintendent established that when IPRA investigators interviewed Respondent Ugarte several weeks after the shooting, Ugarte again falsely reported that he was still in the front part of Hope's window when he heard the gunshots. However, for the same reasons pertaining to Specification No. 2, the Board finds that the Superintendent did not show that Respondent knew his statement to be false here. The Board therefore finds Respondent Ugarte not guilty of the charges set forth in Specification No. 3.

10. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 4:

On or about October 26, 2012, in the United States District Court, Northern District of Illinois, case number 10 C 5076, Officer Ugarte falsely testified that he was headfirst and/or headlong into William Hope's car, and/or that his upper body was in the car, during the entire time all four shots were being fired, or stated words to that effect. Officer Ugarte 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-9 above, which are incorporated here by reference.

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In past cases, when the Superintendent has charged officers with Rule 14 violations, he has either quoted or paraphrased the statements he alleged were false. Here, the Superintendent stretches further, using the “or words to the effect” clause to draw conclusions about Respondent Ugarte’s testimony from several statements rather than quoting or paraphrasing his actual testimony.

Respondent testified at the civil trial as follows:

Q. (Attorney) And did you tell the folks on the jury from the time that you went head first into the car to try and get control over the car *up until* the time that the shots were fired you were head long into that car the entire time? (Italics supplied)

A. (Respondent Ugarte) Yes, I was inside the vehicle, yes.

Q. And you don’t ever – you didn’t get out of the vehicle until it came to a stop from what you told the folks on the jury; is that right?

A. Correct.

Q. And you know – it came it came to a stop, that final resting place up against the Tahoe, right?

A. That is correct.

Q. Your partner fired four shots before that vehicle came to a stop against the Tahoe, right?

A. Yes, he did.

The Superintendent thus concludes that since Respondent testified he did not get out of the vehicle before it came to a stop, and testified that St. Clair fired all four shots before the car came to a stop, Respondent therefore testified that he was in Hope’s car during the entire time the shots were fired. While the Board can follow the Superintendent’s logic to arrive at his conclusion, the Board cautions the Superintendent to base Rule 14 false testimony charges on a respondent’s actual testimony, or words akin to that testimony, rather than conclusions the Superintendent draws from a respondent’s testimony.

Even if the Board was to determine that Respondent testified as alleged in this specification, for the same reasons as noted pertaining to Specifications Nos. 2 and 3, the Board

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finds that Respondent failed to prove the Respondent knew he was testifying falsely. We therefore find Respondent not guilty of the charges set forth in Specification No. 4.

11. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 5:

On or about November 17, 2011, Officer Ugarte falsely testified during his deposition in case number 10 C 5076 that he did not park his police car in front of William Hope's vehicle on July 8, 2010, in order to block Hope in or prevent Hope from moving, and/or that Hope was free to leave, or stated words to that effect. Officer Ugarte 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-10 above, which are incorporated here by reference.

Although Respondent never testified that William Hope "was free to leave" or words to that effect, the Superintendent still admitted sufficient evidence that Ugarte testified as charged in the initial portion of the specification. Respondent's pertinent deposition testimony was as follows:

Q. (Attorney) Instead of parking anywhere else in the wide-open parking lot, the space that you chose was directly in front of Mr. Hope which prevented him from exiting by driving his car forward, right?

...

A. (Respondent Ugarte) *We parked there in front of him so he could know that we were police officers. We were civilian dressed and we did not -- did it so we could prevent him from leaving. (Italics supplied)*

Respondent Ugarte additionally testified, as he did at our hearing, that while he parked at a T in front of Hope's car, there was enough space for Hope to have maneuvered around the SUV had Hope been a good driver.

While the Superintendent proved that Respondent testified as charged, by wording the specification as he did, the Superintendent was required to prove Respondent's specific intent – that Respondent parked his SUV in that manner intending to block Hope from leaving the lot or prevent Hope from moving. The Superintendent asks the Board to infer Respondent's intent from the way Respondent parked and because Hope was ultimately unable to drive around the SUV to escape. The Board cannot make this inference. The fact that Ugarte's SUV ultimately blocked Hope from leaving the lot does not prove that this was Respondent's intent to begin with.

Both in the deposition and at our hearing, Ugarte testified that he parked that way so that Hope would realize Respondents were plain-clothed police officers and were not there to rob him. The Superintendent could not disprove Respondent's contention by a preponderance of the evidence. The Popeye's parking lot was known for narcotics trafficking. The Board finds it reasonable that Respondent's intent was to convey an obvious police presence for the Respondents' own safety.

Since the Superintendent could not prove that Respondent Ugarte's testimony was false, the Board finds him not guilty of the charges in set forth in Specification No. 5.

12. Police Officer Armando Ugarte, Star No. 15050, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 6:

On or about October 26, 2012, in the United States District Court, Northern District of

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Illinois, case number 10 C 5076, Officer Ugarte falsely testified by making one or more statements to the effect that when he parked his police car in front of William Hope's vehicle on July 8, 2010, William Hope was free to leave. Officer Ugarte 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-11 above, which are incorporated here by reference.

Respondent's actual testimony at trial was as follows:

Q. (Attorney) We're at 12:42:55, and you have just pulled your Tahoe up in a T in front of Mr. Hope's car where he is in that parking space at the Popeye's Chicken, right?

A. (Respondent Ugarte) Right.

Q. And you did that, parked right there in front of him at a T without a radio call, a request from Popeye's, any information as to Mr. Hope, any information as to that vehicle's history other than sitting there. That's where you put your vehicle in front of his in that parking lot, right?

A. Yes, I did.

Q. Before you pulled up, he could have driven straight ahead out of his spot, right?

A. Before he pulled -- before I arrived?

Q. Yes.

A. Yes.

Q. After you pulled up, he certainly could not, right?

A. Well, it depends how he drives.

Q. Sir, if he drove straight out of his spot after you pulled up, he'd have broadsided you and hit you right in the middle of that car, right?

A. Well, he would have made a left turn and went around the vehicle.

Q. Okay. That's good.

In order to get around the vehicle, he would have to make a left turn and go around the back side of the vehicle just to be able to get out and go on his way, right?

A. Well, I mean, not necessarily just --

Q. That's what you've just said, right?

A. Well, I mean, well, turn.

Q. All right. And you can see there are plenty of other

parking spaces around for you to choose from even just in that lot when you pulled right there in front of him, right?

A. Yes.

Although Respondent testified that Hope could have possibly maneuvered around Respondents' SUV to exit the parking lot, Respondent never testified that Hope was "free to leave." Nor did his testimony amount to "words to that effect." The Superintendent's contention and Respondent's actual testimony are markedly different from one another. Respondent testified that Hope could have maneuvered out of his parking spot – not that Hope was free to do so.

For this reason, the Board finds Respondent not guilty of the charges set forth in Specification No. 6.

Charges Against Respondent St. Clair

13. Police Officer Michael St. Clair II, Star No. 15527, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 1:

On or about August 2, 2010, Officer Michael St. Clair falsely stated in an interview with the Independent Police Review Authority ("IPRA") during IPRA's investigation into the fatal shooting of William Hope, that Officer Ugarte's upper body was in William Hope's vehicle when Officer St. Clair fired four shots at Hope, and/or that Officer Ugarte did not get out of Hope's car until after the shots were fired, or made statements to that effect. Officer St. Clair 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-12 above, which are incorporated here by reference.

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As with several of the specifications against Respondent Ugarte, the Superintendent does not quote from St. Clair's testimony – the Superintendent draws conclusions about his testimony by putting together other statements St. Clair made. St. Clair reported to IPRA investigators that when St. Clair fired at Hope, Ugarte was reaching into Hope's car. St. Clair also reported that Ugarte was able to get out of the car after St. Clair fired the shots. The Superintendent condensed these two statements to conclude that St. Clair, in effect, testified that Ugarte's upper body was in Hope's vehicle when St. Clair fired all four shots. As stated previously in our findings as to Respondent Ugarte, the Board is troubled that the Superintendent draws conclusions when representing what Respondent "stated" rather than quoting or paraphrasing actual statements he made. Nonetheless, the Board finds that the Superintendent proved that by combining Respondent's actual statements to the IPRA investigators, he in essence made the statement as charged.

The Board finds, however, finds St. Clair not guilty for the same reasons set forth in Specification Nos. 2, 3, and 4 pertaining to Respondent Ugarte. While Haji Bryant's testimony and the Popeye's video footage establish that Respondent St. Clair's statement was false, the same testimony and video footage corroborates both Respondents' statements about the shooting in every other way -- most importantly, that Ugarte had been stuck in the window the moment before St. Clair fired the shots. As with Respondent Ugarte, the Board finds that even if Respondent St. Clair was mistaken about the exact moment Ugarte freed himself, everything happened so quickly that he could have reasonably perceived Ugarte was still stuck. The Superintendent did not sustain his burden of proof by showing St. Clair perceived otherwise and lied about it. Additionally, the Superintendent never established that Respondents had an adequate opportunity to get their stories straight to create a false narrative.

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Because the Superintendent failed to prove by a preponderance of the evidence that Respondent St. Clair knew his statement to be false, The Board finds Respondent not guilty of the charges set forth in Specification No.1.

14. Police Officer Michael St. Clair II, Star No. 15527, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 2:

On or about November 18, 2011, Officer St. Clair falsely testified during his deposition in case number 10 C 5076 by making one or more statements to the effect that Officer Ugarte was inside William Hope's vehicle when Officer St. Clair fired his weapon at Hope, and/or that Officer Ugarte was able to remove himself from Hope's vehicle only after Officer St. Clair discharged his weapon. Officer St. Clair 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-13 above, which are incorporated here by reference.

The Superintendent proved that Respondent St. Clair testified in his deposition that Ugarte was inside of Hope's car when St. Clair fired. However, for the same reasons the Board finds Respondent not guilty of the charges set forth s in Specification No. 1, the Board finds him not guilty here.

15. Police Officer Michael St. Clair II, Star No. 15527, is **not guilty** of violating Rules 2 and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 3:

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On or about October 29, 2012, in the United States District Court, Northern District of Illinois, case number 10 C 5076, Officer St. Clair falsely testified by making one or more statements to the effect that Officer Ugarte's upper body was inside William Hope's vehicle while Officer St. Clair fired four shots at Hope, and/or that Officer Ugarte did not get out of the vehicle until after Officer St. Clair had fired four shots. Officer St. Clair 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 14, which prohibits making a false report, written or oral.

See the findings set forth in Section Nos. 5 and 7-14 above, which are incorporated here by reference.

The Superintendent succeeded in establishing that St. Clair testified at trial to the initial statement alleged in this specification. However, for the same reasons Board finds Respondent not guilty of the charges in Specifications 1 and 2, Respondent is not guilty of the charges set forth in Specification No. 3.

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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 a vote of 8 in favor (Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareil  Cusack, Nanette Doorley, Michael Eaddy, and Andreas Safakas) to 0 opposed, the Board **denies** Respondents' Motion to Dismiss the charges.

By a vote of 6 in favor (Wolff, Block, Carr-Favors, Cusack, Doorley, and Safakas) to 2 opposed (Foreman and Eaddy), the Board finds Respondent Ugarte **not guilty** of the charges in Specification No. 1.

By votes of 5 in favor (Block, Carr-Favors, Cusack, Doorley, and Safakas) to 3 opposed (Foreman, Wolff, and Eaddy), the Board finds Respondent Ugarte **not guilty** of the charges in Specification Nos 2 – 6.

By votes of 5 in favor (Block, Carr-Favors, Cusack, Doorley, and Safakas) to 3 opposed (Foreman, Wolff, and Eaddy), the Board finds Respondent St. Clair **not guilty** of the charges in Specification Nos 1 – 3.

NOW THEREFORE, IT IS HEREBY ORDERED that Police Officer Armando Ugarte, Star No. 15050, as a result of having been found not guilty of all charges in Police Board Case No. 22 PB 3009, be and hereby is restored to his position as a police officer and to the services of the City of Chicago, with all rights and benefits, effective November 23, 2022, (the

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date he was suspended upon the filing of charges).²

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF OCTOBER, 2023.

Attested by:

/s/ STEVEN BLOCK
Board Member

/s/ MAREILÉ CUSACK
Board Member

/s/ MAX A. CAPRONI
Executive Director

² Police Officer Michael St. Clair II was not suspended upon the filing of charges with the Police Board. He remained an active member of the CPD while this case was pending before the Board.

DISSENT

We respectfully dissent from the majority's findings that Respondents are not guilty of all charges. We find that the Superintendent presented sufficient evidence to prove that Respondents by made willful, materially false statements in violation of Rules 2 and 14.

We do not condone the Superintendent's exceedingly long delay in filing these charges. We find, however, that the passage of time did not dilute the Superintendent's evidence, nor did it mitigate the seriousness of Respondents' misconduct.

Though we understand that justification is not at issue in this case, we find it more likely than not that Respondents intentionally shaped their statements and testimony to shield themselves from civil or administrative liability for shooting Hope.

First, we believe that Respondent Ugarte willfully and falsely reported to Detective Johnson that Ugarte stopped or pulled over before entering the parking lot, as reflected on Detective Johnson's GPR. The Popeye's surveillance video footage shows that Ugarte drove Respondents' SUV eastbound down 75th Street and turned into the lot, without stopping.

Second, Ms. Bryant's testimony, the Popeye's video footage, and scene photos taken after the shooting, prove Respondent Ugarte willfully and falsely reported he did not intend to block Hope's car with the SUV. The evidence clearly established that Ugarte parked at a T in front of Hope's car and that Hope was unable to get around the SUV to leave the lot. We do not find Ugarte's testimony that he parked in that manner to announce Respondents' police presence credible.

Third, we agree with the majority that the Superintendent proved by a preponderance of the evidence that both Respondents falsely reported that Ugarte freed himself from the window before St. Clair shot Hope. However, we disagree with the majority's finding that the

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Superintendent failed to prove Respondents knew their statements were false when they made them. We find it difficult to believe that St. Clair would have risked his partner's life by firing at Hope, knowing Ugarte was still stuck within the vehicle. We find it more likely than not that Respondents both knew Ugarte had cleared Hope's car prior to shooting him.

For these reasons, the Superintendent proved Respondents guilty of violating Rules 2 and 14.

GHIAN FOREMAN

PAULA WOLFF

MICHAEL EADDY

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2023.

LARRY SNELLING
Superintendent of Police