

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER MARC A. JAROCKI, STAR No. 2778,) **No. 21 PB 2997-1**
AND)
POLICE OFFICER MICHAEL R. KELLY, STAR No. 6950,) **No. 21 PB 2997-2**
DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1072311)**
RESPONDENTS.)

FINDINGS AND DECISIONS

On August 25, 2021, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Marc A. Jarocki, Star No. 2778, and Police Officer Michael R. Kelly, Star No. 6950 (“Respondents”), recommending that each Respondent be discharged from the Chicago Police Department (“CPD”) for violating CPD’s Rules of Conduct.

A hearing on the charges against Respondents took place before Hearing Officer Lauren A. Freeman on March 22, 23, and 25, 2022. 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. Hearing Officer Freeman 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. Each Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. A copy of the charges filed, and a notice stating the date, place, and time the initial

status hearing would be held, were personally served upon 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.

Introduction

4. The charges against Respondents stem from an off-duty altercation that occurred in a parking garage located at 172 West Madison Street in Chicago on October 30, 2014. Before turning to the facts of this case, it is important to note that the Board finds inexplicable the nearly *seven* years it took to complete the investigation and file charges with the Police Board. The Board urges both CPD Internal Affairs and the City's Law Department going forward to make every effort to bring to timely conclusion all investigations of alleged misconduct.

After attending a morning trial preparation meeting at the City's Law Department at 30 N. LaSalle Street and having drinks at a Loop restaurant, Respondents and Sergeant Patrick Gilmore walked back to the Law Department and notified CPD that they had been released for the day. Respondents and Gilmore then walked to Respondent Jarocki's car in the parking garage and took the elevator to the 12th floor. As they exited the elevator, a group of men and women were in the vestibule just outside of the elevator yelling loudly at each other. One of the individuals in the group, now known as Joseph Baskins, pushed his way inside the elevator past the officers. Gilmore and Baskins exchanged words and Baskins followed the officers out of the elevator. As Respondent Jarocki began leading the other two officers up the ramp to his car, Baskins and Gilmore began fighting. Respondent Kelly saw Baskins throw punches so hard that Gilmore fell to the floor. As Baskins continued to punch Gilmore, Respondents saw Gilmore's head bounce repeatedly off the cement and he was rendered unconscious. Respondent Kelly then

pulled Baskins off of Gilmore and Baskins punched Kelly in the face, causing a laceration to Kelly's eye area that bled onto his clothes. Baskins and his group then fled the 12th floor area in a maroon SUV.

Respondents attempted to bring Gilmore back to consciousness while Gilmore bled from the laceration on the back of his head onto the floor. Gilmore regained consciousness as a group of civilian parkers congregated around the officers and the officers heard several of the civilians call 911. Neither CPD units nor paramedics entered the garage in response to the 911 calls. While in the garage, Respondents never identified themselves to anyone as Chicago police officers nor did they call 911 when no emergency personnel or responding units showed up.

Respondents and Gilmore got into Respondent Jarocki's car and as Jarocki drove down the ramp, he and Respondent Kelly noticed that Gilmore's gun was missing. Respondent Kelly then exited the car and searched the garage but could not find the gun. After calling a former supervisor, Respondents and Gilmore walked back to the Law Department's office where Respondent Kelly called 911 and reported only the fight, not the missing gun. When officers responded to the scene, Respondent Kelly reported that Gilmore's gun was missing.

Charges Against Respondent Jarocki

5. Police Officer Marc A. Jarocki, Star No. 2778, is **guilty** of violating Rules 2, 3, 5, and 21 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 1:

On or about October 30, 2014, at a parking garage located at or near 172 West Madison Street in Chicago, Officer Michael Kelly and/or Sergeant Patrick Gilmore were injured and/or battered, and/or Sergeant Gilmore's gun was taken and/or stolen during an altercation. Officer Jarocki failed to timely call 911 and/or otherwise notify the Chicago Police Department; and/or Officer Jarocki failed to render aid to Officer Kelly and/or Sergeant

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Gilmore; and/or Officer Jarocki relocated from the scene of the altercation. Officer Jarocki 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 5, which prohibits failing to perform any duty; and
- d. Rule 21, which prohibits failing to report promptly to the Department any information concerning any crime or other unlawful action.

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

Respondents violated Rules 5 and 21 by failing to promptly notify the Department that Gilmore's gun had been stolen—urgent information concerning a crime that potentially jeopardized public safety. When Respondents realized Gilmore's gun had been taken by a violent, potentially dangerous offender, they were duty-bound to promptly report the theft, either by calling 911 or by notifying their supervisors.

The fight between Baskins and Gilmore occurred at approximately 2:15 p.m. Respondents realized that Gilmore's gun was missing shortly after Gilmore regained consciousness. When Respondent Kelly called 911 from the Law Department's office nearly 45 minutes after the fight, he reported only that Gilmore had been jumped and was injured—not that Gilmore's gun was missing. It was not until responding units arrived at 30 N. LaSalle after 3:00 p.m. that Respondents formally reported that Gilmore's gun had been stolen. Even if the reporting delay was unintentional, the Board finds it unacceptable.

Respondents maintain that they satisfied Rule 21's prompt notification requirement when Respondent Kelly called their former supervisor, Sergeant Boyle, and told him about the missing

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gun. The Board disagrees. Boyle himself testified that the officers should have reported to their immediate supervisors, not Boyle. Boyle is a close personal friend of Respondent Kelly's and although Boyle had previously been Respondents' and Gilmore's supervisor, Boyle left their district in the early months of 2014 and had not supervised them for months. Respondent Kelly did not call Boyle to formally notify the Department about Gilmore's fight or stolen gun; he called to ask for advice about their situation. Boyle then provided that advice; he told Respondents to go somewhere safe, to get Gilmore to a hospital, and to call the Law Department attorneys. Boyle then took it upon himself to notify the Department. Respondents' informal call to Boyle did not pass muster when they knew that Gilmore's firearm was in dangerous hands. Respondents therefore violated Rules 5 and 21.

While the Board is not convinced that Respondents' failure to promptly notify the Department of Gilmore's stolen gun was intentional, Respondents' lack of prompt action nevertheless violated Rules 2 and 3. The comments to Rule 2 provide that the rule does not only apply to unlawful acts by Department members, "but also all acts, which although not unlawful in themselves, would degrade or bring disrespect upon the member or the Department." The comment to Rule 3 provides that Rule 3 covers "any omission or failure to act by any member of the Department... whether on or off duty," and can be violated by an officer's "carelessness and inefficiency," as well as by design. Here, the Board finds that even if Respondents' delay in notifying the Department about Gilmore's stolen gun was unintentional, their failure to act constituted a failure to promote the Department's public safety goals and brought discredit upon the Department.

While the evidence established that Respondents failed to adequately notify the Department about Gilmore's stolen gun, the Superintendent fell short of proving the other factual

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assertions in Specification No. 1. The Superintendent did not prove that Respondent Jarocki failed to render aid to either Gilmore or Respondent Kelly. Together, Respondents employed various first aid techniques to successfully bring Gilmore back to consciousness and Respondent Kelly's facial cut was not serious enough to necessitate Respondent Jarocki's help. The Superintendent also failed to prove that Respondents improperly left the garage. Respondents were in the garage for at least 25 minutes before walking back to the Corporation Counsel's office. They were aware that civilians had called 911 yet no units responded. Sergeant Boyle advised them to go somewhere safe and they took his advice by walking with Gilmore to a place of comfort and safety, right around the corner. Likewise, the Superintendent did not convince the Board that Respondents failed to make timely notifications about Gilmore's fight and injuries. The Superintendent essentially argued that Respondents delayed calling 911 and notifying the Department about the fight because they were concerned that they had called out late and had consumed alcoholic beverages while possibly still on the clock. Though plausible, the Board finds this argument without evidentiary support. The Board instead credits Respondents' explanations for why they did not call 911 or notify the Department about the fight. They heard civilians around them call 911 and reasonably believed that emergency vehicles and/or police personnel would arrive shortly. As they drove down the ramp and stopped to look for Gilmore's gun, they still had reason to believe that responding units would arrive at any moment. Although Gilmore had been unconscious and suffered obvious severe head injury, his condition appeared to improve, and he was able to walk back to the Law Department's office without Respondents' assistance. Respondents then called 911 to report the attack on Gilmore and during the call, Gilmore requests an ambulance. Respondents testified that with the benefit of hindsight, they wish that they had called 911 earlier to obtain assistance for Gilmore. When examining how

events unfolded, the Board understands why they did not.

Charges Against Respondent Kelly

6. Michael R. Kelly, Star No. 6950, is **not guilty** of violating Rules 2, 3, 5, 6, and 11 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 October 30, 2014, at or near 30 North LaSalle Street in Chicago, Officer Kelly called in to the Court Section and/or Operations Command to report for duty at an office of the City of Chicago Department of Law at approximately 9:00 a.m. Officer Kelly was released from and/or otherwise left the City of Chicago Department of Law at approximately 11:00 a.m. and thereafter went to Cactus Bar & Grill. Officer Kelly failed to call out and/or notify the Court Section and/or Operations Command of his approximately 11:00 a.m. release until approximately 2:00 p.m. Officer Kelly 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 5, which prohibits failing to perform any duty;
- d. Rule 6, which prohibits disobeying an order or directive, whether written or oral, to wit, Employee Resource E02-02-02 ("Payroll and Timekeeping-Overtime/Compensatory Time") eff. September 27, 1997; and/or
- 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.

The Superintendent failed to establish that the provisions of ER E02-02-02 applied to Respondent Kelly on October 30, 2014, or that Kelly had a duty to notify the Department of his comings and goings at all that morning.

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The version of Employee Resource (“ER”) E02-02-02 in effect on October 30, 2014, governed procedures for “Overtime/Compensatory Time.” Kelly did not request any overtime pay or compensatory time for attending the Law Department’s meeting that day.

Even if the ER applied to Department members who did not request overtime pay or compensation time, the Superintendent did not establish that Respondent Kelly would have been bound by its provisions while on furlough. Section IV-C of the now rescinded ER provided, “When a Department member *must* appear in court... the member will... notify [the Department] ...when the court appearance is completed.” (Emphasis supplied) The Superintendent provided no evidence that Respondent Kelly, while on furlough, was *required* to appear at the Law Department’s Office that day. His testimony was un rebutted that he attended the Law Department meetings voluntarily.

The Superintendent likewise failed to show how Respondent Kelly’s three-hour call-out delay reflected incompetence or inefficiency, was inconsistent with his duties as a police officer, reflected poorly upon the Department, or deviated from the Department’s policies and goals. The Superintendent’s Specification infers that because Respondent Kelly forgot to call out when released by the City’s attorneys, he was technically still on-duty while consuming alcohol at the Cactus Bar and Grill. As stated previously, the Superintendent provided insufficient evidence that Respondent Kelly was on-duty at all that day and did not cite to any CPD rules or regulations that prohibited Respondents from consuming alcohol while off-duty. The Superintendent did not meet his burden of proving Respondent Kelly guilty of Rules 2, 3, 5, 6, and 11.

7. Michael R. Kelly, Star No. 6950, is **guilty** of violating Rules 2, 3, 5, and 21 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 2:

On or about October 30, 2014, at a parking garage located at or near 172 West Madison Street in Chicago, Sergeant Patrick Gilmore was injured and/or battered, and/or Sergeant Gilmore's gun was taken and/or stolen during an altercation. Officer Kelly failed to timely call 911 and/or otherwise notify the Chicago Police Department and/or Officer Kelly relocated from the scene of the altercation. Officer Kelly 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 5, which prohibits failing to perform any duty; and
- d. Rule 21, which prohibits failing to report promptly to the Department any information concerning any crime or other unlawful action.

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

By failing to promptly notify the Department that Baskins had stolen Gilmore's gun, Respondent Kelly failed to perform his duty to protect the citizens of Chicago and brought discredit upon the Department. For the same reasons enunciated in Section No. 5 pertaining to Respondent Jarocki, the Board finds that Respondent Kelly violated Rules 2, 3, 5, and 21.

Disciplinary Action for Respondent Jarocki

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

Respondent Jarocki became a Chicago police officer in October 2002. A retired CPD

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captain who supervised Respondent Jarocki in the Alternate Response Unit testified about his passionate work ethic, dedication to service, dependability, and trustworthiness. A fellow police officer and friend testified about Respondent Jarocki's tireless volunteer work for a local charity. Respondent Jarocki also presented five letters of support, including one from his former sergeant. Respondent Jarocki's CPD complimentary history consists of 113 total awards, including one Unit Meritorious Performance Award, two Department Commendations, 96 Honorable Mentions, and five Attendance Recognition Awards; there are no sustained complaints on his disciplinary history report.

Despite Respondent Jarocki's impressive work ethic and community involvement, on October 30, 2014, he disregarded his sworn duty to serve and protect the citizens of Chicago. "The responsibility for the proper performance of a member's duty, whether he be on or off duty, lies primarily with the member himself. A member carries with him, at all times, the responsibility for the safety of the community. He discharges that responsibility by the faithful and dedicated performance of his assigned duty and an immediate and intelligent response to emergency. Anything less violates the trust placed in him by the community, and nothing less qualifies as professional conduct."¹ When Respondent Kelly's search for the gun came up empty, Respondent Jarocki knew that the gun was ostensibly in the hands of the man who violently attacked Gilmore. This was an emergency requiring an immediate and professional response to protect the public. Although off-duty, he still bore the responsibility to safeguard the community and to promptly report the gun theft to the Department. The Board believes, however, that this act of misconduct, especially in light of his admirable employment history and character, does

¹ CPD Rules and Regulations, Article I, Section B (18)

not warrant discharge from the Department.

Based on the nature of Respondent Jarocki's conduct, the evidence he presented in mitigation, and his record and years of service to the Department, the Board finds that a suspension of thirty (30) days is an appropriate penalty based on the facts of this particular case.

Disciplinary Action for Respondent Kelly

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

Respondent Kelly became a Chicago police officer in December 2000. In addition, he has served 33 years in the U.S. Army, both in active duty and in the Reserves, and has served combat tours in many countries. He is currently a Brigade Commander Sergeant Major in the Illinois National Guard.

A retired CPD commander who as a sergeant and lieutenant supervised Kelly on a tactical team testified about Respondent Kelly's strong yet humble leadership qualities and tremendous work ethic. Respondent Kelly's former commander in the Illinois National Guard testified that he was deployed with Kelly to Iraq, and that Kelly exemplified the Guard's values of honor, integrity, and courage. Kelly's wife described Kelly as a great role model for their children and spoke of his kindness, dedication as a police officer, and love for Chicago and its citizens. Respondent Kelly also presented five letters of support and military records that include two Bronze Stars he received for his service in Iraq. His CPD complimentary history consists of 73 total awards, including three Department Commendations, 50 Honorable Mentions, four Attendance Recognition Awards, and eight emblems of recognition for physical fitness; there are no sustained complaints on his disciplinary history report.

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Despite Respondent Kelly's impressive work ethic and committed service to our country, on October 30, 2014, he disregarded his sworn duty to serve and protect the citizens of Chicago. "The responsibility for the proper performance of a member's duty, whether he be on or off duty, lies primarily with the member himself. A member carries with him, at all times, the responsibility for the safety of the community. He discharges that responsibility by the faithful and dedicated performance of his assigned duty and an immediate and intelligent response to emergency. Anything less violates the trust placed in him by the community, and nothing less qualifies as professional conduct."² When Respondent Kelly's search for the gun came up empty, he knew that the gun was ostensibly in the hands of the man who violently attacked Gilmore. This was an emergency requiring an immediate and professional response to protect the public. Although off-duty, he still bore the responsibility to safeguard the community and to promptly report the gun theft to the Department. The Board believes, however, that this act of misconduct, especially in light of his admirable employment history and character, does not warrant separation from the Department.

Based on the nature of Respondent Kelly's conduct and the evidence he presented in mitigation, the Board finds that a suspension of thirty (30) days is appropriate disciplinary action on the facts of this particular case.

² CPD Rules and Regulations, Article I, Section B (18)

POLICE BOARD DECISIONS

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.

Respondent Marc Jarocki

By a vote of 7 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Michael Eaddy, Steve Flores, and Andrea L. Zopp) to 0 opposed, the Board finds Respondent **guilty** of the charges as set forth in Section No. 5 above.

As a result of the foregoing and for the reasons set forth in Section No. 8 above, the Board, by a vote of 6 in favor (Wolff, Block, Cusack, Eaddy, Flores, and Zopp) to 1 opposed (Foreman), hereby determines that cause exists for suspending Respondent 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 thirty (30) days.

NOW THEREFORE, IT IS HEREBY ORDERED that Police Officer Marc A. Jarocki, Star No. 2778, as a result of having been found **guilty** of charges in Police Board Case No. 21 PB 2997-1, be and hereby is **suspended** from his position as a police officer with the Department of Police and from the services of the City of Chicago, for a period of thirty (30) days, from September 1, 2021 (the date he was suspended upon the filing of charges) to and including September 30, 2021. **IT IS FURTHER ORDERED** that Officer Jarocki be and hereby is restored to his position as a police officer with all rights and benefits effective October 1, 2021.

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This disciplinary action is adopted and entered by a majority of the members of the Police Board: Paula Wolff, Steven A. Block, Mareil  B. Cusack, Michael Eaddy, Steve Flores, and Andrea L. Zopp.

Respondent Michael R. Kelly

By votes of 7 in favor (Foreman, Wolff, Block, Cusack, Eaddy, Flores, and Zopp) to 0 opposed, the Board finds Respondent Kelly **guilty** of the charges in Specification No. 2 and **not guilty** of the charges in Specification No. 1 as set forth in Section Nos. 6 and 7 above.

As a result of the foregoing and for the reasons set forth in Section No. 9 above, the Board, by a vote of 6 in favor (Wolff, Block, Cusack, Eaddy, Flores, and Zopp) to 1 opposed (Foreman), hereby determines that cause exists for suspending Respondent 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 thirty (30) days.

NOW THEREFORE, IT IS HEREBY ORDERED that Police Officer Michael R. Kelly, Star No. 6950, as a result of having been found **guilty** of the charges in Police Board Case No. 21 PB 2997-2, be and hereby is **suspended** from his position as a police officer with the Department of Police and from the services of the City of Chicago, for a period of thirty (30) days, from September 1, 2021 (the date he was suspended upon the filing of charges) to and including September 30, 2021. **IT IS FURTHER ORDERED** that Officer Kelly be and hereby is restored to his position as a police officer with all rights and benefits effective October 1, 2021.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Paula Wolff, Steven A. Block, Mareil  B. Cusack, Michael Eaddy, Steve Flores, and Andrea L. Zopp.

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DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21ST DAY
OF JULY, 2022.

Attested by:

/s/ PAULA WOLFF
Vice President

/s MAX A. CAPRONI
Executive Director

DISSENT

I concur with the majority's findings on the charges, but dissent from the decision to suspend each Respondent for thirty days. Based on the serious threat to public safety that resulted from Respondents' failure to promptly report the missing gun, I find that a longer suspension of each Respondent is a more appropriate penalty in this case.

GHIAN FOREMAN

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THESE FINDINGS AND DECISIONS

THIS ____ DAY OF _____, 2022.

DAVID O. BROWN
Superintendent of Police