

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
)	
POLICE OFFICER BRIAN MURPHY,)	No. 10 PB 2726
STAR No. 19036, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	
POLICE OFFICER JASON ORSA,)	No. 10 PB 2727
STAR No. 5350, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	
POLICE OFFICER DANIEL McNAMARA,)	No. 10 PB 2728
STAR No. 7766, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	
SERGEANT LOUIS DANIELSON,)	No. 10 PB 2730
STAR No. 1406, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	(CR No. 311881)
RESPONDENTS)	

FINDINGS AND DECISIONS

On July 2, 2010, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Brian Murphy, Star No. 19036, Police Officer Jason Orsa, Star No. 5350, and Police Officer Daniel McNamara, Star No. 7766, recommending that they each be discharged from the Chicago Police Department for violating various Rules of Conduct.

On August 3, 2010, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Sergeant Louis Danielson, Star No. 1406, recommending that he be suspended from the Chicago Police Department for sixty (60) days for violating various Rules of Conduct.

Thomas E. Johnson, Hearing Officer of the Police Board, ordered the four cases consolidated for hearing. The Police Board caused a hearing on the charges against the four Respondents to be had before Hearing Officer Johnson on November 16, November 18, December 10, and December 17, 2010, and January 4, 2011.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decisions.

POLICE BOARD FINDINGS

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

1. Respondents Murphy, Orsa, and McNamara were at all times mentioned herein each employed as a police officer by the Department of Police of the City of Chicago, and Respondent Danielson was at all times mentioned herein employed as a sergeant of police by the Department of Police of the City of Chicago.
2. The charges were filed in writing and a Notice, stating the time, date, and place, when and where a hearing on the charges was to be held, together with a copy of the original charges, were served upon each Respondent more than five (5) days prior to the hearing on the charges.
3. Throughout the hearing on the charges each Respondent appeared in person and was represented by legal counsel.

4. The Respondents' Motion to Strike and Dismiss is **denied** for the reasons set forth below. The four Respondents allege that the four-year and three-month delay between the March 24, 2006, incident and the July 2010 suspensions of Officers Murphy, Orsa and McNamara requires dismissal. They offer four separate theories:

a. Due Process. Citing *Morgan v Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v Department of Children and Family Services*, 209 Ill.2d 264, 807 NE2d 423 (2004), the Respondents claim that the constitution precludes such a lengthy delay in the investigation of the Respondents' alleged misconduct. *Morgan* and *Lyon*, however, involved delay in *adjudication* of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

Respondents' cases before the Police Board are different, as the Respondents are complaining about the length of the investigation, not the time it took to try them once they were suspended in July of 2010. The difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, and then have them sit for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the officers were working during the entire four-year, three-month period of the investigation. They therefore cannot assert a due-process claim related to the length of the investigation, for the Due Process clause

precludes a state or local government from “depriving any person of life, liberty or property [i.e. a public job] without due process of law.”

b. Laches. Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. The Respondents cite *People v McClure*, 218 Ill.2d 375, 843 NE2d 308 (2006), where the Illinois Supreme Court declined to apply laches against a DUI defendant who waited a year to challenge the statutory summary suspension of his driving privileges. The court found no evidence of prejudice stemming from the delay in filing his petition.

Here, the Respondents argue that they were not notified of the allegations against them until April of 2007, over a year after the incident. They contend that they could have found patrons of Taco Burrito King to rebut Shawn Nelson and Joseph Mularczyk on the critical issue of whether Obed DeLeon entered the premises making threats against the police officers. They also contend that the responding officers and the accused officers would have had a better memory of what happened if their statements were taken promptly after the incident.

Private parties and public agencies are not on an equal footing when it comes to application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. The reason is that important public interests, e.g. regulating the use of force by police officers, could be compromised by public employees who are simply negligent or inattentive. The key though is whether the party seeking laches, here the Respondents, have been

prejudiced by delay in their case, or is the opportunity lost merely speculation on their part. See *Forberg v Board of Fire and Police Commissioners of the City of Markham*, 40 Ill.App.3d 410, 352 NE2d 338 (1st Dist. 1976) (suggesting that laches is inappropriate in police board settings unless the case turns solely on witness recollection).

The Superintendent never really explains what lies behind the lengthy four-year, three-month delay in bringing this case. Rather, the Superintendent argues that this is not a witness-recollection case, but rather one involving a video-recording of the incident and a number of witness statements taken close in time to the actual incident.

The Respondents' alleged prejudice in this matter is speculative. For example, even if they were advised of the allegations within thirty days, could they really have tracked down any of the patrons in the Taco Burrito King? If they were notified of the allegations within sixty days, would the responding officers really have remembered the details (e.g. whether any of the officers mentioned they were Chicago police officers)? The evidence here of prejudice is not strong enough to estop a public agency from enforcing Police Department rules of conduct.

c. General Order 93-03. The Respondents argue that the Police Department's own General Order requires prompt investigation, within thirty days. The Superintendent points out, however, that this thirty-day deadline can be extended by request of the investigator, and here twenty-three extensions of time were granted to the investigator because the case was so complicated. Moreover, the investigation was re-opened on a number of occasions by superiors so the investigator could run down additional information. There was no substantial violation of the General Order on account of the extensions.

d. Municipal Code Section 2-57-070. The Code provides that the Chief Administrator of

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the Independent Police Review Authority (IPRA) must conclude an investigation within six months or else report the reasons for not concluding it to the Mayor, the City Council, the complainant and the officer. The Respondents state that this investigation went way beyond six months but they never received a report from IRPA about the investigation.

The Superintendent states that Section 2-57-070 was not adopted until July 19, 2007, long after this investigation began, and that there is nothing in the IRPA ordinance that makes it retroactive, so this reporting requirement does not apply to the present case. The Board agrees with this construction of the Code.

In any event, neither Section 2-57-070 nor anything else in the Code states that dismissal of a Police Board case is the sanction for failing to make the report to the Mayor, the City Council, and others. It is unpersuasive that such an extreme sanction would automatically follow, particularly where the alleged misconduct under investigation is as serious as it is here. Without any authority, and none is cited by the Respondents, there is no basis for the Board to dismiss the charges pursuant to Section 2-57-070.

5. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, disrespected and/or maltreated Obed DeLeon when he punched and/or kicked Obed DeLeon about the head and/or body, and/or directed profanities at Obed DeLeon, thereby impeding the

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Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

There is no dispute in this case that Officer Murphy pulled his weapon on Obed DeLeon and rammed him into the wall of the Taco Burrito King. The surveillance video of the incident captures not only this event but Officer Murphy's subsequent participation in the pummeling of Mr. DeLeon at the restaurant. Officer Murphy's principal defense is that Mr. DeLeon was verbally threatening him, his companions, and everyone in the restaurant with taunts about his Spanish Cobra affiliation, and threats that he was a "cop-killer" and was ready to "cap someone." Officer Murphy also contends that Mr. DeLeon flashed a gang sign and suggested he was armed because his hand was in his pocket during part of the time he was talking.

The Board finds, however, that Mr. DeLeon did not threaten Officer Murphy, any of the other Respondents, or anyone else in the restaurant. The Board credits the disinterested and very compelling testimony of independent witnesses Shawn Nelson and Joseph Mularczyk, who testified that Mr. DeLeon did not act or speak in a threatening manner to anyone in the restaurant. Rather, the Board finds that Officer Orsa caused the situation to escalate—the Board credits the testimony of Messrs. Nelson and Mularczyk that Officer Orsa stated to Mr. DeLeon "What if I'm that asshole?" Messrs. Nelson and Mularczyk were in close proximity to Mr. DeLeon and the Respondents, had ample opportunity to observe what transpired and hear what DeLeon and the Respondents said in the restaurant, and had little incentive to lie or exaggerate their testimony. The Board finds Nelson's and Mularczyk's demeanor on the witness stand, despite rigorous cross-examination, to be very credible. Nor does the surveillance video support Officer Murphy's claim of a threat. While it is clear that Mr. DeLeon was addressing the restaurant and later the Respondents, and further that he was upset (apparently about the car parked blocking the

entrance to the restaurant parking lot) DeLeon's body movements and the response of others in the restaurant are not consistent, in the Board's judgment, with the kind of threats to which Officer Murphy, as well as Officers McNamara and Orsa, testified. Nor was there any evidence that Mr. DeLeon was armed or accompanied by gang members or other allies. In order to find Officer Murphy guilty of this and other charges, the Board does not have to rely upon, and does not rely upon, the testimony of Mr. DeLeon.

In further support of its finding that there was no threat by Mr. DeLeon, the Board notes that the Case Report that includes a narrative section completed with information provided by Matthew Walsh (in evidence as Superintendent ex. no. 11) does not mention any threat, that the surveillance video does not clearly or even reasonably document that a gang sign was given, and finally that the actions of Officer Murphy and his colleagues are not consistent with the presence of a threat, as they go sit near Mr. DeLeon as he is supposedly making these threats. Most importantly, the decision of Officers Murphy, McNamara, and Orsa to leave the premises and not provide information to the responding Chicago police officers about Mr. DeLeon's supposed threats (including threats to kill officers) seriously undermines the credibility of their testimony.

The Respondents did offer the testimony of Mr. Walsh to support their claim of a threat, but the Board finds Mr. Walsh's testimony to be completely incredible. He claimed that Mr. DeLeon started the altercation by punching him, when the surveillance video clearly shows that is a lie. He signed complaints against not only Mr. DeLeon but also against Messrs. Nelson and Mularczyk, accusing them of criminal conduct, when he had no contact with them whatsoever. Moreover, he was badly impeached in his testimony. The officers also offered the testimony of Investigator David O'Callaghan, whom they had hired to investigate the case. Mr. O'Callahan

said that the security guard on the scene, Len Villareal, told him that Mr. DeLeon was being very aggressive and that he would have responded as the officers did to Mr. DeLeon. Mr. Villareal, however, on direct examination testified that he was in the restaurant but did not hear any threats from Mr. DeLeon, and that no patron approached him after hearing threats or feeling threatened. The Board therefore finds that Mr. Villareal's testimony does not, on balance, support that of the Respondents.

In sum, the Board finds that Officer Murphy did not take action to control a volatile situation, but rather the evidence, taken as a whole, shows that Officer Murphy's decision to pull his gun on Mr. DeLeon was not only unwarranted but created a serious danger for Mr. DeLeon, the respondent officers, and the patrons in the restaurant. Murphy's decision, and that of Officers McNamara and Orsa, to leave the scene without explaining what had transpired to responding officers, after creating a dangerous situation, did a disservice to the Chicago Police Department, as well as to all of those on the scene that night, including Messrs. Nelson and Mularczyk who were arrested for no reason whatsoever.

6. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, engaged in an unjustified verbal and/or physical altercation with Obed DeLeon when he used and/or displayed his weapon at Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

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See the findings set forth in paragraph no. 5 above, which are adopted here.

7. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty**
of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its
policy and goals or brings discredit upon the Department,

in that:

Count III: On or about March 24, 2006, Police Officer Brian Murphy disobeyed an order or
directive, whether written or oral, in that he failed to complete and/or submit a Tactical
Response Report, thereby impeding the Department's efforts to achieve its policy and goals
and/or bringing discredit upon the Department.

There is no dispute in this case that Officer Murphy, as well as Officers McNamara and
Orsa, failed to complete or submit a Tactical Response Report regarding the incident with Mr.
DeLeon. Nor did any of these officers report, orally or in writing, to any superior in any way,
their actions at the Taco Burrito King on March 24, 2006. Officers Murphy, McNamara, and
Orsa say that they felt a Tactical Response Report was not required because they were off duty.
They all conceded, however, that they were mistaken and that the obligation to complete such a
Report applies whether the officer is on duty or off duty. The Department's General Order 02-08-
05 is clear that a Tactical Response Report is required even if the officer is off duty and therefore
Officers Murphy, McNamara, and Orsa all breached their duty in this regard.

8. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty**
of violating, to wit:

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Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count IV: On or about March 24, 2006, Police Officer Brian Murphy disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed to immediately notify a supervisor and prepare a written report to the commanding officer, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The findings set forth in paragraph 5 above establish that Officers Murphy, Orsa, and McNamara all engaged in misconduct and Officer Murphy concedes that he failed to make any report, of any kind, to a superior regarding his actions or the actions of his fellow officers at the Taco Burrito King on March 24, 2006. Officer Murphy, as well as Officers McNamara and Orsa, are thus clearly guilty of this charge.

9. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count V: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, failed to take proper police action when he failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical actions he took against Obed DeLeon, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer Murphy does not dispute that he left the Taco Burrito King premises without informing the responding officers of the actions he took against Mr. DeLeon and without

reporting his physical altercation with Mr. DeLeon. Indeed, he does not deny that he failed to tell the responding officers that they were dealing with what Officer Murphy claims is a cop-killer who was bent on killing police officers. He also does not deny that he failed to inform the responding officers that no search was conducted of Mr. DeLeon. Officer Murphy does say that he spoke to Officer Bukowski, who told him to go outside. Officer Murphy did this but then concedes he left without further talking to Officer Bukowski or anyone else on the scene. The Board credits Officer Bukowski's testimony over that of Officer Murphy in any event. Officer Bukowski, who was in the middle of a full-scale melee, does not indicate that anyone identified themselves as off-duty police officers; he further testified that he wanted to separate the combatants so that the matter could be sorted out after Mr. DeLeon was under control. As such, the Board has ample evidence on which to find Officer Murphy guilty of this charge.

10. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count VI: On or about April 10, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), Police Officer Brian Murphy made a false report to Investigator Galindo, in that Officer Murphy stated that he could not recall the officers' names that were with him on March 24, 2006, or words to that effect, and/or Officer Murphy stated that Obed DeLeon threatened him, or words to that effect, and/or Officer Murphy stated that Obed DeLeon kept reaching into his waistband, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board finds that Officer Murphy made a false statement when he told the Office of Professional Standards (OPS), now the Independent Police Review Authority (IPRA), that Mr. DeLeon had threatened him. See the findings set forth in paragraph no. 5 above, which are adopted here. The Board finds that Officer Murphy did not make a false statement when, in 2007, he stated he could not recall the other officers with him. In a 2009 statement to IPRA, after he had an opportunity to review photos taken on the night of March 24, 2006, by the security camera, Officer Murphy readily identified Officers Orsa and McNamara. The Board also does not find that Officer Murphy made a false statement when he told OPS that Mr. DeLeon was reaching into his waistband, as the surveillance video makes it clear that Mr. DeLeon did have his hand in his pocket prior to the altercation. As the charge presents the three different false statements as alternatives, and Officer Murphy is guilty of one of the false statements, the Board finds him guilty of this charge.

11. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count VII: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, unlawfully and/or unnecessarily used and/or displayed his weapon at Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are adopted here.

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12. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count VIII: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, by his overall action and conduct brought discredit upon the Department.

See the findings set forth in paragraph nos. 5, 7, 8, and 9 above, which are adopted here.

13. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

Count I: On or about March 24, 2006, Police Officer Brian Murphy disobeyed an order or directive, whether written or oral, in that he failed to complete and/or submit a Tactical Response Report, in violation of General Order 02-08-05, Section III-A.

See the findings set forth in paragraph no. 7 above, which are adopted here.

14. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

Count II: On or about March 24, 2006, Police Officer Brian Murphy disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed

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to immediately notify a supervisor and prepare a written report to the commanding officer, in violation of General Order 93-03-02B, Section II-B.

See the findings set forth in paragraph no. 8 above, which are adopted here.

15. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, disrespected and/or maltreated Obed DeLeon when he punched and/or kicked Obed DeLeon about the head and/or body, and/or directed profanities at Obed DeLeon.

See the findings set forth in paragraph no. 5 above, which are adopted here.

16. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, engaged in an unjustified verbal and/or physical altercation with Obed DeLeon when he used and/or displayed his weapon at Obed DeLeon.

See the findings set forth in paragraph no. 5 above, which are adopted here.

17. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

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Rule 10: Inattention to duty,

in that:

Count I: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, failed to take proper police action when he failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical actions he took against Obed DeLeon, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby being inattentive to duty.

See the findings set forth in paragraph no. 9 above, which are adopted here.

18. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count II: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, failed to take proper police action when he failed to stop Police Officer Jason Orsa from punching and/or kicking Obed DeLeon about the head and/or body, thereby being inattentive to duty.

The surveillance video clearly shows Officer Orsa kicking Mr. DeLeon while Mr. DeLeon is down on the ground. Joseph Mularczyk testified that he witnessed Officer Orsa kick Mr. DeLeon, and Shawn Nelson testified that Mr. DeLeon was being kicked and punched by the various people who had attacked him. While Officer Orsa claims his kicks were a defensive maneuver, he called no expert in the use of force to support this testimony, and the surveillance video and Officer Orsa's failure to complete a Tactical Response Report or otherwise report his use of force belie his testimony. Officer Murphy, who himself was engaged in the attack on Mr.

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DeLeon, did nothing to stop Officer Orsa from kicking Mr. DeLeon while he was down, despite being on top of Mr. DeLeon.

19. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

On or about April 10, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), Police Officer Brian Murphy made a false report to Investigator Galindo, in the Officer Murphy stated that he could not recall the officers' names that were with him on March 24, 2006, or words to that effect, and/or Officer Murphy stated that Obed DeLeon threatened him, or words to that effect, and/or Officer Murphy stated that Obed DeLeon kept reaching into his waistband, or words to that effect.

See the findings set forth in paragraph no. 10 above, which are adopted here.

20. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department,

in that:

On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, failed to report to the Department his involvement in the altercation with Obed DeLeon, and/or he failed to report Police Officer Jason Orsa's involvement in the altercation with Obed DeLeon, and/or he failed to report Police Officer Daniel McNamara's involvement in the altercation with Obed DeLeon, thereby failing to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

See the findings set forth in paragraph nos. 8 and 9 above, which are adopted here.

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21. Respondent **Police Officer Brian Murphy**, Star No. 19036, charged herein, is **guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

in that:

On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Brian Murphy, while off duty, unlawfully and/or unnecessarily used and/or displayed his weapon at Obed DeLeon.

See the findings set forth in paragraph no. 5 above, which are adopted here.

22. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Jason Orsa punched and/or kicked Obed DeLeon about the head and/or body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department..

The surveillance video clearly shows Officer Orsa kicking Mr. DeLeon while Mr. DeLeon is down on the ground. Officer Orsa's only defense is that this was a defensive maneuver. However, he called no expert in the use of force to support this testimony, and the surveillance video and Officer Orsa's failure to complete a Tactical Response Report or otherwise report his use of force belie his testimony. See also the findings set forth in paragraph no. 18 above, which are adopted here.

23. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Jason Orsa failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical actions he took against Obed DeLeon, and/or he failed to identify the actual/correct victim(s) to the responding officers, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer Orsa claims that he identified himself as an off-duty officer in a brief conversation with a person in a blue shirt. The surveillance video suggests that this person was not, in fact, a responding officer. He also suggests that Officer Bukowski said he had the matter under control and therefore there was no need to further discuss the matter with him or the other responding officers. The Board does not believe Officer Orsa's testimony, but rather believes that of Officer Bukowski who, in the middle of a melee, was seeking to separate Mr. DeLeon from the other combatants so that he could sort the matter out after order had been restored. Even if Officer Orsa mentioned something about being an officer while the fight with Mr. DeLeon was going on, that is insufficient and inadequate as an identification of his position. Officer Orsa needed to wait until the situation was under control and then lay out who he was, what actions he took against Mr. DeLeon, and why he took those actions. He does not say he attempted to do any of these things. Also, the evidence is undisputed that Officer Orsa took no steps to correctly identify the victim (or assailant) to the responding officers, nor did he discuss the threats that Mr. DeLeon

supposedly made. Further, Officer Orsa left the scene, thereby allowing Messrs. Nelson and Mularczyk to be arrested for no reason whatsoever.

24. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Jason Orsa failed to take proper police action when he failed to stop Police Officer Brian Murphy from beating and/or kicking and/or punching Obed DeLeon about the head and/or body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer Murphy pulled his gun on Mr. DeLeon and pushed him up against the restaurant wall, without cause. See the findings set forth in paragraph no. 5 above, which are adopted here. Officer Murphy created a dangerous situation for a significant number of civilians gathered at the restaurant. While the Board does not believe Officer Orsa could have stopped Officer Murphy from pulling his gun, as Murphy apparently did so without warning, the charge is that Officer Orsa did not stop Officer Murphy from beating Mr. De Leon. Officer Orsa is guilty of this charge, as he did nothing to stop Officer Murphy, who was actively involved in attacking Mr. De Leon. Rather, Officer Orsa joined in the beating of Mr. DeLeon and, as such, is guilty of this charge.

25. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

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Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,
in that:

Count IV: On or about March 24, 2006, Police Officer Jason Orsa failed to report to a supervisory member or to the Department his involvement in the altercation involving Obed DeLeon at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, and/or he failed to report Police Officer Brian Murphy's involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Daniel McNamara's involvement in the altercation involving Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer Orsa failed to fill out a Tactical Response Report related to his actions on March 24, 2006 at the Taco Burrito King. He also does not dispute that he failed to make any other report, of any kind, to any supervisor about his actions or those of Officers McNamara and Murphy at the restaurant. Instead, he left the premises. He is clearly guilty of this charge.

26. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,
in that:

Counts V and VI: On or about March 24, 2006, Police Officer Jason Orsa disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed to immediately notify a supervisor and prepare a written report to the commanding officer, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer Murphy clearly engaged in misconduct by pulling his gun without justification at the Taco Burrito King; see the findings set forth in paragraph no. 5 above, which are adopted here. Officers Murphy and McNamara engaged in misconduct by leaving the restaurant without adequately identifying themselves as police officers and without informing the responding

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officers or supervisory officers of what had occurred; see the findings set forth in paragraph no. 9 and 25 above, which are adopted here.

27. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that:

Count I: On or about March 24, 2006, Police Officer Jason Orsa disobeyed an order or directive, whether written or oral, in that he failed to complete and/or submit a Tactical Response Report, in violation of General Order 02-08-05, Section III-A.

See the findings set forth in paragraph no. 7 above, which are adopted here.

28. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that:

Count II: On or about March 24, 2006, Police Officer Jason Orsa disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed to immediately notify a supervisor and prepare a written report to the commanding officer, in violation of General Order 93-03-02B, Section II-B.

See the findings set forth in paragraph nos. 25 and 26 above, which are adopted here.

29. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,
in that:

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On or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Jason Orsa punched and/or kicked Obed DeLeon about the head and/or body, thereby disrespecting and/or maltreating any person, while on or off duty.

See the findings set forth in paragraph no. 22 above, which are adopted here..

30. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count I: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Jason Orsa failed to take proper police action when he failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical actions he took against Obed DeLeon, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby being inattentive to duty.

See the findings set forth in paragraph no. 23 above, which are adopted here.

31. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count II: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Jason Orsa failed to take proper police action when he failed to stop Police Officer Brian Murphy from kicking and/or punching Obed DeLeon about the head and/or body, thereby being inattentive to duty.

See the findings set forth in paragraph no. 24 above, which are adopted here.

32. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count I: On or about June 29, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about October 1, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Jason Orsa falsely stated that Obed DeLeon entered the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, yelling profanities and/or yelling "fuck the police," or words to that effect, and/or Officer Orsa falsely stated that Obed DeLeon stated that he (DeLeon) had "just slammed into the back of some police officer's vehicle," or words to that effect, and/or Officer Orsa falsely stated that Obed DeLeon stated that he (DeLeon) was going to kill the police, or words to that effect, thereby making a false report, written or oral.

The Board credits the testimony of Mr. Nelson and Mr. Mularczyk and finds that Mr. DeLeon did not make the kind of threats Officer Orsa claims he did. See also the findings set forth in paragraph no. 5 above, which are adopted here. Therefore, Officer Orsa's statements to OPS/IPRA were false.

33. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count II: On or about June 29, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about October 1, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Jason Orsa falsely stated that he did not kick Obed DeLeon about the head and/or body, or words to that effect, and/or Officer Orsa falsely stated that his involvement in the altercation ended after he kned Obed DeLeon in order to assist in taking Obed DeLeon down, or words to that effect, thereby making a false report, written or oral.

The surveillance video clearly shows that Officer Orsa kicked Mr. DeLeon, contrary to Officer Orsa's statement to OPS/IPRA. It also shows that Officer Orsa's involvement in the attack on Mr. DeLeon did not end after Mr. DeLeon was taken down to the ground, contrary to Officer Orsa's statement to OPS/IPRA. The Board finds that both of these statements were false.

34. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count III: On or about June 29, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about October 1, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Jason Orsa falsely stated that Obed DeLeon was fighting with numerous people inside of the Taco Burrito King, or words to that effect, and/or Officer Orsa falsely stated that he did not know who Obed DeLeon originally began fighting, or words to that effect, thereby making a false report, written or oral.

The Board finds that Officer Orsa told the truth in saying that Mr. DeLeon was fighting with numerous people inside the Taco Burrito King. The surveillance video, as well as the testimony of Messrs. Nelson and Mularczyk, confirm that after he was wrongly attacked by Officer Murphy, Mr. DeLeon did become involved in a fight with numerous individuals, as he resisted the attack. Officer Orsa, however, falsely stated that he did not know who Mr. DeLeon began fighting with, when the surveillance video is clear that the fight was initiated by Officer Murphy, who began it directly in front of Officer Orsa.

35. Respondent **Police Officer Jason Orsa**, Star No. 5350, charged herein, is **guilty** of violating, to wit:

Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department,

in that:

On or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Jason Orsa failed to report to a supervisory member or to the Department his involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Brian Murphy's involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Daniel McNamara's involvement in the altercation with Obed DeLeon.

See the findings set forth in paragraph no. 25 above, which are adopted here.

36. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: The Superintendent did not prove by a preponderance of the evidence that on or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Daniel McNamara punched and/or kicked Obed DeLeon about the head and/or body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The surveillance video does not show Officer McNamara punching or kicking Mr. DeLeon. Rather, it shows Officer McNamara keeping the crowd away from the melee, and taking what appear to be reasonable steps to control the fight going on inside the restaurant. Neither Messrs. Nelson, Mularczyk, or DeLeon were able to identify Officer McNamara specifically as

someone who punched or kicked Mr. DeLeon. The evidence is thus insufficient to overcome Officer McNamara's denial of this allegation.

37. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Daniel McNamara failed to take proper police action when he failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical actions he took against Obed DeLeon, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Officer McNamara testified that he had no opportunity to speak with the responding officers. This is plainly not the case. Had Officer McNamara waited at the scene until Mr. DeLeon was in custody and the responding officers had the restaurant and the surrounding area under control, he could have spoken to any one of the various responding officers. There is no dispute that he did not do so. He failed to identify himself to the responding officers as an off-duty officer, failed to inform them of the physical actions that had been taken with respect to Mr. DeLeon and simply left the premises without ever informing anyone in authority about anything, including Mr. DeLeon's alleged threats against police officers.

38. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **not guilty** of violating, to wit:

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Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: The Superintendent did not prove by a preponderance of the evidence that on or about March 24, 2006, while patronizing Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, Police Officer Daniel McNamara failed to take proper police action when he failed to stop Police Officer Jason Orsa and Police Officer Brian Murphy from kicking and/or punching Obed DeLeon about the head and/or body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board does not believe that Officer McNamara could have taken any action to prevent Officer Murphy from pulling his gun on Mr. DeLeon, as Officer Murphy did so apparently without warning. Once the gun was pulled, Officer McNamara did not join in the beating but took reasonable action to protect persons in the restaurant and to contain the fight. Based on the surveillance video, the Board does not believe that Officer McNamara was in a position to prevent Officer Orsa from kicking Mr. DeLeon while he was down. Officer McNamara took reasonable steps to contain the fight, based on the surveillance video.

39. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count IV: On or about March 24, 2006, Police Officer Daniel McNamara failed to report to a supervisory member or to the Department his involvement in the altercation involving Obed DeLeon at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, and/or he failed to report Police Officer Jason Orsa's involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Brian Murphy's involvement in the

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altercation involving Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department..

There is no dispute that Officer McNamara, like Officer Murphy and Officer Orsa, completely failed to report or apprise any supervisor, including the sergeants who responded to the scene, about his involvement, or the involvement of Officers Murphy and Orsa, with Mr. De Leon.

40. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Counts V and VI: On or about March 24, 2006, Police Officer Daniel McNamara disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed to immediately notify a supervisor and prepare a written report to the commanding officer, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph nos. 5, 22, and 39 above, which are adopted here.

41. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

Count I: On or about March 24, 2006, Police Officer Daniel McNamara disobeyed an order or directive, whether written or oral, in that he failed to complete and/or submit a Tactical Response Report, in violation of General Order 02-08-05, Section III-A.

See the findings set forth in paragraph no. 7 above, which are adopted here.

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42. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

Count II: On or about March 24, 2006, Police Officer Daniel McNamara disobeyed an order or directive, whether written or oral, in that he observed misconduct of other officers and failed to immediately notify a supervisor and prepare a written report to the commanding officer, in violation of General Order 93-03-02B, Section II-B.

See the findings set forth in paragraph nos. 5, 22, and 39 above, which are adopted here.

43. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **not guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

The Superintendent did not prove by a preponderance of the evidence that on or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Daniel McNamara punched and/or kicked Obed DeLeon about the head and/or body, thereby disrespecting and/or maltreating any person, while on or off duty.

See the findings set forth in paragraph no. 36 above, which are adopted here.

44. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count I: On or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Daniel McNamara failed to take proper police action when he failed to identify himself as an off-duty Chicago police officer to responding officers, and/or he failed to inform the responding officers of the physical

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actions he took against Obed DeLeon, and/or he left the premises without reporting his involvement in the physical altercation involving Obed DeLeon, thereby being inattentive to duty.

See the findings set forth in paragraph no. 37 above, which are adopted here.

45. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **not guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that on or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Daniel McNamara failed to take proper police action when he failed to stop Police Officer Jason Orsa and Police Officer Brian Murphy from beating and/or kicking and/or punching Obed DeLeon about the head and/or body, thereby being inattentive to duty.

See the findings set forth in paragraph no. 38 above, which are adopted here.

46. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count I: On or about August 15, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about May 19, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Daniel McNamara falsely stated that Obed DeLeon entered the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, yelling "cop kill," and/or "Spanish Cobra," and/or "I'm gonna cap somebody," or words to that effect, thereby making a false report, written or oral.

Officer McNamara's statements are false. See the findings set forth in paragraph no. 5 above, which are adopted here.

47. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that on or about August 15, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about May 19, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Daniel McNamara falsely stated that he did not kick and/or punch Obed DeLeon about the head and/or body, and/or falsely stated that his involvement in the altercation ended after "he pulled [Obed DeLeon] away from continuing his attack on the group of people," or words to that effect, and/or falsely stated that he did not use any other force against Obed DeLeon, or words to that effect, thereby making a false report, written or oral.

The Board finds that Officer McNamara's statements set forth in this charge were substantially true. While Mr. De Leon did not attack the officers, the gist of this statement is that Officer McNamara's involvement in the altercation ended after he pulled Mr. De Leon away from those in the fight. Based on a review of the surveillance video, it does appear that Officer McNamara took reasonable steps to control the fight.

Officer McNamara's statements took place on August 15, 2007, and May 19, 2009, as opposed to the dates set out in the Charges and Specifications, but the Board *sua sponte* grants leave to amend the charges so that they conform to the proof, as Officer McNamara's statements are in the record and there is no dispute as to when they were given.

48. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count III: On or about August 15, 2007, in the Office of Professional Standards (now known as the Independent Police Review Authority), and/or on or about May 19, 2009, in the office of the Independent Police Review Authority, located at or near 10 West 35th Street, Suite 1300, Chicago, Police Officer Daniel McNamara falsely stated that he did not know how Obed DeLeon got on the ground, or words to that effect, and/or Officer McNamara falsely stated that Obed DeLeon tripped and fell to the ground, or words to that effect, and/or Officer McNamara falsely stated that he did not have the opportunity and/or the time to speak to responding officers at the scene, or words to that effect, thereby making a false report, written or oral.

Based on the surveillance video and the testimony of Officer Bukowski and Officer Olszewski, the Board finds that Officer McNamara's statement was false when he said he did not have the opportunity or time to speak to the responding officers at the scene. Based on the surveillance video, the Board also finds that Officer McNamara did know how Mr. De Leon got on the ground and that Mr. De Leon did not trip or fall to the ground. He was taken down by the various officers. As such, Officer McNamara's remaining statements are false as well.

Officer McNamara's statements took place on August 15, 2007, and May 19, 2009, as opposed to the dates set out in the Charges and Specifications, but the Board *sua sponte* grants leave to amend the charges so that they conform to the proof, as Officer McNamara's statements are in the record and there is no dispute as to when they were given.

49. Respondent **Police Officer Daniel McNamara**, Star No. 7766, charged herein, is **guilty** of violating, to wit:

Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department,

in that:

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On or about March 24, 2006, at the Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, while off duty, Police Officer Daniel McNamara failed to report to a supervisory member or to the Department his involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Brian Murphy's involvement in the altercation involving Obed DeLeon, and/or he failed to report Police Officer Jason Orsa's involvement in the altercation with Obed DeLeon.

See the findings set forth in paragraph no. 39 above, which are adopted here.

50. Respondent **Sergeant Louis Danielson**, Star No. 1406, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: On or about March 24, 2006, while responding to an incident at Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, he failed to conduct a thorough preliminary investigation, and/or he ignored information provided by witnesses Shawn Nelson and/or Joseph Mularczyk regarding their observation(s) that Obed DeLeon was not the aggressor/offender and/or that Obed DeLeon was the victim of a beating and/or that a gun was pointed at Obed DeLeon, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board finds, based on the testimony of Messrs. Nelson and Mularczyk, which was entirely credible, that Sergeant Danielson completely ignored their attempts to provide truthful information to him; specifically, that Mr. De Leon was not the aggressor in this incident but rather the victim, and that the gun involved was used against Mr. De Leon. Rather, Sergeant Danielson had Messrs. Nelson and Mularczyk, as well as Mr. De Leon, arrested, though there was no evidence that they had done anything wrong. Officer Olszewski confirmed that Sergeant Danielson told him to arrest and charge these defendants.

The OEC recording shows that Sergeant Danielson responded to a call of a man with a

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gun. After arriving at the scene, he concedes he made no effort to determine who had the gun or how it was used. Nor did he make an effort to recover the gun. Indeed, Sergeant Danielson conceded that he did not speak with any of the Taco Burrito King patrons or employees, or any other witnesses. He did not review the restaurant's surveillance video. He did not even enter the Taco Burrito King. He also made no inquiry of Sergeant Delahanty or any of the responding officers as to what had taken place. Despite Sergeant Danielson's abdication of any responsibility at the scene, he approved the Case Report of the incident. The Case Report was seriously deficient, as it made no mention of the gun that called Sergeant Danielson to the scene in the first place. Apparently, Sergeant Danielson also made no effort to speak with Mr. Walsh, who falsely signed complaints against Messrs. De Leon, Nelson, and Mularczyk.

Sergeant Danielson says that under General Order 04-03, preliminary investigations are not to be conducted by field sergeants but rather by the officers assigned to the case, here Officers Olszewski and White. On this basis, Sergeant Danielson excuses himself from responsibility for the complete failure adequately to investigate this matter and the wrongful arrest of three civilians. The Board rejects Sergeant Danielson's defense. General Order 83-01, Sections III.E-K and IV.A and D, imposes on field sergeants the responsibility to supervise investigations, to ensure that their subordinates take appropriate actions in responding to calls and in performing their duties, and to ensure that the Department's policies, goals, procedures and rules and regulations are carried out. Sergeant Danielson completely failed to discharge his responsibilities as a sergeant in this matter, both at the scene and in the station. His failure of leadership directly contributed to the unjust treatment of Messrs. Nelson, Mularczyk, and DeLeon.

51. Respondent **Sergeant Louis Danielson**, Star No. 1406, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about March 24, 2006, while responding to an incident at Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, he failed to conduct a thorough preliminary investigation of the incident inside Taco Burrito King in that he failed to interview patrons and/or witnesses and/or employees, and/or he failed to review the surveillance video, and/or he failed to make attempts to identify the man with a gun, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 50 above, which are adopted here.

52. Respondent **Sergeant Louis Danielson**, Star No. 1406, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count I: On or about March 24, 2006, while responding to an incident at Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, he failed to conduct a thorough preliminary investigation, and/or he ignored information provided by witnesses Shawn Nelson and/or Joseph Mularczyk regarding their observation(s) that Obed DeLeon was not the aggressor/offender and/or that Obed DeLeon was the victim of a beating and/or that a gun was pointed at Obed DeLeon, thereby being inattentive to duty.

See the findings set forth in paragraph no. 50 above, which are adopted here.

53. Respondent **Sergeant Louis Danielson**, Star No. 1406, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

in that:

Count II: On or about March 24, 2006, while responding to an incident at Taco Burrito King, located at 5509 North Harlem Avenue, Chicago, he failed to conduct a thorough preliminary investigation of the incident inside Taco Burrito King in that he failed to interview patrons and/or witnesses and/or employees, and/or he failed to review the surveillance video, and/or he failed to make attempts to identify the man with a gun, thereby being inattentive to duty.

See the findings set forth in paragraph no. 50 above, which are adopted here.

54. The Police Board has considered the facts and circumstances of **Police Officer Brian Murphy's** conduct, and the evidence presented in defense and mitigation. The Board finds that the conduct of which the Board has found this Respondent guilty (including but not limited to pointing a gun at a civilian without justification and pushing him up against a wall, not remaining at the scene of the incident, and making false official reports in an attempt to cover-up his and others' misconduct) is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for him no longer occupying his office.

55. The Police Board has considered the facts and circumstances of **Police Officer Jason Orsa's** conduct, and the evidence presented in defense and mitigation. The Board finds that the conduct of which the Board has found this Respondent guilty (including but not limited to kicking a civilian repeatedly without justification, actively participating in rather than attempting to control a dangerous and disorderly situation, not remaining at the scene of the incident, and making false official reports in an attempt to cover-up his and others' misconduct) is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office

detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for him no longer occupying his office.

56. The Police Board has considered the facts and circumstances of **Police Officer Daniel McNamara's** conduct, and the evidence presented in defense and mitigation. The Board finds that the conduct of which the Board has found this Respondent guilty is not sufficiently serious to warrant a penalty of discharge, for, unlike Respondents Murphy and Orsa, Respondent McNamara did not maltreat Obed DeLeon but rather took reasonable action in an attempt to control a dangerous and disorderly situation. The Board finds that a suspension is the appropriate penalty in this case.

57. The Police Board has considered the facts and circumstances of **Sergeant Louis Danielson's** conduct, and the evidence presented in defense and mitigation. The Board determines that additional proceedings shall be had for the purpose of determining the appropriate penalty in this case, pursuant to Section III-H of the Police Board's *Rules of Procedure*. Following these additional proceedings, the Board shall render its decision as to whether to order the penalty recommended by the Superintendent, a lesser penalty, or a greater penalty, up to and including discharge from the Chicago Police Department.

BY REASON OF THE FINDINGS set forth herein, cause exists for: the discharge of Police Officer Brian Murphy, Star No. 19036, from his position as a police officer with the Department of Police, and from the services of the City of Chicago; the discharge of Police

Police Board Case Nos. 10 PB 2726, 2727, 2728, & 2730
Respondents Murphy, Orsa, McNamara, & Danielson
Findings and Decisions

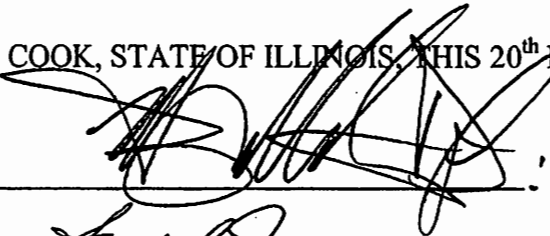
Officer Jason Orsa, Star No. 5350, from his position as a police officer with the Department of Police, and from the services of the City of Chicago; and the suspension of Police Officer Daniel McNamara, Star No. 7766, from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of one (1) year, from July 7, 2010, to and including July 6, 2011.

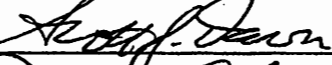
POLICE BOARD DECISION

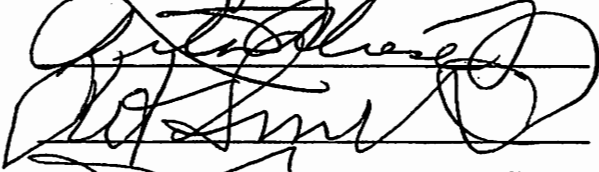
The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and


IT IS HEREBY ORDERED that the Respondent, **Police Officer Brian Murphy**, Star No. 19036, as a result of having been found **guilty** of charges in Police Board Case No. 10 PB 2726, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.


DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JANUARY, 2011.

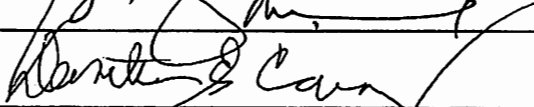












Attested by:

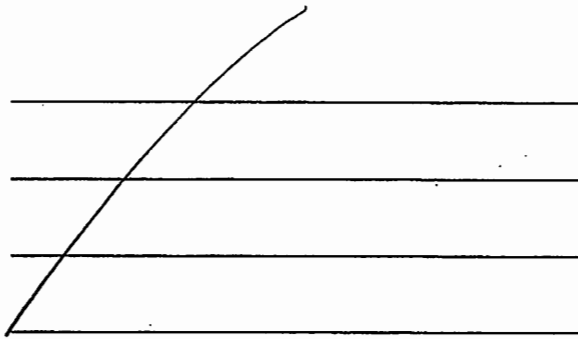


Executive Director
Police Board

Police Board Case Nos. 10 PB 2726, 2727, 2728, & 2730
Respondents Murphy, Orsa, McNamara, & Danielson
Findings and Decisions

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board regarding **Police Officer Brian Murphy**.

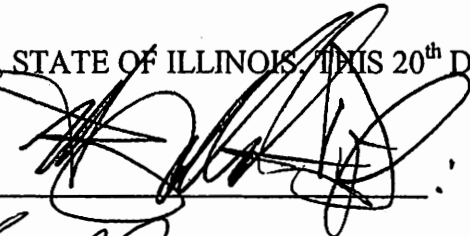


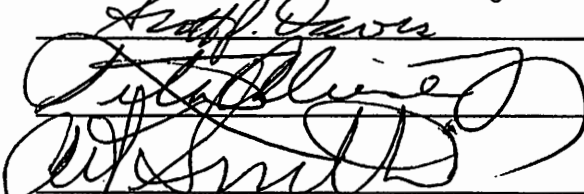
POLICE BOARD DECISION

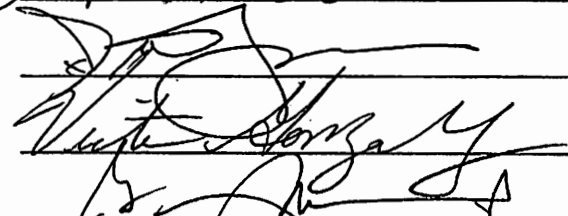
The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

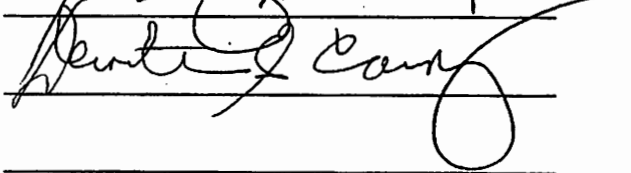
IT IS HEREBY ORDERED that the Respondent, **Police Officer Jason Orsa**, Star No. 5350, as a result of having been found **guilty** of charges in Police Board Case No. 10 PB 2727, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JANUARY, 2011.



Scott Davis


J. Smith


J. Orsa


J. Orsa

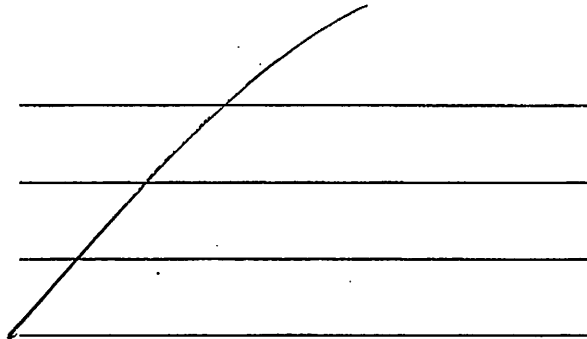
Attested by:



Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board regarding **Police Officer Jason Orsa**.

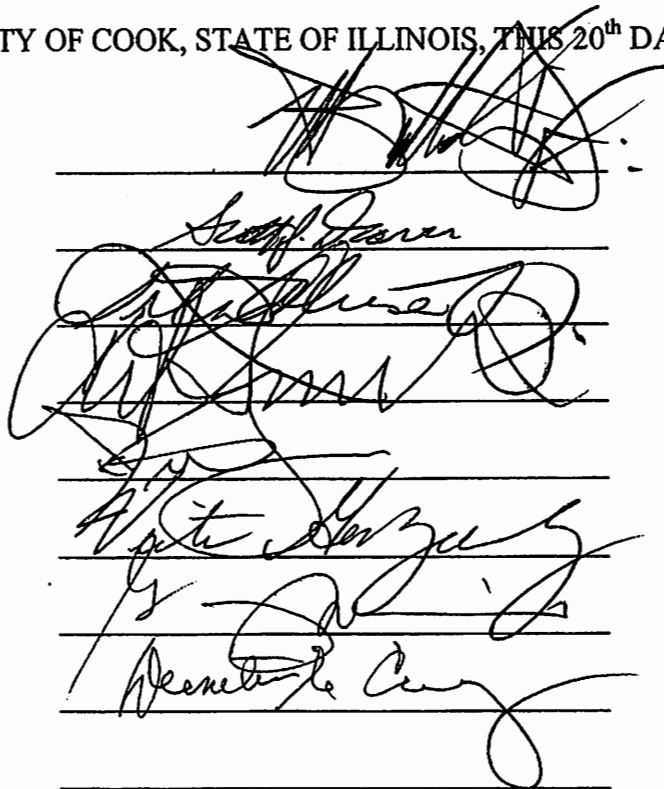


POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having viewed the video-recording of the hearing, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

IT IS HEREBY ORDERED that the Respondent, **Police Officer Daniel McNamara**, Star No. 7766, as a result of having been found **guilty** of charges in Police Board Case No. 10 PB 2728, 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 from July 7, 2010, to and including July 6, 2011 (one year).

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JANUARY, 2011.

A series of seven handwritten signatures, each written over a horizontal line. The signatures are in cursive and vary in style, representing the members of the Police Board.

Attested by:

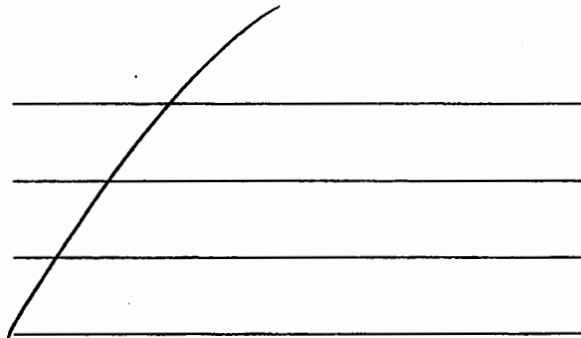
A handwritten signature in cursive, appearing to read "Max A. Caproni", written over a horizontal line.

Executive Director
Police Board

Police Board Case Nos. 10 PB 2728, 2727, 2728, & 2730
Respondents Murphy, Orsa, McNamara, & Danielson
Findings and Decisions

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board regarding **Police Officer Daniel McNamara**.



RECEIVED A COPY OF

THESE FINDINGS AND DECISIONS

THIS ____ DAY OF _____, 2011.

SUPERINTENDENT OF POLICE

INTERNAL AFFAIRS DIVISION
RECORDS SECTION

25 APRIL 2008

TO: COMMANDER OFFICER UNIT 113

FROM: RECORDS SECTION
INTERNAL AFFAIRS DIVISION

SUBJECT: PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF:

MURPHY BRIAN	19036	019	
NAME	(LAST, FIRST)	STAR	UNIT
MALE	WHITE		
SEX	RACE	EMPLOYEE#	

REFERENCE: COMPLAINT REGISTER/ LOG NUMBER 311881

THE PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF THE SUBJECT
ACCUSED HAS BEEN REQUESTED IN YOUR NAME BY:

SUPV.	LERNER	15		113
RANK	NAME	STAR	EMPLOYEE#	UNIT

RELATIVE TO A SUSTAINED FINDING IN THE INVESTIGATION OF THE
ABOVE REFERENCE COMPLAINT LOG NUMBER.

THE RECORDS SECTION, INTERNAL AFFAIRS DIVISION, DISCLOSED THE
FOLLOWING DISCIPLINARY ACTION ADMINISTERED TO THE SUBJECT
ACCUSED FOR THE PAST FIVE(5) YEARS.

VERIFIED/PREPARED BY:

NIYA SCOTT

NONE ☐

SEE ATTACHED ☒

FOR: COMMANDING OFFICER
RECORDS SECTION
INTERNAL AFFAIRS DIVISION



Resist M... #2



Chicago Police Department

Internal Affairs Division



SPAR HISTORY REPORT (Sustained Findings)

Employee#	Name	Star#	Unit	Position	Sex	Race	Birth Date	Date of Appointment
[REDACTED]	MURPHY, BRIAN D	19036	019/-	POLICE OFFICER	M	WHITE	[REDACTED]	26-APR-2004

History : Total No SPAR's: 1

Log #	Incident Date	Completed Date	Disciplinary Action	Transgression Type	Suspension Dates
513678	19-FEB-2008	12-MAR-2008	REPRIMAND	022A - CURRENT IL LICENSE PLATES AND/OR CITY VEHICLE STICKER	

For Official Police Purposes Only! This information is confidential and should not be disseminated for reasons other than its intended purpose.
CLEAR, Personnel Suite: Automated SPAR Application Print Date and Time: 25-APR-2008 10:14:37 Printed By : PC0S988

1 of 1

Report Date: 29 Dec 2010
Report Time: 1029 Hrs

Information Services Division

Prepared by:
by:

Chicago Police Department

Personnel Division



Complimentary History

Name	Title	Unit	Detail Unit	Emp Number
MURPHY, BRIAN D	9161	019	166	

Achievements

Total No.

DEPARTMENT COMMENDATION
ATTENDANCE RECOGNITION AWARD
HONORABLE MENTION
COMPLIMENTARY LETTER
TOTAL AWARDS

2
1
38
1

42

INTERNAL AFFAIRS DIVISION
RECORDS SECTION

25 APRIL 2008

TO: COMMANDER OFFICER UNIT 113

FROM: RECORDS SECTION
INTERNAL AFFAIRS DIVISION

SUBJECT: PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF:

ORSA	JASON	5350	025
NAME	(LAST, FIRST)	STAR	UNIT
MALE	WHITE		
SEX	RACE	EMPLOYEE#	

REFERENCE: COMPLAINT REGISTER/ LOG NUMBER 311881

THE PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF THE SUBJECT
ACCUSED HAS BEEN REQUESTED IN YOUR NAME BY:

SUPV.	LERNER	15		113
RANK	NAME	STAR	EMPLOYEE#	UNIT

RELATIVE TO A SUSTAINED FINDING IN THE INVESTIGATION OF THE
ABOVE REFERENCE COMPLAINT LOG NUMBER.

THE RECORDS SECTION, INTERNAL AFFAIRS DIVISION, DISCLOSED THE
FOLLOWING DISCIPLINARY ACTION ADMINISTERED TO THE SUBJECT
ACCUSED FOR THE PAST FIVE(5) YEARS.

VERIFIED/PREPARED BY:

NIYA SCOTT

NONE ☐
SEE ATTACHED ☒

FOR: COMMANDING OFFICER
RECORDS SECTION
INTERNAL AFFAIRS DIVISION

Report Orsa
1

Chicago Police Department

Internal Affairs Division

SPAR HISTORY REPORT (Sustained Findings)

Employee#

Name

Star#

Unit

Position

Sex

Race

Birth Date

Date of Appointment

ORSA, JASON M

5350

025/-

POLICE OFFICER

M

WHITE

26-JAN-2004

History : Total No. Sustained Findings: 2

Log #	Incident Date	Completed Date	Disciplinary Action	Transgression Type	Suspension Dates
510021	30-JUL-2007	28-AUG-2007	REPRIMAND	022A - CURRENT IL LICENSE PLATES AND/OR CITY VEHICLE STICKER	
509904	18-JUL-2007	14-AUG-2007	REPRIMAND	005 - COURT APPEARANCE VIOLATION	

For Official Police Purposes Only! This information is confidential and should not be disseminated for reasons other than its intended purpose.
CLEAR, Personnel Suite: Automated SPAR Application Print Date and Time: 25-APR-2008 10:15:55 Printed By: PC05988

Report Date: 29 Dec 2010

Report Time: 1029 Hrs

Information Services Division

Deputy Warehouse

by:

Chicago Police Department

Personnel Division



Complimentary History

Name	Title	Unit	Detail Unit	Emp Number
ORSA, JASON M	9161	025	376	

Achievements

Total No.

DEPARTMENT COMMENDATION
HONORABLE MENTION
ATTENDANCE RECOGNITION AWARD
TOTAL AWARDS

2

30

1

33

INTERNAL AFFAIRS DIVISION
RECORDS SECTION

25 APRIL 2008

TO: COMMANDER OFFICER UNIT 113

FROM: RECORDS SECTION
INTERNAL AFFAIRS DIVISION

SUBJECT: PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF:

MCNAMARA DANIEL

7766

023

NAME	(LAST, FIRST)	STAR	UNIT
------	---------------	------	------

MALE	WHITE		
------	-------	--	--

SEX	RACE	EMPLOYEE#
-----	------	-----------

REFERENCE: COMPLAINT REGISTER/ LOG NUMBER 311881

THE PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF THE SUBJECT
ACCUSED HAS BEEN REQUESTED IN YOUR NAME BY:

SUPV.	LERNER	15		113
RANK	NAME	STAR	EMPLOYEE#	UNIT

RELATIVE TO A SUSTAINED FINDING IN THE INVESTIGATION OF THE
ABOVE REFERENCE COMPLAINT LOG NUMBER.

THE RECORDS SECTION, INTERNAL AFFAIRS DIVISION, DISCLOSED THE
FOLLOWING DISCIPLINARY ACTION ADMINISTERED TO THE SUBJECT
ACCUSED FOR THE PAST FIVE(5) YEARS.

VERIFIED/PREPARED BY:

NIYA SCOTT

NONE ☒
SEE ATTACHED ☐

FOR: COMMANDING OFFICER
RECORDS SECTION
INTERNAL AFFAIRS DIVISION

*Resident McNamara
6*

Report Date: 29 Dec 2010

Report Time: 1029 Hrs

Information Services Division

Data Warehouse

Prepared by:

Chicago Police Department

Personnel Division



Complimentary History

Name	Title	Unit	Detail Unit	Emp Number
MCNAMARA, DANIEL R	9161	023	376	

Achievements

Total No.

EMBLEM OF RECOGNITION - PHYSICAL FITNESS	4
POLICE OFFICER OF THE MONTH AWARD	1
HONORABLE MENTION	69
DEPLOYMENT OPERATIONS CENTER AWARD	7
HONORABLE MENTION RIBBON AWARD	1
2004 CRIME REDUCTION RIBBON	1
DEPARTMENT COMMENDATION	4
OTHER AWARDS	3
TOTAL AWARDS	90

NOTE: THIS REPORT IS FOR OFFICIAL LAW
ENFORCEMENT / AUTHORIZED USE ONLY. THE
INFORMATION IS CURRENT AS OF THE DATE
AND TIME OF THE REPORT. THIS REPORT IS
NOT FOR PUBLIC DISSEMINATION.



Chicago Police Department

CLEAR

Citizen & Law Enforcement Analysis & Reporting System



City of Chicago
Richard M. Daley, Mayor

Police Board

Demetrius E. Carney
President

Scott J. Davis
Vice President

Melissa M. Ballate
Ghian Foreman
Rita A. Fry
Victor M. Gonzalez
Rev. Johnny L. Miller
Arthur J. Smith Sr.
George M. Velcich

Max A. Caproni
Executive Director

Suite 1220
30 North LaSalle Street
Chicago, Illinois 60602
(312) 742-4194
(312) 742-4193 (FAX)
(312) 745-6876 (TTY)

www.chicagopoliceboard.org

Re: Police Board Case Nos. 10 PB 2726, 2727, 2728, & 2730
Respondents Murphy, Orsa, McNamara, & Danielson

NOTICE

Under Illinois law, a party to a matter before the Police Board has the right to appeal the Board's decision by filing a petition for administrative review in the Circuit Court of Cook County, County Department, Chancery Division.

In accordance with 735 Illinois Compiled Statutes 5/3-103, the time limit for filing an appeal is 35 days from the date the Board personally serves a party with a copy of the decision, or 35 days from the postmark of the date the Board mails a copy of the decision to a party. Filing an appeal after this time limit may result in the dismissal of the case.

