

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTERS OF CHARGES FILED AGAINST))	
SERGEANT STEPHEN FRANKO,))	No. 16 PB 2909
STAR No. 1537, DEPARTMENT OF POLICE,))	
CITY OF CHICAGO,))	
POLICE OFFICER JANET MONDRAGON,))	No. 16 PB 2910
STAR No. 4364, DEPARTMENT OF POLICE,))	
CITY OF CHICAGO,))	
POLICE OFFICER DAPHNE SEBASTIAN,))	No. 16 PB 2911
STAR No. 2763, DEPARTMENT OF POLICE,))	
CITY OF CHICAGO, AND))	
POLICE OFFICER RICARDO VIRAMONTES,))	No. 16 PB 2912
STAR No. 10590, DEPARTMENT OF POLICE,))	
CITY OF CHICAGO,))	
RESPONDENTS.))	(CR No. 1081772)

FINDINGS AND DECISIONS

On August 30, 2016, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Sergeant Stephen Franko, Star No. 1537, Police Officer Janet Mondragon, Star No. 4364, Police Officer Daphne Sebastian, Star No. 2763, and Police Officer Ricardo Viramontes, Star No. 10590 (collectively referred to as “Respondents”), recommending that the Respondents be discharged from the Chicago Police Department for violating several Rules of Conduct.¹ On June 12, 2017, the Police Board granted Special Prosecutor Patricia Brown Holmes’s and Respondent Jason Van Dyke’s motions to stay these proceedings, pending the

¹ The Superintendent also filed charges against Jason Van Dyke, who remains suspended without pay. A hearing on the charges against Van Dyke has not been held due to his October 8, 2018, conviction for second-degree murder and aggravated battery. As a result of his conviction, he has been de-certified as a law enforcement officer by the State of Illinois, and the Superintendent has filed new charges seeking Van Dyke's discharge from the Department because he has been de-certified. Other officers at the scene of the killing, e.g., Van Dyke’s partner, Officer Joseph Walsh, and officers involved in the investigation of this incident, e.g., Deputy Chief David McNaughton, Chief Eugene Roy, and Detective David March, among others, resigned from the Police Department.

disposition of criminal charges related to the killing of Laquan McDonald. In so doing, the Board also honored the request of Judge Vincent Gaughan, then presiding over the Van Dyke criminal case, that the Board postpone its disposition of these cases. As explained in the Board's June 12, 2017 Order on Motions for Stay, if the Police Board proceeded with these cases it would have undermined and interfered with the integrity of the criminal prosecutions brought in connection with the McDonald killing. On November 29, 2018, the Police Board lifted its stay of these proceedings.

Thomas E. Johnson, Hearing Officer of the Police Board, ordered the cases consolidated for hearing. A hearing on these charges against the Respondents took place before Hearing Officer Johnson on April 10 through April 12, 2019. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the entire evidentiary hearing. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decisions.²

²In reviewing the record of the proceedings, the Board reviewed Hearing Officer Johnson's rulings on the various motions and issues the parties presented both prior to the hearing and at the hearing, as well as the reasons for those rulings. The Board affirms each of these rulings. These motions and issues include, but are not limited to: the consolidation of the cases for hearing; the severing of the case against Van Dyke following his criminal conviction; rulings on the various motions for bills of particular; the conflict of interest questions raised pertaining to the representation of certain respondents; the various motions *in limine* offered by the respondents and the Superintendent; the Superintendent's motion to bar use of federal grand jury testimony and statements to the FBI; Officer Viramontes's motion to call Superintendent Johnson to testify regarding certain statements purportedly made at a roll call; the relevancy of testimony from various command officers; Officer Sebastian's motion to present a portion of Officer McElligott's prior sworn testimony; the Superintendent's motion to admit Xavier Torres's prior sworn testimony on grounds he was unavailable; and Sergeant Franko's motion to bar use of his OIG statements and to dismiss the case against him on grounds it violated the Illinois Police and Community Relations Improvement Act.

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. Each Respondent was at all times mentioned herein employed as a sworn 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 in person and was represented by legal counsel.

Introduction

4. On October 20, 2014, Police Officer Jason Van Dyke fatally shot seventeen-year old Laquan McDonald in the 4100 block of South Pulaski Road in Chicago. A jury convicted Officer Van Dyke of second-degree murder and sixteen counts of aggravated battery. Van Dyke was then sentenced to a term of incarceration. These cases are not about Officer Van Dyke's conduct on the night of October 20, 2014, however. Instead, these cases analyze the conduct and statements made by Officer Van Dyke's immediate superior that night (Sergeant Stephen Franko) and three of Van Dyke's fellow 8th District officers (Officers Ricardo Viramontes, Janet Mondragon, and Daphne Sebastian) who were on the scene when Mr. McDonald was shot. As set forth more fully below, the Police Board finds that Sergeant Franko and each of the officers violated important Department rules and discharges each of them from the Police Department. Their conduct is antithetical to that expected and required of a sworn law enforcement officer, who at all times has

a duty to act with honesty and integrity and to accurately and completely report their observations.

In particular, the Board finds that Sergeant Franko failed to properly supervise his officers on October 20, 2014. First, Sergeant Franko, as the first-on-scene supervisor, was tasked by the Department's On-Call Incident Commander (also known as the "Street Deputy") David McNaughton with reviewing and approving the critical case reports, including those authored by Officer Van Dyke and Officer Walsh. The Board finds that Sergeant Franko had a duty under General Order 03-02-04 (Supt.'s Exh. 32) not merely to sign the reports, but to determine if these reports were complete and accurate before signing them. Sergeant Franko failed to do so and thus violated his duties. The reports approved by Sergeant Franko contained several demonstrable and known falsehoods, including, among other things, that Officer Van Dyke was injured by Laquan McDonald, that Officers Van Dyke and Walsh were victims, and that Mr. McDonald assaulted and committed battery against them by attacking them with a weapon, using force likely to cause death or great bodily harm. Second, Sergeant Franko failed to ensure that the officers he supervised were utilizing the audio component of their in-car video systems, thus depriving the Department of a critical source of information about police conduct in connection with the killing of Mr. McDonald. Street-level supervision of patrol officers is vital to the Department if it is to function effectively. Sergeant Franko failed in his supervisory responsibilities, thus warranting his discharge from the Police Department.

The remaining Respondents—Officers Viramontes, Mondragon, and Sebastian—were all present when Mr. McDonald was killed. They gave statements that night to Detective March (Supt.'s Exh. 2) and (in the cases of Officers Mondragon and Sebastian) early the next morning to the Independent Police Review Authority ("IPRA") (Supt.'s Exhs. 18 and 20). Each of these officers was in a critical position to observe and so their statements were crucial to understanding

what happened. It was their statements that would be used by the investigators to determine whether the fatal shooting of Mr. McDonald was justified—or whether a crime by their fellow officer had been committed. As sworn officers, each understood the importance of their statements to that investigation and understood that their statements must be truthful and complete. Each of the three officers failed in their duty—either by outright lying or by shading the truth. In so doing, Officers Viramontes and Mondragon violated Rule 14, and each of the three officers violated Rules 2 and 3.

First, as to Rule 14. It is well-established that Rule 14 of the Department's Rules of Conduct prohibits officers from making willful and material false statements, whether orally or in writing. Officers Viramontes and Mondragon willfully violated Rule 14 in their recounting of the events surrounding the fatal shooting of Mr. McDonald as follows:

- Officer Viramontes violated Rule 14 when he told Detective March that Mr. McDonald continued to move and attempted to get back up off the ground after he was shot, with the knife still in his hand. The video evidence in this case, as well as Officer Viramontes's own actions, show these statements were demonstrably and willfully false, and the Board finds they were made in order to manufacture justification for Officer Van Dyke's decision to fire sixteen rounds at Mr. McDonald.
- Officer Mondragon, who was following Mr. McDonald in her squad car at close range, violated Rule 14 when she said that she was placing her vehicle transmission into park and therefore did not see the encounter between Officer Van Dyke and Mr. McDonald, and heard but did not see the shots being fired. The Board finds, based on the reliable, video evidence, that the shooting lasted fifteen seconds and Officer Mondragon's car was in motion (and therefore not in park) during the initial four seconds of shooting, thereby rendering her account of what she observed demonstrably false.

Now, as to Rules 2 and 3. While Officers Viramontes and Mondragon willfully lied about what they saw, the Chicago Police Department rightfully requires even more from its sworn officers. Department Rules 2 and 3 require that Chicago police officers provide a complete and

accurate accounting of what they observe while on duty. Officers may not offer misleading statements which emphasize certain facts to the exclusion of others. And they are not permitted to pick and choose facts in order to support a pre-determined conclusion. Instead, officers must provide a complete accounting without embellishment, exaggeration, or spin.

Here, all three patrol officers violated that duty by describing the alleged threat posed by Mr. McDonald in an exaggerated way, while omitting relevant facts that support the opposite conclusion. The overall impression based on this selective telling is both misleading and false. Indeed, taken on their face, the officers' accounts depict a scene in which Mr. McDonald was the aggressor and Officer Van Dyke the victim—a depiction squarely contradicted by reality. Put simply, the officers wanted to help their fellow officer and so described the incident in a way to put him in the best possible light. In so doing, the officers violated Rules 2 and 3 as follows:

- In addition to telling Detective March that Mr. McDonald tried to get up off the ground with the knife in his hand after he had been shot, which is willfully false, Officer Viramontes told Detective March that prior to the shooting, Mr. McDonald turned toward Officers Van Dyke and Walsh, suggesting that Mr. McDonald was a threat to the officers. At the time of his statement, Officer Viramontes offered no precise description of *when* Mr. McDonald turned toward the officers and failed to note the critical fact that, immediately prior to the shooting, Mr. McDonald was moving *away* from the officers. At the hearing, Officer Viramontes testified that he did not see Mr. McDonald make “aggressive movements toward” the officers, that he was not trying to ascribe blame to Mr. McDonald, that Mr. McDonald only “looked towards [the officers],” and that Mr. McDonald may have twisted because he had been shot. But leaving out these key facts at the time of his statement to investigators and only including those facts that depict Mr. McDonald as aggressor render his statement intentionally misleading.
- Officer Mondragon told both Detective March and IPRA that she did not see the key encounter between Officers Van Dyke and Walsh because she was putting her car into park, and so was looking down when the shots were fired. In addition to being willfully false, Officer Mondragon's statement is misleading, as it is intended as a shield to prevent all of the facts surrounding that night from coming to light—facts that would have been detrimental to her fellow officer.
- Officer Sebastian told Detective March that Mr. McDonald ignored Officer Van Dyke's and Officer Walsh's verbal directions to drop the knife and “continued to advance on the

officers waving the knife,” suggesting a serious threat to the officers. She later told IPRA that Mr. McDonald turned his body towards them with the knife in his right hand, and was facing the officers. She further said that Mr. McDonald was still moving on the ground after he was shot. She did not, however, offer a precise statement as to the timing of these events, nor did she mention the critical fact that Mr. McDonald was walking away from the officers at the time he was shot. At the hearing, Officer Sebastian testified that her statements to March and IPRA were not made to suggest that Mr. McDonald posed a threat to Officers Van Dyke and Walsh, that Mr. McDonald was not waving the knife right before he was shot, but earlier, that Mr. McDonald was never trying to attack or stab the officers, and that while Mr. McDonald was moving on the ground after being shot, he was not trying to get back up. Like with Officer Viramontes, though, her failure to offer these clarifications in her statement to investigators renders her statement intentionally misleading to benefit her fellow officer.

To be clear, Officers Viramontes, Mondragon, and Sebastian are not responsible for the shooting of Mr. McDonald. They are, however, responsible for failing to accurately report it—even when that may implicate a fellow officer. For telling outright lies and/or half-truths, each officer must be discharged from the Chicago Police Department.

In further support, the Board states as follows:

Charges Against Respondent Stephen Franko

5. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Sergeant Franko made, caused to be made, adopted, and/or approved one or more false, misleading, inaccurate, and/or inconsistent statements on Officer Jason Van Dyke’s Tactical Response Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald’s actions constituted an assault, or words to that effect; and/or an imminent threat of battery, or words to that effect; and/or a battery, or words to that effect; and/or an attack with a weapon, or words to that effect; and/or deadly force, or words to that effect; and/or the use of force likely to cause death or great bodily harm, or words to that effect.

Sergeant Franko thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 4 above, which are incorporated herein by reference. Sergeant Franko was the first supervisor to arrive on scene, shortly after Mr. McDonald had been shot. At the scene, Sergeant Franko spoke with and observed Officers Van Dyke and Walsh. He specifically asked Officers Van Dyke and Walsh if they were ok, and both officers answered affirmatively. Sergeant Franko then drove Officer Van Dyke to Area Central, where the matter was to be further investigated. Sergeant Franko conceded that he saw no injuries on Officer Van Dyke and that Officer Van Dyke did not complain of any injuries. Sergeant Franko also conceded that Officer Van Dyke did not submit an Injury on Duty report, which would have been submitted if he was injured.

Sergeant Franko, together with the other officers present for the McDonald shooting, stayed at Area Central for approximately three to four hours, where they were tasked with investigating the circumstances of the shooting. Sergeant Franko's role in that investigation, among other things, included reviewing the Tactical Response Reports ("TRRs") and Officer Battery Reports ("OBRs") that Officers Van Dyke and Walsh completed (Supt.'s Exhs. 4, 5, 12, and 13), as directed by Deputy Chief McNaughton; Sergeant Franko also reviewed the Original Case Incident Report (Supt.'s Exh. 14). Under Department General Order 03-02-04 (Supt.'s Exh. 32), Sergeant Franko was required to review the TRRs and OBRs for "completeness and accuracy." Sergeant Franko was to approve these reports only once he verified their accuracy.

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(See, Supt.'s Exh. 32, Sections IV(B) and (G)). Sergeant Franko was to further approve the Case Incident Report to determine if it was appropriate (See, Supt.'s Exh. 33, which is Department Special Order S03-03-06, Section III(G)).

During the three-to-four hour period that Sergeant Franko was at Area Central for the purpose of investigating an officer-involved fatal shooting, the in-car video of the shooting, taken from Officers Sebastian's and Mondragon's car was playing (Supt.'s Exh. 6). Detectives examined the video, and it was at all times accessible to Sergeant Franko. Sergeant Franko conceded that he saw "bits and pieces" of the dash cam video (including the shooting itself and when Mr. McDonald fell to the ground), but testified that, despite being tasked with reviewing the officers' reports, he did not watch the entire video. He conceded that he could have watched the entire video, but instead spent the bulk of his time at Area Central renewing friendships and standing around.

The Police Board finds Sergeant Franko's testimony that he did not watch the entirety of the video incredible. A fatal, officer-involved shooting had occurred, and perhaps the key piece of contemporaneous evidence as to what had happened was available to Sergeant Franko for hours. Though assigned to review the written reports prepared by the shooter and his partner for completeness and accuracy, Sergeant Franko would have the Board believe that he did not take the six minutes and six seconds required in order to examine this dash cam video before signing off on key reports in the case. The Board declines to credit his testimony.

Nevertheless, Sergeant Franko had an obligation to view the video in order to determine if the accounts given by Officers Van Dyke and Walsh were complete and accurate. The Board relies upon the testimony of Tina Skahill, Commander in the Department's Bureau of Internal Affairs, and the terms of General Order 03-02-04, as well as Special Order S03-03-06, in finding that

Sergeant Franko was required to examine the dash cam video. In the words of Commander Skahill, Sergeant Franko could not “put his head in the sand,” and instead was required to determine whether the Van Dyke and Walsh reports were complete and accurate. Therefore, the Board finds that at the time Sergeant Franko reviewed the reports, he at least “should have known” everything contained on the video.

With those findings in mind, the Board holds that Sergeant Franko signed and approved the TRRs, OBRs, and Original Case Incident Report even though he knew or should have known that these reports contained materially false information.³ In particular:

A. The TRR (Supt.’s Exh. 4), authored by Officer Van Dyke states that Mr. McDonald assaulted Officer Van Dyke, committed a battery against him with a weapon, and used force likely to cause death or great bodily harm. The Board finds, based on the dash cam video, the corroborating testimony of Xavier Torres, and the testimony of Sergeant Snelling, that these statements are false. Indeed, none of the officers on scene indicated to Detective March (Supt.’s Exh. 2) or to IPRA that Mr. McDonald battered Officer Van Dyke. Sergeant Franko knew or should have known of the statement’s falsity at the time he approved the report, as is evident from the dash cam video (the portions of the video he claims he did see and also the portions he purportedly did not see), his personal interactions with Officer Van Dyke at the scene, and the accounts given of the incident by the other officers on the scene later documented by Detective March (Supt.’s Exh. 2).⁴

³The Rule 2 and Rule 3 charges against Sergeant Franko allege that he “made, caused to be made, adopted, and/or approved one or more false, misleading, inaccurate, and/or inconsistent statements” on Officer Van Dyke’s and Officer Walsh’s TRRs and OBRs, and on the Original Case Incident Report. Prior to the hearing, the Superintendent clarified that the Superintendent intended to prove that Sergeant Franko approved these reports when he knew these reports were false. See, the February 13, 2019, Pre-Hearing Order, at p. 3.

⁴Even if Sergeant Franko only saw “bits and pieces” of the dashcam video, his decision to approve Officer Van

B. The OBR (Supt.'s Exh. 5), authored by Officer Van Dyke, stated that three officers were battered by Mr. McDonald and the manner of attack was "stabbed/cut (including actual attempt)." The Board finds that the dash cam video, as well as the testimony of Xavier Torres and Sergeant Snelling, and the other officers on the scene demonstrate that neither Officers Van Dyke nor Walsh were battered and neither of the officers were stabbed. Nor did Mr. McDonald attempt to stab them. The Board further finds that Sergeant Franko knew or should have known these statements were false based on the dashcam video, Sergeant Franko's own interaction with an uninjured Officer Van Dyke, and the reports of the other officers on the scene.

C. Officer Walsh's TRR (Supt.'s Exh. 12) and OBR (Supt.'s Exh. 13) contain the same false statements that appear on Officer Van Dyke's TRR and OBR, including that Mr. McDonald assaulted Officer Walsh and committed a battery against him with a weapon, using force likely to cause death or great bodily harm, and that three officers (including Officers Van Dyke and Walsh) were battered by Mr. McDonald, in that they were "stabbed/cut (including actual attempt)." For the reasons set out in paragraph 5 (A) and (B) above, the Board finds that Sergeant Franko approved these reports when he knew or should have known they were false.

D. Officer Dora Fontaine completed the Original Case Incident Report (Supt.'s Exh. 14)

Dyke's TRR (and the other reports at issue here) as complete and accurate without bothering to look at the video would violate Rules 2 and 3. Rule 2 prohibits "conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit on the Department." Department policy is set out in General Order 03-02-04, and was clearly explained by Commander Skahill. The Comment to Rule 2 indicates the Rule covers "any and all conduct which is contrary to the letter and spirit of Departmental policy or goals." Surely, Sergeant Franko's alleged blind acceptance of demonstrably untrue facts in this TRR (and the other reports at issue) brought discredit on the Department. Rule 3 prohibits "Any failure to promote the Department's efforts to implement its policy or accomplish its goals," and the Comment to this rule makes it clear that this "...applies to supervisory and other members who, through carelessness, inefficiency or design fail to implement all policy goals, rules, regulations, orders and directives of the Department..." While the Board is convinced that Sergeant Franko knowingly approved the false reports of Officers Van Dyke and Walsh, as well as the Original Case Incident Report, even if he was merely careless in failing to conduct a minimal examination of the evidence at hand before concluding the reports were complete and accurate he has violated both of these Rules.

and stated in that report that Officer Van Dyke was “injured by offender” and that both Officers Van Dyke and Walsh were victims in their encounter with Mr. McDonald. The dash cam video demonstrates that these statements were completely false. Sergeant Franko approved the report knowing the statements were false, based on his own interactions with Officer Van Dyke, the statements of the other officers on the scene, and the dash cam video.

Sergeant Franko posited two defenses to the charges filed against him. First, Sergeant Franko contends that the charges against him should be dismissed because the Illinois Police and Community Relations Improvement Act (“IPCRIA”), 50 ILCS 727/1, implemented by Department General Order G03-06, requires that the Civilian Office of Police Accountability (“COPA,” which replaced IPRA) conduct any investigation of an officer-involved shooting that results in death, and that lead investigators handling these cases must be persons certified by the Illinois Law Enforcement Training Standards Board as a Lead Investigator. Sergeant Franko maintains that since the City of Chicago’s Office of Inspector General (“OIG”) took statements from him in connection with the pending charges and conducted the investigation that led to those charges, the IPCRIA was violated. The Board finds, however, that IPCRIA does not apply to the investigation of these charges. IPCRIA, by its terms, applies only to “officer-involved death investigations.” The charges against Sergeant Franko (and the other respondents here) do not allege that they caused the death of Mr. McDonald. Rather, the Department’s Bureau of Internal Affairs and IPRA’s referral letters to the OIG (attached to the Superintendent’s Response to Sergeant Franko’s motion) make clear that this investigation relates to the veracity of the officers’ statements regarding the shooting and the possible violation of Departmental rules of conduct that occurred. As such, it is not an “officer-involved death investigation.” Further, the Board finds that IPCRIA did not become effective until January 1, 2016, after IPRA referred its investigation to the

OIG, and General Order G03-06, on which Sergeant Franko relies, did not become effective until nearly two years after the OIG began its investigation. As such, even if IPCRIA governed this investigation (which it does not), the investigation pre-dated the enactment of the statute and General Order, and thus neither would apply here. Finally, IPCRIA does not provide for either dismissal of charges or suppression of the OIG statements taken (the other remedy Sergeant Franko sought). Sergeant Franko relies upon the Uniform Peace Officers Discipline Act, 50 ILCS 725/3-10, as authority to bar the use of Sergeant Franko's statements, and he does not cite any authority for the extreme measure of dismissing these charges. The Uniform Peace Officers Discipline Act, however, is a different statute and does not govern violations of IPCRIA (if IPCRIA did apply). Therefore, there is no legal authority to support the relief Sergeant Franko seeks here.

Second, while Sergeant Franko admits that he was bound by Department General Order 03-02-04 (Tr., at pp. 106-08, 663), and that it would be inappropriate to sign off on a TRR, OBR, or Original Case Incident Report that he knew was false (Tr., at pp. 96-99, 659-60), he contends that he had no obligation to review these TRR and OBR reports for "completeness and accuracy," as General Order 03-02-04 provides in Sections IV(B) and (G). Rather, seizing on language from the TRR report itself, he claims that his only responsibility was to "ensure the legibility and completeness of this report." Sergeant Franko maintains that he was only required to ensure that all of the boxes on the forms were completed, but that he had no responsibility to approve it for accuracy. He says that his job was to send the completed form up to Deputy Chief McNaughton for his review and approval. Sergeant Franko then went one step further, claiming that even if he has independent information establishing that the reports contain false information, he has no duty to correct them.

The Board rejects Sergeant Franko's attempt to convert his role as a sworn officer and supervisor into a clerical one. The terms of Section IV of General Order 03-02-04 clearly require field supervisors to ensure that TRRs and OBRs are "accurate and complete." Sergeant Franko was the field supervisor for both Officers Van Dyke and Walsh. Commander Tina Skahill of the Department's Bureau of Internal Affairs, confirmed the Board's reading of the General Order, and convincingly demonstrated how important it is that supervisors ensure the completeness and accuracy of TRRs and OBRs. Sergeant Snelling, who teaches use of force at the Police Academy, also testified that the supervising sergeant has a duty to review these reports for completeness and accuracy (see, pp. 73-74 of his testimony). The Board relies on the terms of the General Order and the testimony of Commander Skahill and Sergeant Snelling to reject Sergeant Franko's defense that he had no duty to ensure that his subordinate officers told the truth in their reports.⁵

The Board finds that Sergeant Franko's decision to sign off on reports he knew were false represents a major and serious failure of leadership. In order for Department policies to be followed in the field, it is critical that first-line supervisors like Sergeant Franko remain faithful to the Department's rules and ensure that officers they command follow those rules. Sergeant Franko did not do that here. His effort to minimize his responsibilities both as it related to his viewing the dash cam video, and likening his review of the TRRs and OBRs to a clerical task is deeply troubling to the Board. The Board finds that his failure as a supervisor here was profound and contributed directly to the false way in which this killing was documented and investigated by the Department.⁶

⁵ Section IV(B) of the Department's Rules and Regulations provides that supervisors like Sergeant Franko "will be responsible for adherence to the Department's Rules, Regulations, Policies, Orders and Procedures" and they "remain answerable and accountable for failures or inadequacies on the part of their subordinates."

⁶ At the hearing, Sergeant Franko also objected to the admission of the TRR and OBR reports into evidence, as

6. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 21, 2014, Sergeant Franko made one or more false statements on Officer Jason Van Dyke's Tactical Response Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald's actions constituted an assault, or words to that effect; and/or an imminent threat of battery, or words to that effect; and/or a battery, or words to that effect; and/or an attack with a weapon, or words to that effect; and/or deadly force, or words to that effect; and/or the use of force likely to cause death or great bodily harm, or words to that effect.

Sergeant Franko thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4 and 5 above, which are incorporated herein by reference. In signing and approving Officer Van Dyke's and Officer Walsh's TRRs and OBRs as complete and accurate, Sergeant Franko violated Rule 14. Sergeant Franko knew that Laquan McDonald had not battered Officers Van Dyke or Walsh, had not used force against them likely to cause death or great bodily harm, and had not attempted to stab or assault either of them. Sergeant Franko also knew that Van Dyke was not injured and that Van Dyke and Walsh were not victims. In nonetheless vouching for the accuracy of these statements, Sergeant Franko made willful and material false statements on these official police reports. This is not a case where a sergeant was asked to sign off on reports made by his subordinates in the field at the end of his shift when the

hearsay. This was improper in that during the pre-hearing process, Sergeant Franko had stipulated to the authenticity and admissibility of these exhibits. See, Pre-Hearing Order dated March 18, 2019, at p. 6. In any event, Supt.'s Exhs. 4,5,12, and 13 are not hearsay, as they were not offered to prove the truth of Officer Van Dyke's statements but rather as relevant reports that Sergeant Franko was asked to review and subsequently approve. The information on the reports was false and Sergeant Franko knew it, for the reasons described above. The Board has determined the information on these exhibits was false based on the testimony and other exhibits offered at the hearing.

sergeant was not personally familiar with what had happened in the field. Sergeant Franko knew from his own observations what had transpired, and he chose to perpetuate and affirm the false information Van Dyke and Walsh supplied rather than reject these false statements. His decision to approve these reports as accurate thus violates Rule 14.

7. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Sergeant Franko made, caused to be made, adopted, and/or approved one or more false, misleading, inaccurate, and/or inconsistent statements on Officer Jason Van Dyke's Battery Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald "stabbed/cut" and/or attempted to "stab/cut" Officer Van Dyke and/or another officer, or words to that effect.

Sergeant Franko thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4 and 5 above, which are incorporated herein by reference.

8. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 21, 2014, Sergeant Franko made one or more false statements on Officer Jason Van Dyke's Battery Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald "stabbed/cut" and/or attempted to "stab/cut" Officer Van Dyke and/or another officer, or words to that effect.

Sergeant Franko thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4-6 above, which are incorporated herein by reference.

9. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Sergeant Franko made, caused to be made, adopted, and/or approved one or more false, misleading, inaccurate, and/or inconsistent statements on Officer Joseph Walsh's Tactical Response Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald's actions constituted an assault, or words to that effect; and/or an imminent threat of battery, or words to that effect; and/or a battery, or words to that effect; and/or an attack with a weapon, or words to that effect; and/or deadly force, or words to that effect; and/or the use of force likely to cause death or great bodily harm, or words to that effect.

Sergeant Franko thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4 and 5 above, which are incorporated herein by

reference.

10. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 21, 2014, Sergeant Franko made one or more false statements on Officer Joseph Walsh's Tactical Response Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald's actions constituted an assault, or words to that effect; and/or an imminent threat of battery, or words to that effect; and/or a battery, or words to that effect; and/or an attack with a weapon, or words to that effect; and/or deadly force, or words to that effect; and/or the use of force likely to cause death or great bodily harm, or words to that effect.

Sergeant Franko thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4-6 above, which are incorporated herein by reference.

11. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Sergeant Franko made, caused to be made, adopted, and/or approved one or more false, misleading, inaccurate, and/or inconsistent statements on Officer Joseph Walsh's Battery Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald "stabbed/cut" and/or attempted to "stab/cut" Officer Walsh and/or another officer, or words to that effect.

Sergeant Franko thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4 and 5 above, which are incorporated herein by reference.

12. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 21, 2014, Sergeant Franko made one or more false statements on Officer Joseph Walsh's Battery Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald "stabbed/cut" and/or attempted to "stab/cut" Officer Walsh and/or another officer, or words to that effect.

Sergeant Franko thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4-6 above, which are incorporated herein by reference.

13. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Sergeant Franko made, caused to be made, adopted, and/or

approved one or more false, misleading, inaccurate, and/or inconsistent statements in the Original Case Incident Report (RD No. HX475653) related to the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that Officer Jason Van Dyke was injured by McDonald, or words to that effect.

Sergeant Franko thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4 and 5 above, which are incorporated herein by reference.

14. The Respondent, Sergeant Stephen Franko, Star No. 1537, charged herein, is **guilty** of violating Rule 2 Rule 3, Rule 6, and Rule 11 in that the Superintendent proved by a preponderance of the evidence the following charges:

From on or about October 19, 2014, to on or about October 21, 2014, or for some period of time therein, Sergeant Franko failed to monitor one or more of his subordinates to ensure they maintained a practice of using audio in the in-car video systems; and/or failed to ensure the audio portion of the in-car video systems were used properly; and/or failed to verify that the in-car microphones were operational; and/or failed to initiate an investigation when notified of damaged and/or missing and/or lost equipment; and/or failed to maintain an accurate Supervisor's Management Log.

Sergeant Franko thereby violated:

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

oral, in that he disobeyed Special Orders S03-05 and S03-03-06; and

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

See the findings set forth in paragraph no. 4 above, which are incorporated herein by reference. Most of the police vehicles under Sergeant Franko's command were equipped with audio and video systems that were activated when the vehicle's emergency lights were employed. The systems could also be turned on manually. This included the vehicles driven by officers on the night of October 20, 2014.⁷ Nevertheless, retired Sergeant Lance Becvar testified, without contradiction, that no audio could be recovered from any of those vehicles. Indeed, he testified further that the batteries for Officers Mondragon's and Sebastian's audio system were found in their glove compartment with the batteries either removed or turned upside down.

Sergeant Becvar, who was then in charge of the unit that monitored the Department's in-car audio and video systems, testified that when an officer began his or her shift, the officer was required to check that the audio and video systems were working. This included making a test video, ensuring that the microphones were working, and that the microphones had been synched properly to the video system. Department Special Order S03-05 (Supt.'s Exh. 34), Section VI (B) requires supervising sergeants, including Sergeant Franko, to:

1. Monitor subordinates to ensure the in-car video system is used;
2. Ensure that the Help Desk is contacted and a ticket number is obtained whenever any member is unable to use the in-car video system;
3. Initiate an investigation when notified of a missing or lost remote transmitter/audio recorder; and
4. Document on the Supervisor's Management Log: (a) whether each vehicle has an in-car video system, and (b) whether it is functioning.

⁷ Officers McElligott and Gaffney, Velez and Bacera, Viramontes and Fontaine, Mondragon and Sebastian, and Van Dyke and Walsh all drove vehicles equipped with audio recording equipment.

Officers Mondragon and Sebastian conceded at the hearing that they did not check to see that their microphones were working or synched to the video system prior to the start of duty on October 20, 2014. Indeed, they testified they had a regular practice of not checking.⁸

Sergeant Franko testified that at the beginning of each shift, he sent a PDT message to each police vehicle, asking if their “cam” was operational. The officers were to respond *yes* if that was the case. Officers Sebastian and Mondragon did respond to the message with the phrase: “8779 working, TGIF,” with a happy face. Sergeant Franko also said that it was his daily practice to enter this in the Supervisor’s Management Log when the officers confirmed their cameras were on. While the Supervisor’s Management Log for the night of October 20-21, 2014, has been lost or destroyed, the Superintendent offered into evidence the Management Log for the preceding night (Supt.’s Exh. 15), which indicates that Sergeant Franko did not record whether the in-car video system was operable or not.

The evidence clearly demonstrates that Sergeant Franko failed to discharge his responsibilities as a supervisor under Department Special Order S03-05. His inquiry as to whether the officers’ “cam” was working did not relate to the audio system at all. He made no effort to monitor the audio systems in the cars, or his officers’ use of the audio system. This is apparent from the complete lack of audio evidence from the night of October 20-21, 2014. Officer Sebastian testified that if Sergeant Franko had asked whether her audio was operational, she would have told him the truth that it was not (Tr., at pp. 203-05, 210-11), but Sergeant Franko never asked. Nor did Sergeant Franko make any effort to visually inspect the officers he was supervising to see that they

⁸ Officers McElligott, Gaffney, Velez, and Bacera all received five-day suspensions for not having operational audio systems on the night of October 20, 2014. Officers Sebastian and Mondragon were charged in this case for violating Rules 6 and 11 for not ensuring that their audio system was working on the night in question, and did not contest these charges. Officer Viramontes is not charged in connection with his audio system, as Sergeant Becvar found Viramontes’s and Fontaine’s in-car video system was not working properly that night.

were wearing their microphones. His failure to exercise supervisory responsibility to ensure that the audio systems in his subordinates' cars were working left investigators without critical evidence. Sergeant Franko clearly disobeyed and ignored his responsibilities under Department Special Order S03-05, and he is therefore guilty of violating Rules 2, 3 and 6. His conduct also was incompetent, and thus in violation of Rule 11.

Charges Against Ricardo Viramontes

15. The Respondent, Police Officer Ricardo Viramontes, Star No. 10590, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 20, 2014, Officer Viramontes made one or more false, misleading, inaccurate, and/or inconsistent statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald turned towards Officers Jason Van Dyke and Joseph Walsh, or words to that effect; and/or after McDonald fell to the ground, he attempted to get back up with the knife still in his hand, or words to that effect.

Officer Viramontes thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 4 above, which are incorporated herein by reference. During his interview with the detective tasked with investigating the fatal shooting, Officer Viramontes stated that immediately prior to the shooting, Mr. McDonald "turned toward

Van Dyke and his partner, Officer Joseph Walsh” (Supt.’s Exh. 2). At the hearing, Officer Viramontes testified that he saw Mr. McDonald “kind of twist and turn towards the officers” (Tr., p. 264), and that Mr. McDonald made a “twisting motion” with his right arm toward the officers (Tr., p. 291). Officer Viramontes’s statements indicated that Mr. McDonald posed a threat to Officer Van Dyke. The dash cam video, however, demonstrates that Officer Viramontes’s statements are false. Immediately prior to the shooting, Mr. McDonald did not turn toward Officers Van Dyke and Walsh, nor did he use his right hand to make a “twisting motion toward” Van Dyke and Walsh. In fact, Mr. McDonald was moving away from Officers Van Dyke and Walsh when he was shot and killed. The dash cam video is corroborated by the testimony of Xavier Torres (Supt.’s Exh. 42), who was parked one building south of the Dunkin Donuts, going northbound on Pulaski Road. Mr. Torres testified that Mr. McDonald did not make any threatening movements toward the officers, but instead was moving southwest in an effort to get away from them. This view of the dash cam video is further supported by the testimony of Sergeant Snelling. The Board finds Officer Viramontes’s statement about Mr. McDonald turning toward the officers to be demonstrably false.

At the hearing, Officer Viramontes testified that he did not see Mr. McDonald making “aggressive movements towards [the officers]” (Tr., pp. 288, 528), that he was not trying to ascribe blame to Mr. McDonald (Tr., p. 304), that McDonald in the moment before the shooting “looked towards [the officers]” (Tr., p. 292) and that Mr. McDonald may have twisted because he had been shot (Tr., p. 292). Officer Viramontes, however, provided none of this information to Detective March. As such, his report of a turn (or twist) toward Officer Van Dyke is misleading and false. The misleading nature of Officer Viramontes’s report is compounded by his failure to note that Mr. McDonald was actually walking away from Officers Van Dyke and Walsh at the time Officer

Van Dyke shot him, that Mr. McDonald did not use the knife in any kind of a threatening manner prior to being shot, and that Officers Van Dyke and Walsh had begun moving toward Mr. McDonald as he was moving away from them. The Board finds that this was not an inadvertent misperception on the part of Officer Viramontes, but rather an attempt to portray through the selective inclusion and omission of facts that Mr. McDonald was a threat to the officers' lives, when he in fact was not. Officer Viramontes's decision to only include an account that would support Officer Van Dyke's use of lethal force, rather than an account that fully set forth all of the relevant facts, including those that cast his fellow officer's decision in a negative light, is sufficient to find that Officer Viramontes violated both Rules 2 and 3.

Officer Viramontes also told Detective March that after he was shot, Mr. McDonald fell to the ground "but continued to move, attempting to get back up, with the knife in his hand" (Supt.'s Exh. 2). At the hearing, Officer Viramontes actually testified that Mr. McDonald was "trying to push himself up" (Tr., p. 265), and he was using his arms to push himself up (Tr., p. 294). The Board finds Officer Viramontes's statement to Detective March (and his hearing testimony) to be patently and willfully false. The dash cam video clearly shows that once Mr. McDonald was shot, he made no effort to get up. While his body moved from the repeated shots fired into him, Mr. McDonald's hands are clearly visible on the video and he is not using them to get up. If Mr. McDonald was trying to get up off the ground with the knife in order to threaten the officers, Officer Viramontes would likely have drawn his weapon and prepared to defend himself and his fellow officers. But Sebastian Exh. 7 (a split screen version of two videos) shows that immediately after Officer Viramontes exited his car (as the shooting begins), he did not draw his weapon or assume a defensive stance, but rather casually walked to the rear of his squad car. This confirms that Officer Viramontes knew that Mr. McDonald was not making any effort to get up and present

a threat to the officers on the scene. The Board finds that this statement by Officer Viramontes to Detective March was not only false, but designed to justify the number of times Officer Van Dyke shot Mr. McDonald.

16. The Respondent, Police Officer Ricardo Viramontes, Star No. 10590, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 20, 2014, Officer Viramontes made one or more false statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald turned towards Officers Van Dyke and Walsh, or words to that effect; and/or after McDonald fell to the ground, he attempted to get back up with the knife still in his hand, or words to that effect.

Officer Viramontes thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4 and 15 above, which are incorporated herein by reference. Commander Skahill testified that a Rule 14 conviction requires a willful and material false statement. The Board finds that Officer Viramontes's statement to Detective March that Mr. McDonald attempted to get up with the knife still in his hand was willfully false, as this statement is so clearly at odds with the dash cam video, Officer Viramontes's conduct as Mr. McDonald was being shot, and Mr. Torres's testimony. The statement was material, in that it was directly related to and designed to support Officer Van Dyke's use of deadly force, and his sustained fire of sixteen rounds into Mr. McDonald. While Officer Viramontes claimed he had a good-faith basis for recounting what he thought he saw (even if it was wrong in retrospect), the Board finds that because Mr. McDonald so obviously was not attempting to get off the ground, and no reasonable

person could have thought he was, Officer Viramontes's statement was willfully false when it was made and was presented to Detective March in an effort to artificially support Officer Van Dyke's use of force. As such, the Board finds Officer Viramontes violated Rule 14, as well as Rule 2 and Rule 3.

Charges Against Janet Mondragon

17. The Respondent, Police Officer Janet Mondragon, Star No. 4364, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 20, 2014, Officer Mondragon made one or more false, misleading, inaccurate, and/or inconsistent statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that Officer Mondragon looked down while putting her gearshift in park, and only heard—but did not see—the shot(s) that were fired at McDonald, or words to that effect; and/or Officer Mondragon did not see any shot(s) being fired by Officer Van Dyke, or words to that effect; and/or Officer Mondragon did not see who was firing a gun, or words to that effect.

Officer Mondragon thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph no. 4 above, which are incorporated herein by reference. Officer Mondragon and her partner, Officer Sebastian, responded to the scene at 41st and Pulaski after receiving a radio call. Officer Mondragon was driving their vehicle. They found Mr. McDonald moving southbound in the middle of Pulaski Road and they followed close behind.

Their dash cam video captured the fatal shooting of Mr. McDonald. After the shooting, Officer Mondragon told Detective March that prior to the shooting, she saw Mr. McDonald running southbound on Pulaski, in the middle of the street, and saw that he had a knife in his hand that he was waving. She also reported to Detective March that she saw Officers Van Dyke and Walsh outside their squad car ordering McDonald to drop the knife. Officer Mondragon, however, indicated that she did not see the key aspects of the encounter between Officer Van Dyke and Mr. McDonald that had been captured by her own vehicle's dash cam. She told Detective March that "(a)s she was placing her vehicle transmission into Park, [she] looked down and heard multiple, continuous gunshots, without pause." She says she then saw Mr. McDonald fall to the ground but did not know who fired the shots.

Officer Mondragon told a similar story to IPRA in the early morning hours of October 21, 2014, even after the dash cam video from her car was being played at Area Central where she gave her statement (Supt.'s Exh. 18). After recounting that she was right behind Mr. McDonald as he was "jogging" down Pulaski Road, she said she saw Officers Van Dyke and Walsh get out of their car and heard them tell Mr. McDonald to drop the knife. She stated that Mr. McDonald was waving the knife and then she heard shots fired. When asked the important question of whether Mr. McDonald was "facin' Officer Walsh and his partner when, when he was wavin' that (inaudible) and all that?", Officer Mondragon responded "how would I recall," as she had taken the position she heard but did not see the gunshots or the shooter.

The Board finds that Officer Mondragon's statement to Detective March and her subsequent statement to IPRA were both false. The dash cam video establishes without question that Officer Van Dyke shot at Mr. McDonald for fifteen seconds. Officer Mondragon conceded at the hearing it does not take fifteen seconds to put her vehicle into park, but rather only a few

seconds. More importantly, her own dash cam video shows her car was still moving forward as Mr. McDonald began to walk away from Officer Van Dyke and as the shooting began. The car moves for the first four seconds of the shooting. Officer Mondragon's vehicle could not have been put into park when the vehicle was still moving. The Board finds that Officer Mondragon was in a position to see what transpired between Officer Van Dyke and Mr. McDonald until at least four seconds after the shooting began and again after Mr. McDonald was on the ground, being hit with multiple rounds.

When a Chicago police officer is witness to the killing of a civilian (by a fellow officer or another civilian), that officer has an obligation to provide a complete and accurate account of all that he or she saw. This includes information that is helpful and harmful to the shooter. Police officers are expected to be careful observers of what is occurring, even under stressful circumstances. Officer Mondragon's obvious lie was designed to avoid reporting negative information about her fellow officer. This is a lie and it violates both Rules 2 and 3.

Rule 2 prohibits officers from bringing discredit on the Department. The Comment to the Rule says that it proscribes not only unlawful acts by members but also all acts, which although not unlawful in themselves, would degrade or bring disrespect upon the member or the Department. Officer Mondragon's statement that she did not see anything brings discredit on the Department. Rule 3 is violated when an officer fails to promote the Department's efforts to implement its policy or accomplish its goals. The Comment to that Rule makes clear that it covers "any omission or failure to act by any member of the Department, which act would be required by the stated policy, goals, rules, regulations, orders and directives of the Department." It further states that the Rule can be violated by an officer's "carelessness and inefficiency," as well as by design. Here, the Board finds that Officer Mondragon's failure to provide an account of the critical encounter

between Officer Van Dyke and Mr. McDonald was willful and not careless. The Board finds she was in a position to see what happened and determined not to say what she saw, which inured to the benefit of her fellow officer.⁹

18. The Respondent, Police Officer Janet Mondragon, Star No. 4364, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 20, 2014, Officer Mondragon made one or more false statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that Officer Mondragon looked down while putting her gearshift in park during the shooting, or words to that effect; and/or Officer Mondragon did not see shot(s) being fired by Officer Van Dyke, or words to that effect; and/or Officer Mondragon did not see who was firing a gun, or words to that effect; and/or Officer Mondragon did not see McDonald fall to the ground, or words to that effect.

Officer Mondragon thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4 and 17 above, which are incorporated herein by reference. The Board finds that Officer Mondragon's statements to Detective March and to IPRA that she did not witness the critical encounter between Officer Van Dyke and Mr. McDonald was a willful false statement. It was also material, as Officer Mondragon's vantage point was that depicted on the dash cam—a vantage point that established the shooting was unjustified. As such, she is guilty of violating Rule 14.

⁹ The Superintendent made much of the many texts Officer Mondragon exchanged with Officer Van Dyke before the shooting. Some days, there were as many as seventy texts (Supt.'s Exh. 37c). The Board does not rely on these texts in finding Officer Mondragon guilty of these charges.

19. The Respondent, Police Officer Janet Mondragon, Star No. 4364, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Officer Mondragon made one or more false, misleading, inaccurate, and/or inconsistent statements to the Independent Police Review Authority (IPRA), which responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that Officer Mondragon did not see who was firing a gun, or words to that effect; and/or Officer Mondragon provided a true and accurate account of the shooting to IPRA, or words to that effect.

Officer Mondragon thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4, 17, and 18 above, which are incorporated herein by reference.

20. The Respondent, Police Officer Janet Mondragon, Star No. 4364, charged herein, is **guilty** of violating Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 21, 2014, Officer Mondragon made one or more false statements to the Independent Police Review Authority, which responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that Officer Mondragon did not see who was firing a gun, or words to that effect; and/or Officer Mondragon provided a true and accurate account of the shooting, or words to that effect.

Officer Mondragon thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4, 17, and 18 above, which are incorporated herein by reference.

21. The Respondent, Police Officer Janet Mondragon, Star No. 4364, charged herein, is **guilty** of violating Rule 2 Rule 3, Rule 6, and Rule 11 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 20, 2014, Officer Mondragon failed to visually inspect the in-car video system equipment on her assigned vehicle for damage; and/or failed to obtain the audio recorder from her in-car video system and/or ensure it was securely attached to her person; and/or failed to follow the start-up procedures for the in-car video system as trained and/or ensure the system was working properly, and/or failed to audibly record events with her in-car video system; and/or failed to notify her supervisor about the audio component's status.

Officer Mondragon thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that she disobeyed Special Order S03-05; and
- d. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in paragraph nos. 4 and 14 above, which are incorporated herein by reference. Retired Sergeant Becvar testified, without contradiction, that it was Officer Mondragon's (and her partner Officer Sebastian's) responsibility to check that their video and audio systems were working prior to beginning their shift. They were to make a test video to ensure that the video system was working, as well as the microphones, and to verify that the

microphones were synched with the video in their car. These requirements are contained in Department Special Order S03-05 (Supt.'s Exh. 34). Both Officers Mondragon and Sebastian conceded not only that they did not do this prior to the beginning of their shift on October 20, 2014, but that it was their regular practice not to do so (Tr., at p. 354, 357-58). Sergeant Becvar testified that he found the microphones in the glove compartment of Officer Mondragon's and Sebastian's car, with the batteries either removed or turned upside down. It is further undisputed that no audio could be retrieved from Officer Mondragon's and Sebastian's squad car on October 20, 2014. Officer Mondragon, for all practical purposes, did not dispute these charges against her, and she is guilty of violating Rules 2, 3, 6, and 11.

Charges Against Daphne Sebastian

22. The Respondent, Police Officer Daphne Sebastian, Star No. 2763, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 20, 2014, Officer Sebastian made one or more false, misleading, inaccurate, and/or inconsistent statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald—after being told to “Drop the knife!”—continued to advance on Officers Jason Van Dyke and Joseph Walsh while waving the knife, or words to that effect; and/or McDonald turned toward Officers Van Dyke and Walsh, or words to that effect; and/or McDonald waved or made a motion with the knife when he turned towards Officers Van Dyke and Walsh, or words to that effect; and/or McDonald continued to move after he fell to the ground, or words to that effect.

Officer Sebastian thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts

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

- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4 and 17 above, which are incorporated herein by reference. When questioned by Detective March right after the killing of Mr. McDonald, Officer Sebastian said she and Officer Mondragon had pulled up behind Mr. McDonald as he was running southbound down Pulaski Road. Officer Sebastian saw the knife in Mr. McDonald's right hand, and that he was waving it. After Officers Walsh and Van Dyke pulled ahead of Mr. McDonald, stopped their vehicle and exited with their guns drawn, Officer Sebastian said that "McDonald turned toward the two officers and continued to wave the knife." She then said that after Mr. McDonald ignored the officers' command to drop the knife, he "continued to advance on the officers waving the knife." Officer Sebastian concluded by saying she heard multiple gun shots and saw McDonald fall to the ground "where he continued to move" (Supt.'s Exh. 2).

Some hours later, at Area Central, Officer Sebastian told IPRA Investigator Killen that when Mr. McDonald "got closer to them [Van Dyke and Walsh] and they got outta the vehicle, it (noise) he turned his body towards them like the knife like (noise) in a motion toward them. His (noise) his right arm did." She then stated that after Officers Van Dyke and Walsh cut off Mr. McDonald, that Mr. McDonald does not stop but is "still moving." She was asked: "Is that when he turns, so he faces---", and answered: "Hmm huh yeah he's still, he's still moving yes." Officer Sebastian claims she did not watch her entire dash cam video prior to her IPRA statement (Tr., pp. 246-48). However, she told Special Prosecutor Holmes's investigator in 2017 that she viewed at least portions of the video at Area Central (Tr., p. 192, 249-51). The Board credits Officer Sebastian's statement to the Special Prosecutor and finds that she had in fact watched at least

portions of the video prior to her interview with IPRA.

At the hearing, Officer Sebastian testified that her statements to Detective March and IPRA were not made to suggest that Mr. McDonald posed a threat to Officers Van Dyke and Walsh (Tr., pp. 187-88, 231). She testified that Mr. McDonald was waving the knife but only as he trotted down Pulaski in the middle of the street, and not right before the shooting (Tr., pp. 186-88). She testified that Mr. McDonald made a twisting motion towards the officers right before he was shot, with the knife in his right hand (Tr., pp. 194-96, 224-25) but she denied that she ever said Mr. McDonald was attacking or attempting to stab Officers Van Dyke or Walsh (Tr., pp. 231, 256). While she told Detective March that Mr. McDonald was moving on the ground, she testified at the hearing he was not trying to get up (Tr., p. 199, 228).

The Board finds that Officer Sebastian's statements to Detective March and to IPRA were misleading and false because of her decision to omit substantial and important facts. It is true that Mr. McDonald began walking or jogging down the middle of Pulaski Road, and was waving a knife in his right hand. It is true that he refused to drop the knife. But her statement that he "continued to advance on the officers waving the knife" before he was shot is demonstrably false, as confirmed by Officer Sebastian's own dash cam video and Mr. Torres's testimony. Mr. McDonald was moving away from the officers and was not waving his knife at them. To the contrary, the officers moved toward Mr. McDonald. While Officer Sebastian claimed at the hearing that Detective March was not careful in the way he took notes, and she did not mean to suggest that Mr. McDonald posed a threat to Officers Van Dyke and Walsh or made an effort to attack or attempt to stab either Officer Van Dyke or Officer Walsh, she omitted these critical facts from the account she gave both Detective March and IPRA. Moreover, she omitted any mention of Mr. McDonald's movement away from the officers or the officers' movement toward Mr.

McDonald. In fact, she gave the opposite impression. She suggested in her IPRA statement that Mr. McDonald made a turn so that he faced the officers right before the shooting, which is false. Similarly, while it is true that Mr. McDonald's body was moving on the ground, she omitted the important fact that Mr. McDonald was not trying to get up and therefore did not present a threat while on the ground.

As explained earlier, Rules 2 and 3 require Chicago police officers to give a complete and accurate account of what they have observed, particularly in a situation like this one, where a civilian was fatally shot by the police. Officer Sebastian's statements are replete with critical omissions, so that they appear to help justify the use of lethal force by Officer Van Dyke. If she had given a complete statement, even including only the modifications to her statements that she gave at the hearing—that Mr. McDonald was not a threat to Officers Van Dyke and Walsh, did not attack them and did not attempt to stab them, and that Mr. McDonald was not attempting to get off the ground—the picture painted is entirely different. The statements Officer Sebastian gave to the investigators were not complete. They were misleading and false because of intentional and material omissions, and as such, she violated Rules 2 and 3.

23. The Respondent, Police Officer Daphne Sebastian, Star No. 2763, charged herein, is **not guilty** of violating Rule 14 in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about October 20, 2014, Officer Sebastian made one or more false statements to a member(s) of the Department who responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald—after being told to “Drop the knife!”—continued to advance on Officers Jason Van Dyke and Joseph Walsh while waving

the knife, or words to that effect; and/or McDonald turned toward Officers Van Dyke and Walsh, or words to that effect; and/or McDonald waved or made a motion with the knife when he turned towards Officers Van Dyke and Walsh, or words to that effect; and/or McDonald continued to move after he fell to the ground, or words to that effect.

Officer Sebastian thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4, 17, and 22 above, which are incorporated herein by reference. The Board finds that while Officer Sebastian's statements to Detective March and to IPRA were misleading, in that they omitted key facts, and therefore were false in important respects, the Superintendent has not met his burden of proving that the statements she made were willfully false at the time she made them. Unlike the other Respondent officers in this case, most of what she included in her statements bore some resemblance to what happened on the street, as established by the evidence in this case, but they were misleading and false because of the material facts omitted. She did not invent a fiction of Mr. McDonald getting up off the ground with his knife after he was shot (as did Officer Viramontes). She did not intentionally falsely claim she did not see what transpired directly in front of her (as did Officer Mondragon). But to be sure, Officer Sebastian misled those investigating the shooting by consciously omitting key facts from her account of what occurred. The Board, however, finds that this is insufficient, in this case, to constitute a violation of Rule 14.

(Board Members Foreman, Wolff, Eaddy and Flores hereby dissent from the majority concerning whether Officer Sebastian violated Rule 14, and state as follows:

We believe that the Superintendent did prove by a preponderance of evidence that Officer Sebastian violated Rule 14 by willfully making one or more material false statements.

Officer Sebastian testified or provided statements about what she saw on October 20, 2014, on at least four different occasions. Officer Sebastian told Detective March that Mr. McDonald

ignored Officer Van Dyke and Officer Walsh's verbal directions to drop the knife and "continued to advance on the officers waving the knife," suggesting a serious threat to the officers. She later told IPRA that Mr. McDonald turned his body towards them with the knife in his right hand, and was facing the officers. She further said that Mr. McDonald was still moving on the ground after he was shot. However, her dash cam video demonstrates that Mr. McDonald did not turn his body and face the officers immediately prior to his being shot. Most critically, Officer Sebastian failed to mention the important fact that Mr. McDonald was walking away from the officers at the time he was shot as clearly demonstrated by her own dash cam video.

We note that Officer Sebastian changed her rendition of the incident throughout her various statements and testimony. In her first statement at the scene, she said that Mr. McDonald advanced toward the officers waving the knife and that when he was on the ground he was moving. When testifying before IPRA, she attempted to distance herself from the initial statement which suggested that Officer Van Dyke shot Mr. McDonald because he feared for his life, but continued to state that Mr. McDonald turned toward the officers with the knife (something which is contradicted by her dash cam video), potentially posing a threat. By the time she testified at the Board hearing, she said Mr. McDonald was just "waving it [the knife] as he was walking along" and denied that she intended to suggest that Mr. McDonald posed a threat to Officer Van Dyke by saying she did not remember "believing one way or the other" if she thought Mr. McDonald posed a threat.

We agree with Board Member O'Malley when he says in his dissent, "The other members of the Board found her not guilty on Rule 14 for the same statements [as she was found guilty of vis a vis Rules 2 and 3]. It is my opinion that the decision to find her guilty for the same conduct under Rules 2 and 3 is totally inconsistent and confusing." We agree that this is inconsistent and

confusing, but reach the opposite conclusion, however, and believe she is guilty of violating all three rules. As the Superintendent proved, Officer Sebastian gave false and material statements that corroborated the testimony of others, intended to justify the shooting. As Officer Sebastian kept modifying her version of the event to make it appear that she did not intend to give statements justifying Officer Van Dyke's shooting, she proved that her first and second statements regarding the shooting of Mr. McDonald were false and misleading. Finally, even during her testimony, Officer Sebastian did not appear to be completely forthcoming. She stated that the video of the incident was playing at the station after the event and stated first, "I don't recall watching it" and when asked in the very next question to be clear about whether she did or did not watch it, she then stated, "I don't remember watching it in its entirety." This testimony is, by the way, inconsistent with the testimony she gave to the Special Prosecutor.

We wish to make clear through this dissent that the Board's goal is to impress upon members the Department of the importance of telling the complete truth inclusive of the relevant circumstances and context. The Board regards a Rule 14 violation among the most significant actions to be judged by the Board. An officer's responsibility to tell the truth is at the heart of Rule 14 and at the heart of community trust in the police.)

24. The Respondent, Police Officer Daphne Sebastian, Star No. 2763, charged herein, is **guilty** of violating Rule 2 and Rule 3 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 21, 2014, Officer Sebastian made one or more false, misleading, inaccurate, and/or inconsistent statements to the Independent Police Review Authority, which responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false, misleading, inaccurate, and/or inconsistent statements included that McDonald turned towards Officers Van Dyke and Walsh with a knife in a motion towards them, or words to that effect; and/or Officer Sebastian provided a true and accurate account of the shooting to IPRA, or words to that effect.

Officer Sebastian thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.

See the findings set forth in paragraph nos. 4, 17, and 22 above, which are incorporated herein by reference.

25. The Respondent, Police Officer Daphne Sebastian, Star No. 2763, charged herein, is **not guilty** of violating Rule 14 in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about October 21, 2014, Officer Sebastian made one or more false statements to the Independent Police Review Authority, which responded to and/or investigated the events surrounding the fatal shooting of Laquan McDonald on or about October 20, 2014, at or about 21:57 hours, at or around the 4100 block of South Pulaski Road, Chicago.

Said false statements included that McDonald turned towards Officers Van Dyke and Walsh with a knife in a motion towards them, or words to that effect; and/or Officer Sebastian provided a true and accurate account of the shooting to IPRA, or words to that effect.

Officer Sebastian thereby violated Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph no. 4, 17, 22, and 23 above, which are incorporated herein by reference.

(Board Members Foreman, Wolff, Eaddy and Flores hereby dissent from this finding for the reasons set forth in paragraph no. 23 above.)

26. The Respondent, Police Officer Daphne Sebastian, Star No. 2763, charged herein, is **guilty** of violating Rule 2 Rule 3, Rule 6, and Rule 11 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 20, 2014, Officer Sebastian failed to visually inspect the in-car video system equipment on her assigned vehicle for damage; and/or failed to obtain the audio recorder from her in-car video system and/or ensure it was securely attached to her person; and/or failed to follow the start-up procedures for the in-car video system as trained and/or ensure the system was working properly, and/or failed to audibly record events with her in-car video system; and/or failed to notify her supervisor about the audio component's status.

Officer Sebastian thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, in that she disobeyed Special Order S03-05; and
- d. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in paragraph nos. 4, 14, and 21 above, which are incorporated herein by reference. Like Officer Mondragon, Officer Sebastian candidly admitted that she did not follow the requirements of Department Special Order S03-05 prior to her shift on October 20, 2014. She did not check to see that her audio system was operational, as well as the microphones, and did not synch the microphones to the video system in their car. Officer Sebastian testified that it was not her practice to follow this routine. Officer Sebastian did not dispute Sergeant Becvar's testimony that her microphone was in the glove compartment of her squad car with the batteries either removed or turned upside down. It is also not disputed that no audio was available from Officer Sebastian's car. For all practical purposes, Officer Sebastian did not dispute these charges and the Board therefore finds that she violated Rules 2, 3, 6, and 11, as charged.

Penalties

27. The Police Board has considered the facts and circumstances of the conduct of which it has found each Respondent guilty, and the evidence each Respondent presented in their defense and mitigation.

As set forth more fully in the sections below, after carefully considering the evidence each Respondent offered in defense and mitigation, the Board finds that each Respondent's misconduct is incompatible with continued service as an officer and warrants a penalty of discharge from the Chicago Police Department. Each Respondent's conduct is antithetical to that expected and required of a sworn law enforcement officer, who at all times has a duty to act with honesty and integrity, not approve official police reports he knew or should have known were false (in the case of Sergeant Franko) or give misleading and false accounts of what they observed in the course of one's official duties (in the cases of Officers Viramontes, Mondragon and Sebastian).

Respondent Stephen Franko

28. Sergeant Franko presented evidence in mitigation from Lieutenant Janice Roche and Sergeant Theresa Hickey. In addition, Sergeant Franko, who joined the Police Department in 1994, has a complimentary history of 65 total awards, including one Life Saving Award, two Department commendations, 52 honorable mentions, and two attendance recognition awards. He has one sustained complaint on his disciplinary history (a one-day suspension relating to two police radios missing from the 8th District radio room in 2015).

Nevertheless, after thoroughly considering Sergeant Franko's service as a police officer and his prior disciplinary history, the Board finds that his accomplishments as an officer and the positive evaluations of him do not outweigh the seriousness of his misconduct in this case. The

Board finds that Sergeant Franko's misconduct is incompatible with continued service as a sworn officer and warrants his discharge from the Chicago Police Department.

The Board is convinced that supervising sergeants must be vigilant in following Departmental rules and policies themselves and in insisting that their subordinate patrol officers do so as well. Unless these supervisors commit to enforcing the rules, the Department's policies will be ignored and disrespected on the street. This case presents a glaring example of a sergeant who abdicated his responsibility to lead as a supervisor and failed in his duties as a sworn officer by approving reports of a fatal officer-involved shooting that he knew, or should have known, were false, and in failing to ensure that his officers utilized the Department's audio system. His position at the hearing that he had no obligation to assess the accuracy of the TRRs and OBRs Officers Van Dyke and Walsh submitted was particularly troubling to the Board, given the clear mandates of Department General Order 03-02-04 and Department Special Order S03-03-06.

Sergeant Franko's conduct brought discredit upon the Chicago Police Department and undermined its mission. Effective law enforcement depends upon a high degree of cooperation between the police department and the public it serves. Conduct such as Sergeant Franko's fosters public distrust and a lack of confidence in the integrity of the Chicago Police Department, thereby significantly harming the Department's efforts to achieve the important goals of preventing crime, preserving the public peace, identifying and arresting those who commit crimes, and promoting respect and cooperation of all Chicagoans for the law and those sworn to enforce it.

The Board finds that Sergeant Franko's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for him to no longer occupy his office. The Board finds that his

violations of Rules 2 and 3 are, by themselves, sufficiently serious to warrant his discharge from the Police Department.

Respondent Ricardo Viramontes

29. Officer Viramontes presented evidence in mitigation from Theresa Casillas. In addition, Officer Viramontes, who joined the Police Department in 2003, has a complimentary history of 36 total awards, including 27 honorable mentions and one attendance recognition award. He has no sustained complaints on his disciplinary history.

Nevertheless, after thoroughly considering Officer Viramontes's service as a police officer and the lack of prior disciplinary history, the Board finds that his accomplishments as an officer and the positive evaluation of him do not outweigh the seriousness of his misconduct in this case. The Board finds that Officer Viramontes's misconduct is incompatible with continued service as a police officer.

Article I(B)(4) of the Police Department's Rules and Regulations provides that: "The public demands that the integrity of its law enforcement officers be above reproach, and the dishonesty of a single officer may impair public confidence and cast suspicion and disrespect upon the entire Department. Succumbing to even minor temptation can be the genesis which will ultimately destroy an individual's effectiveness and contribute to the corruption of countless others. A member must scrupulously avoid any conduct which might compromise the integrity of himself, his fellow members or the Department." This case involved the fatal shooting of a seventeen-year-old by a Chicago police officer. Despite the gravity of this situation, Officer Viramontes willfully lied about the circumstances of this young man's death, by contending that even after being shot multiple times, Mr. McDonald remained a threat to Officer Van Dyke.

Officer Viramontes's statement was at odds with all of the evidence at the scene and represents a clear attempt to benefit his fellow officer at the expense of the whole truth. Moreover, Officer Viramontes's misleading and therefore false statement about Mr. McDonald's actions immediately before he was killed irretrievably undermined his integrity as a law enforcement officer and leaves the Board with no confidence in his ability to continue as a police officer.

Officer Viramontes's conduct brought discredit upon the Chicago Police Department and undermined its mission.¹⁰ Effective law enforcement depends upon a high degree of cooperation between the police department and the public it serves. Conduct such as Officer Viramontes's fosters public distrust and a lack of confidence in the integrity of the Chicago Police Department, thereby significantly harming the Department's efforts to achieve the important goals of preventing crime, preserving the public peace, identifying and arresting those who commit crimes, and promoting respect and cooperation of all Chicagoans for the law and those sworn to enforce it.

In addition, Officer Viramontes's violation of Rule 14 renders him unfit to hold that office. Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, but particularly one as a police officer. The duties of a police officer include making arrests and testifying in court, and a police officer's credibility is at issue in both the prosecution of crimes and in the Police Department's defense of civil lawsuits. A public finding that a police officer made false official reports is detrimental to the officer's credibility as a witness and, as such, is a serious liability to the Department. See, *Rodriguez v Weis*, 408 Ill.App.3d 663, 671 (1st Dist. 2011).

The Board finds that Officer Viramontes's conduct is sufficiently serious to constitute a

¹⁰ Officer Viramontes is charged with violating Rules 2, 3 and 14. The Board finds that his violations of Rules 2 and 3 are, by themselves, sufficiently serious to warrant a penalty of discharge.

substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for him to no longer occupy his office.

Respondent Janet Mondragon

30. Officer Mondragon presented evidence in mitigation from retired Sergeant Lee Bielecki and Officer Antonio Phillips. In addition, Officer Mondragon, who joined the Police Department in 2007, has a complimentary history of 48 total awards, including one Department commendation, 33 honorable mentions, six emblems of recognition for physical fitness, and two attendance recognition awards; she has no sustained complaints on her disciplinary history.

Nevertheless, after thoroughly considering Officer Mondragon's service as a police officer and the lack of prior disciplinary history, the Board finds that her accomplishments as an officer and the positive evaluations of her do not outweigh the seriousness of her misconduct in this case. The Board finds that Officer Mondragon's misconduct is incompatible with continued service as a police officer.

Officer Mondragon was a witness to the fatal shooting of a seventeen-year old by a Chicago police officer. Her decision to say she did not see what happened, when she clearly did, constitutes serious misconduct. The Board finds this conduct by a trained police officer, particularly in the context of a case as serious as this one, to be reprehensible. It has completely undermined Officer Mondragon's integrity and effectiveness as a police officer going forward.

Officer Mondragon's conduct brought discredit upon the Chicago Police Department and

undermined its mission.¹¹ Effective law enforcement depends upon a high degree of cooperation between the police department and the public it serves. Conduct such as Officer Mondragon's fosters public distrust and a lack of confidence in the integrity of the Chicago Police Department, thereby significantly harming the Department's efforts to achieve the important goals of preventing crime, preserving the public peace, identifying and arresting those who commit crimes, and promoting respect and cooperation of all Chicagoans for the law and those sworn to enforce it.

In addition, Officer Mondragon's violation of Rule 14 renders her unfit to hold that office. Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, but particularly one as a police officer. The duties of a police officer include making arrests and testifying in court, and a police officer's credibility is at issue in both the prosecution of crimes and in the Police Department's defense of civil lawsuits. A public finding that a police officer made false official reports is detrimental to the officer's credibility as a witness and, as such, is a serious liability to the Department. See, *Rodriguez v. Weis*, 408 Ill.App.3d 663, 671 (1st Dist. 2011).

The Board finds that Officer Mondragon's conduct is sufficiently serious to constitute a substantial shortcoming that renders her continuance in her office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for her to no longer occupy her office.

Respondent Daphne Sebastian

31. Officer Sebastian presented evidence in mitigation from retired Sergeant Lee Bielecki,

¹¹ Officer Mondragon is charged with violating Rules, 2, 3, 6, 11, and 14. The Board finds that her violations of Rules 2 and 3 are, by themselves, sufficiently serious to warrant a penalty of discharge.

Barbara Ziegler, and Officer Antonio Phillips. In addition, Officer Sebastian, who joined the Police Department in 2002, has a complimentary history of 89 total awards, including two Department commendations, 65 honorable mentions, 13 emblems of recognition for physical fitness, and two attendance recognition awards; she has no sustained complaints on her disciplinary history.

Nevertheless, after thoroughly considering Officer Sebastian's service as a police officer and the lack of prior disciplinary history, the Board finds that her accomplishments as an officer and the positive evaluations of her do not outweigh the seriousness of her misconduct in this case. The Board finds that Officer Sebastian's misconduct is incompatible with continued service as a police officer.

While the Board has found that Officer Sebastian did not violate Rule 14, she nonetheless provided reports in this case that were deliberately misleading and therefore false. Officer Sebastian offered two accounts of a fatal shooting that made it appear as though Officer Van Dyke appropriately used lethal force against Mr. McDonald when that was not what occurred and not what Officer Sebastian saw. She deliberately omitted critical and relevant facts from her reports of what happened, so that her reports were misleading. Her misleading account of what transpired has undermined her integrity as a police officer and brought severe disrespect upon the Department and her fellow officers.

Officer Sebastian's conduct brought discredit upon the Chicago Police Department and undermined its mission. Effective law enforcement depends upon a high degree of cooperation between the police department and the public it serves. Conduct such as Officer Sebastian's fosters public distrust and a lack of confidence in the integrity of the Chicago Police Department, thereby significantly harming the Department's efforts to achieve the important goals of preventing crime,

preserving the public peace, identifying and arresting those who commit crimes, and promoting respect and cooperation of all Chicagoans for the law and those sworn to enforce it.

The Board finds that Officer Sebastian's conduct is sufficiently serious to constitute a substantial shortcoming that renders her continuance in her office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for her to no longer occupy her office.

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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 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 Stephen Franko

By votes of 9 in favor (Ghian Foreman, Paula Wolff, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp) to 0 opposed, the Board finds Respondent Stephen Franko **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 11, and Rule 14, as set forth in paragraph nos. 5 – 14 above.

As a result of the foregoing, the Board, by a vote of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for discharging Respondent Stephen Franko from his position as a sergeant of police with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Sergeant Stephen , Star No. 1537, as a result of having been found **guilty** of all charges in Police Board Case No. 16 PB 2909, be and hereby is **discharged** from his position as a sergeant of police with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp.

Respondent Ricardo Viramontes

By votes of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, the Board finds Respondent Ricardo Viramontes **guilty** of violating Rule 2, Rule 3, and Rule 14, as set forth in paragraph nos. 15 and 16 above.

As a result of the foregoing, the Board, by a vote of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for discharging Respondent Ricardo Viramontes from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Ricardo Viramontes, Star No. 10590, as a result of having been found **guilty** of all charges in Police Board Case No. 16 PB 2912, 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.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp.

Respondent Janet Mondragon

By votes of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, the Board finds Respondent Janet Mondragon **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 11, and Rule 14, as set forth in paragraph nos. 17 – 21 above.

As a result of the foregoing, the Board, by a vote of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for discharging Respondent Janet Mondragon from her position as a police officer

with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Janet Mondragon , Star No. 4364, as a result of having been found **guilty** of all charges in Police Board Case No. 16 PB 2910, be and hereby is **discharged** from her position as a police officer with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp.

Respondent Daphne Sebastian

By votes of 8 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, Simpson, Sweeney, and Zopp) to 1 opposed (O'Malley), the Board finds Respondent Daphne Sebastian **guilty** of violating Rule 2 and Rule 3, as set forth in paragraph nos. 22 and 24 above. By votes of 5 in favor (Delgado, O'Malley, Simpson, Sweeney, and Zopp) to 4 opposed (Foreman, Wolff, Eaddy, and Flores), the Board finds Respondent Daphne Sebastian **not guilty** of violating Rule 14, as set forth in paragraph nos. 23 and 25 above. By votes of 9 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, the Board finds Respondent Daphne Sebastian **guilty** of violating Rule 2, Rule 3, Rule 6, and Rule 11, as set forth in paragraph no. 26 above.

As a result of the foregoing, the Board, by a vote of 8 in favor (Foreman, Wolff, Delgado, Eaddy, Flores, Simpson, Sweeney, and Zopp) to 1 opposed (O'Malley), hereby determines that cause exists for discharging Respondent Daphne Sebastian from her position as a police officer with the Department of Police, and from the services of the City of Chicago.

Police Board Case Nos. 16 PB 2909-2912

Franko et al.

Findings and Decisions

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Daphne Sebastian , Star No. 2763, as a result of having been found **guilty** of charges in Police Board Case No. 16 PB 2911, be and hereby is **discharged** from her position as a police officer with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JULY, 2019.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT REGARDING RESPONDENT DAPHNE SEBASTIAN

I hereby dissent from certain findings of the majority of the Board with regard to Respondent Daphne Sebastian, and from the decision to discharge her from the Chicago Police Department.

I find that there is insufficient evidence that the statements Officer Sebastian made to Detective March and to the Independent Police Review Authority were false, misleading, inaccurate, or inconsistent. In the Board's decision, the majority states her statements were "intentionally misleading to benefit her fellow officer." That reasoning is partially based on her statements that Mr. McDonald "continued to advance on the officers waving the knife." I find that statement can be construed as accurate and does not automatically translate into her believing or stating that McDonald was an imminent threat to her fellow officers requiring or condoning deadly force. The Board states that her statement made it appear as though Van Dyke appropriately used deadly force. I do not agree with that assertion whatsoever.

Officer Sebastian was charged with numerous violations based on statements she gave to the Chicago Police Department and investigators for IPRA. She was charged with rules governing officer conduct. In this case, Rules 2, 3, and 14 based on the same statements.

In the charges, certain statements she made were referenced and cited as misleading, inaccurate, and/or inconsistent. It is my opinion that those statements did not fall under any of those categories. It is also my opinion that her statements were consistent with what she believed. Her statements reflected what she knew at the time of the event and how she, and she alone, perceived those events.

It is also my opinion that her testimony at the hearing was consistent with what she believes she saw and what she remembers almost five years ago.

The other members of the Board found her not guilty on Rule 14 for the same statements. It is my opinion that the decision to find her guilty for the same conduct under Rules 2 and 3 is totally inconsistent and confusing.

Based on the evidence presented, it is my opinion that Officer Sebastian is not guilty of violating Rules 2, 3, and 14 based on her statements to both the Chicago Police Department and IPRA. I also do not find that her conduct and guilty verdicts for failing to visually inspect the in-car video system and ensure her audio recorder was functional is worthy of termination. It is my opinion that she is guilty only of these infractions and that a lengthy term of suspension is just in this case based on the totality of her conduct regarding the events of October 20, 2014.

/s/ JOHN P. O'MALLEY JR.

RECEIVED A COPY OF
THESE FINDINGS AND DECISIONS
THIS ____ DAY OF _____, 2019.

EDDIE T. JOHNSON
Superintendent of Police