

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER PATRICK KELLY,) **No. 19 PB 2966**
STAR No. 19397, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
)
)
) **(CR No. 1033096)**
RESPONDENT.)

FINDINGS AND DECISION

On October 10, 2019, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Patrick Kelly, Star No. 19397 (“Respondent”), recommending that Respondent be discharged from the Chicago Police Department for violating several Rules of Conduct.

A hearing on the charges against the Respondent took place before Hearing Officer Allison L. Wood on March 8–12, 2021, via Zoom video conferencing. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer’s report (neither party filed a response to this report), and viewed the video recording of the entire evidentiary hearing. Hearing Officer Wood made an oral report to and conferred with the Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

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

1. Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. A copy of the charges filed, and a notice stating the date, place, and time the initial

status hearing would be held, were personally served upon Respondent not fewer than five (5) days before the date of the initial status hearing for this case.

3. At the hearing on the charges Respondent appeared and was represented by legal counsel.

Introduction

4. Respondent has been a Chicago police officer since 2004. It is undisputed that Respondent was off-duty on the evening of January 11, 2010. He spent time with his childhood friend Michael LaPorta (“LaPorta”) at two local bars—first McNally’s (a 2:00 a.m. bar), and then Brewbakers (a 4:00 a.m. bar). In the early morning hours of January 12, 2010, Respondent and LaPorta returned to Respondent’s home, where they continued drinking. At approximately 4:35 a.m., LaPorta was shot in the head with Respondent’s service weapon. No one was present at the time of the shooting apart from Respondent and LaPorta. The bullet entered LaPorta’s head on the back, left side, approximately three inches above LaPorta’s left ear. The cartridge casing of the bullet that was fired failed to eject properly; it was found in the chamber of Respondent’s gun, a Double Action Kellerman (“DAK”) Sig Sauer. Respondent called 911 at about 4:35 a.m. and reported that LaPorta had committed suicide. During that call Respondent realized that LaPorta was still breathing. Respondent called 911 a second time at about 4:40 a.m., asking when the paramedics would arrive at his home; paramedics arrived during the course of that phone call. Respondent became upset when he was not allowed to travel to the hospital in the ambulance with LaPorta, leading responding officers to take him to the ground and arrest him. LaPorta survived the shooting, but was left with a severe brain injury that prevented him from communicating with investigating officers regarding the incident until 2016.

The charges against Respondent arise out of the events that took place in the early

morning hours of January 12, 2010, and the ensuing investigation. In the years following the shooting—including during the hearing on the charges before the Board—Respondent maintained that LaPorta shot himself in the head. The charges include: (1) on the morning of January 12, 2010, Respondent discharged his firearm in the direction of LaPorta without justification; (2) in a statement made to the Independent Police Review Authority (“IPRA”) on January 11, 2011, Respondent said that he went to grab for the gun but did not touch it; and (3) in the same January 11, 2011 statement to IPRA, Respondent answered “no” when he was asked if he shot LaPorta.

The Board concludes that the preponderance of the evidence presented in this case established that Respondent pulled the trigger on the morning of January 12, 2010, and subsequently lied about it during an interview with IPRA on January 11, 2011. His statement that he did not shoot LaPorta was inconsistent with the physical and circumstantial evidence in this case. Accordingly, the Board finds Respondent guilty of violating Rules 2, 8, 9, 14, and 38.

Charges Against Respondent

5. Police Officer Patrick Kelly, Star No. 19397, is **guilty** of violating Rules 2, 8, 9, and 38 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about January 12, 2010, Officer Patrick Kelly discharged his firearm in the direction of Michael LaPorta without justification. Officer Kelly thereby violated:

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

d. Rule 38, which prohibits unlawful or unnecessary use or display of a weapon.

The Superintendent has the burden to prove by a preponderance of the evidence that it is more likely than not that Respondent discharged his firearm in LaPorta's direction without justification on the morning of January 12, 2010. *See generally Clark v. Bd. of Fire & Police Comm'rs of the Vill. of Bradley*, 613 N.E.2d 826 (Ill. App. Ct. 1993). While it is impossible to know exactly what transpired in those early morning hours, the physical and circumstantial evidence presented to the Police Board render it more likely than not that Respondent fired the shot that struck LaPorta.

First, the Police Board finds LaPorta's testimony that he did not shoot himself to be credible. Although LaPorta has undeniably suffered an extremely severe brain injury, the Police Board found credible the amount of detail LaPorta was able to recall during his testimony.¹ And while Respondent's expert, Dr. Robert Heilbronner, testified that LaPorta's recollection of the night at issue has resulted from memory confabulation,² there is simply no evidence in the record to support that theory. Indeed, there is no evidence before the Police Board indicating that a member of LaPorta's family—or any other individual in close contact with him—discussed what transpired on the morning of January 12, 2010, with him, or otherwise told him that he was shot by Respondent.

On the other hand, the Police Board was given several reasons to question the veracity of

¹ LaPorta's memory was sufficient enough to correct Respondent's counsel when she misstated particular facts during the Police Board hearing. LaPorta corrected Respondent's counsel when she confused the last name of Respondent's sister. When Respondent's counsel incorrectly stated that LaPorta resided in a dormitory with Respondent in college, he clarified that they lived in a house.

² Dr. Heilbronner explained that memory confabulation describes a situation where someone (typically with a brain injury) does not recall events accurately. The brain, in its injured state, tries to put together a cohesive picture of what happened based on various sources of information (*i.e.* statements by others), and the ultimate picture it presents is inaccurate.

Respondent's claim that LaPorta shot himself. As an initial matter, Respondent's description of the shooting defies common sense. Officer Kelly testified that, in the middle of an otherwise normal conversation, LaPorta entered his bedroom and retrieved his service weapon, which was kept in a nightstand when he was off-duty. It is not credible that LaPorta—who would have no way of knowing where Respondent kept his weapon when he was off-duty (and there was no evidence offered to the contrary)—would abruptly end an otherwise normal conversation in order to retrieve the gun and attempt suicide.

Respondent's claim that he was not intoxicated at the time of the shooting also gave the Police Board reason to question both the veracity of his testimony as a whole and his specific recollection of what transpired on the morning of January 12, 2010. Those who responded to the scene after the shooting, including Sergeant Stephen Coyne, testified that Respondent appeared to be highly intoxicated.³ The Police Board was particularly persuaded by the testimony of the Superintendent's expert, Dr. Albert Larsen. Using data from the Breathalyzer test that was administered at 12:37 p.m. on January 12, 2010, Dr. Larsen performed a back extrapolation.⁴ Given Respondent's alcohol reading of .093 approximately eight hours after the shooting, Dr. Larsen explained that Respondent's claim that he drank no more than five light beers over the course of approximately five hours (two at McNally's, two at Brewbakers, and part of a beer upon returning to his home with LaPorta) could not be accurate. Based on Dr. Larsen's calculation, Officer Kelly's blood alcohol concentration at the time of the shooting was between

³ The Police Board recognizes that Respondent's actions (yelling, screaming, crying, and swearing at the responding officers) could have been brought on—at least in part—by concern for his friend (as Respondent claims). However, the idea that a sober individual—especially a police officer—would attempt to kick out the back window of a squad car is implausible.

⁴ A back extrapolation is a calculation that uses the results of a later-in-time Breathalyzer to determine the range of alcohol concentration in an individual's body at the time of an earlier incident.

.169 and .246 grams of alcohol per deciliter, a range consistent with consumption of between ten and fourteen beers.⁵

Second, all available evidence suggests that LaPorta would not—and could not—shoot himself at an angle consistent with the entry wound on the back, left side of his head (approximately three inches above LaPorta’s left ear). Respondent testified that LaPorta shot himself using his left hand, rather than wrapping his right arm around his head to fire the shot. If, indeed, LaPorta did shoot himself, it would be physically more plausible that he would have used his left hand. However, apart from Respondent’s uncorroborated testimony that LaPorta was ambidextrous, there is no indication in the record that LaPorta would have handled the gun with his left hand. LaPorta’s uncle, David Battistoni, is an experienced gun owner who testified that he has gone hunting with LaPorta hundreds of times since he was a young child. Mr. Battistoni taught LaPorta how to shoot a loaded gun when he was ten or eleven years old; only knowing how to shoot with his right hand himself, Mr. Battistoni taught LaPorta to shoot with his right hand. Mr. Battistoni further testified that, during their many hunting trips, he never saw LaPorta shoot with his left hand. The Police Board has no reason to think that LaPorta would use his left hand to fire a gun to attempt suicide.

The location and direction of LaPorta’s injury is also inconsistent with a self-inflicted injury—regardless of whether the gun was held in LaPorta’s left or right hand. David Balash, a forensic science consultant and independent firearms examiner, demonstrated how the location and direction of LaPorta’s injury was inconsistent with someone holding the gun in the right

⁵ Dr. Larsen acknowledged that, if Respondent suffered from improper liver functioning resulting from alcoholism (as Respondent claimed), his calculation of Respondent’s blood alcohol concentration at the time of the shooting could be “off.” However, there is no indication that this calculation could have been so affected by Respondent’s liver functioning as to discount the conclusion that Respondent lied when he said he only consumed five light beers over the course of roughly five hours.

hand, contorting their arm around their head, and pulling the trigger with their index finger.⁶ Mr. Balash also credibly testified that a left handed shot would not line up with the wound location; even if it had, such a shot would have resulted in a through and through wound⁷ with more catastrophic injuries. Finally, Mr. Balash testified that the failure of the cartridge casing to eject from Respondent's weapon was inconsistent with someone holding the gun in their left hand against their left temple and firing.⁸

Third, the available physical evidence is totally inconsistent with Respondent's claim that LaPorta pulled the trigger. The testimony of Dr. Mariusz Zieweski, an expert witness in the field of biomedical engineering, was particularly persuasive on this point. Dr. Zieweski testified that, based on the blood spatter pattern that was left on the floor of Respondent's living room,⁹ LaPorta must have been facing a south or southwest direction at the time of the shooting (*i.e.*, facing into the living room with his back to Respondent's bedroom). The blood spatter pattern

⁶ During the hearing, much time was dedicated to the distinctions between Respondent's service weapon and the gun Mr. Balash used to prepare his expert report and provide demonstration during the Police Board hearing. Mr. Balash used a Double Action Only ("DAO"), and Respondent's service weapon is a DAK. Mr. Balash testified that, even when the gun was held to the location of the entry wound with the left hand, an individual could not pull the trigger with their left index finger. Respondent's expert, Rick Wyant, testified that a DAK has half the trigger pull of a DAO, making it easier to fire in a variety of positions. Regardless of that fact, all other available evidence—including LaPorta's experience firing guns with his right hand, the location and direction of the injury, and the fact that there was not an exit wound—indicates that the likelihood of LaPorta firing the gun with his left hand is very low.

⁷ The shot fired at LaPorta did not result in an exit wound.

⁸ Respondent's expert, Mr. Wyant, testified that the clicking sound Respondent claims to have heard and the failure of the fired cartridge case to eject from the weapon could have resulted from the failure of the shooter to fully commit to the trigger pull (*i.e.*, pulling the trigger back a bit and then releasing it). He went on to explain that the failure of the fired cartridge case to eject could have resulted from "limp wristing"—a term of art used to describe cases where the shooter does not hold the gun firmly, allowing the gun to move in the shooter's hand when the trigger is pulled. The Superintendent's expert, Mr. Balash, agreed that failure to hold the gun firmly as a result of alcohol intoxication could have caused the weapon to malfunction and not eject correctly. Respondent and LaPorta had been drinking on the night of the shooting; their respective intoxication levels could have caused either of them to fail to hold the gun firmly. Therefore, the Police Board does not believe that this testimony weighs in favor of or cuts against Respondent's claim that LaPorta pulled the trigger.

⁹ Importantly, Dr. Zieweski testified that the blood spatter pattern underlying his analysis had not been disturbed by the police officers and paramedics who responded to the scene on the morning of January 12, 2010.

indicates that LaPorta rotated before ultimately landing on his back on the living room floor.

Respondent, on the other hand, testified that LaPorta shot himself in the head while facing north, and then fell straight backwards, landing on his back.¹⁰

Dr. Zieweski further testified that the location of scalp and hair fragments on a south window sill and the couch (located against the south wall) were consistent with the conclusion he had reached based on the blood spatter pattern. The testimony of Respondent's expert, Rick Wyant, that the location of these displaced scalp and hair fragments was consistent with a contact or near contact shot does not cut against Dr. Zieweski's testimony (which assumes LaPorta was shot from behind at a close range). Therefore, the Police Board concludes that Respondent's version of events is wholly inconsistent with the physical evidence in his living room.¹¹

Taken together, all of this evidence indicates that LaPorta did not fire the shot that struck him in the back of the head. The Superintendent has met his burden of proving that it is more likely than not that, on the morning of January 12, 2010, Respondent discharged his firearm in the direction of LaPorta without justification.

¹⁰ Respondent testified that he followed LaPorta into his bedroom; as Respondent walked into the bedroom, LaPorta walked out towards the living room. Respondent stated that he turned around so he was face to face with LaPorta, who had Respondent's service weapon held to the left side of his head (and was facing north—towards Respondent and the door of the bedroom). Respondent testified that LaPorta fired the gun, fell backwards, and landed on his back.

¹¹ There is also a significant amount of evidence in the record regarding gun powder residue. Robert Berk, the Illinois State Police trace analyst who worked on this case, testified that he was unable to locate any gunshot residue particles on the back of Respondent's hands, on the cuffs of the shirt Respondent was wearing at the time of the shooting, or on the left cuff or collar of the shirt LaPorta was wearing at the time of the shooting. Mr. Berk identified gunshot residue on the right cuff of LaPorta's shirt. Given the failure to test LaPorta's hands for gunshot residue, the excessive handling of LaPorta's garments at the hospital, and the risk of transfer of materials from one surface to another (all of LaPorta's clothing was placed in a single brown paper bag), the Police Board does not believe that this gun powder residue physical evidence is (1) sufficient to draw a conclusion about who fired the gun, or (2) inconsistent with its determination that it is more likely than not that Respondent shot LaPorta.

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6. Police Officer Patrick Kelly, Star No. 19397, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges:

On January 11, 2011, Officer Patrick Kelly made a false, misleading, or deliberately incomplete statement to the Independent Police Review Authority (IPRA) when describing the events of the evening on which Michael LaPorta received a gunshot wound to the head. In that statement, Officer Kelly described the moments before Michael LaPorta was shot, and said that he (Kelly) went to grab for the gun but did not touch the gun, or words to that effect, when in fact Kelly did touch the gun. Officer Kelly thereby violated:

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

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

As laid out in Section No. 5, it is more likely than not that Respondent fired his service weapon in LaPorta's direction. This determination necessarily means that, at one point in the moments before LaPorta was shot, Respondent touched the gun. The Board finds that Respondent's statement to IPRA on January 11, 2011—that he went to grab for the gun but did not touch it—was a willfully false statement about a fact that was material to the incident under investigation. The Superintendent has met his burden to prove that Respondent made a false statement to IPRA and is guilty of violating Rules 2 and 14.

7. Police Officer Patrick Kelly, Star No. 19397, is **guilty** of violating Rules 2 and 14 in that the Superintendent proved by a preponderance of the evidence the following charges:

On January 11, 2011, Officer Patrick Kelly made a false, misleading, or deliberately incomplete statement to IPRA when describing the events of the evening on which Michael LaPorta received a gunshot wound to the head. In that statement, Officer Kelly answered "no" when asked if he shot Michael LaPorta, or words to that effect, when in fact Officer

Kelly did shoot Michael LaPorta. Officer Kelly thereby violated:

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

See the findings set forth in Section Nos. 5 and 6 above, which are incorporated herein by reference.

As laid out in Section No. 5, it is more likely than not that Respondent fired the shot that struck LaPorta in the head on the morning of January 12, 2010. Consequently, Respondent's statement to IPRA on January 11, 2011, that he did not shoot LaPorta was a willfully false statement about a fact that was material to the incident under investigation. The Superintendent has met his burden to prove that Respondent made a false statement to IPRA and is guilty of violating Rules 2 and 14.

Disciplinary Action

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

Respondent's evidence in mitigation included the testimony of two witnesses. Jane Bansley, Respondent's younger sister, testified that Respondent has no history of mistreating his friends. While LaPorta testified that the argument that ultimately led to the shooting arose out of Respondent yelling at and hitting his dog, Ms. Bansley also testified that Respondent has no history of mistreating animals. Hillary Clark, Respondent's wife and a former Chicago Police Officer, testified that Respondent is a loving husband and father. Ms. Clark also

testified as to Respondent's interaction with their dogs, saying she has never witnessed concerning behavior.

In addition, the Board considered Respondent's complimentary and disciplinary histories. Since he joined the Department in 2004, Respondent has earned 53 total awards, including five Department Commendations, 33 Honorable Mentions, one Deployment Operations Center Award, one Attendance Recognition Award, and one Emblem of Recognition for Physical Fitness. He has no sustained complaints on the report of his disciplinary history.

Nevertheless, after thoroughly considering Respondent's evidence in mitigation and service as a police officer, the Board finds that his accomplishments as an officer and the positive evaluations of him do not mitigate the seriousness of his misconduct in this case. The Board finds that Respondent's misconduct is incompatible with continued service as a police officer.

Respondent's actions in shooting of Michael LaPorta in the head were reckless, violent, and unjustified. The Board finds that returning Respondent to his position as a police officer, in which he would be armed and authorized to use deadly force, poses an unacceptable risk to the safety of the public. His discharging his firearm without justification indicates a gross disregard for public safety and a lack of judgment so serious as to warrant removing him from his position as a Chicago police officer.

In addition, Respondent attempted to cover up his actions by knowingly making false material statements to the Independent Police Review Authority. Respondent's dishonesty relates directly to his public duties as a police officer, and renders him unfit to hold that office. Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any

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job, 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 an officer has knowingly made a material false statement to an investigator is detrimental to the officer's ability to perform his responsibilities, including his credibility as a witness, and, as such, is a serious liability to the Department. *See Rodriguez v. Weis*, 946 N.E.2d 501, 507 (Ill. App. Ct. 2011).

The Board finds that Respondent'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.

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POLICE BOARD DECISION

The members of the Police Board of the City of Chicago hereby certify that they have read and reviewed the record of proceedings, viewed the video-recording of the entire evidentiary hearing, received the oral report of the Hearing Officer, and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. The Police Board hereby adopts the findings set forth herein by the following votes.

By a vote of 8 in favor (Ghian Foreman, Paula Wolff, Matthew C. Crowl, Michael Eaddy, Steve Flores, Jorge Montes, Rhoda D. Sweeney, and Andrea L. Zopp) to 0 opposed, the Board finds Respondent **guilty** of the charges in Specification Nos. 1–3, as set forth in Section Nos. 5–7 above.

As a result of the foregoing and for the reasons set forth in Section No. 8 above, the Board, by a vote of 8 in favor (Foreman, Wolff, Crowl, Eaddy, Flores, Montes, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for discharging Respondent from his position as a police officer.

NOW THEREFORE, IT IS HEREBY ORDERED that Respondent Police Officer Patrick Kelly, Star No. 19397, as a result of having been found **guilty** of all charges in Police Board Case No. 19 PB 2966, be and hereby is **discharged** from his position as a police officer 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, Matthew C. Crowl, Michael Eaddy, Steve Flores, Jorge Montes, Rhoda D. Sweeney, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF JUNE, 2021.

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Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of Board hereby dissent from the findings and decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2021.

DAVID O. BROWN
Superintendent of Police