

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
SERGEANT SAM CIRONE,)	No. 16 PB 2901
STAR No. 1808, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	(CR No. 1078509)
RESPONDENT.)	

FINDINGS AND DECISION

On February 3, 2016, the Superintendent of Police filed with the Police Board of the City of Chicago Charges against Sergeant Sam Cirone, Star No. 1808 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be suspended from the Chicago Police Department for a period of one (1) year for violating several Rules of Conduct, which set forth expressly prohibited acts.

On September 20, 2016, the Respondent filed with the Police Board a Motion to Strike and Dismiss the Charges. In an Order entered on November 17, 2016, the Board denied the Respondent’s motion.

On February 10, 2017, the parties proposed to the Board a Stipulation that would have resulted in a one-year suspension, subject to the Board’s approval. By Order dated February 21, 2017, however, the Board did not accept the Stipulation and directed its hearing officer to conduct a full evidentiary hearing in this matter in order for the Board to determine if the Respondent was guilty of any of the charges and, if so, to fashion an appropriate penalty.¹ Under *Lesner v Police Board of the City of Chicago*, 2016 IL App (1st) 150545, 55 N.E.2d 1206 (2016), the Board has authority to reject a proposed stipulation offered by the parties and require

¹The parties’ stipulation, offered in connection with this attempt at settling the case, was withdrawn and, by its terms, may have no effect on the Board’s determination of this matter, following the hearing.

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a hearing. Further, under *Lesner*, if the Board finds the Respondent guilty, it may impose a penalty less than, the same as, or greater than what the Superintendent has sought.

A lengthy delay then ensued as the Respondent litigated whether sergeants facing suspension for more than thirty days could opt for arbitration rather than Police Board review of those suspensions. In the end, the Illinois Appellate Court ruled that the Police Board has exclusive jurisdiction over such cases, including the Respondent's case. *Policemen's Benevolent & Protective Association of Illinois, Unit 156A-Sergeants v City of Chicago*, 2018 IL App (1st) 171089-U (June 29, 2018). After the Illinois Supreme Court denied leave to appeal, 111 N.E.3d 983 (November 28, 2018), the case came back to the Police Board.

A hearing on these charges against the Respondent took place before Hearing Officer Thomas E. Johnson on August 22, 23, 26 and 27, 2019. Following this evidentiary hearing, members of the Police Board² viewed the video recording of the entire evidentiary hearing and read and reviewed the record of the proceedings, including the Hearing Officer's written report and the parties' responses to this report.³ Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision.

²Board Members Matthew Crowl and Steve Flores recused themselves from this case to avoid the appearance of a conflict of interest.

³On November 14, 2019, the Superintendent filed a Motion to Strike Portions of Sergeant Cirone's Response to the Hearing Officer's Report. The report sets forth the evidence presented at the hearing and includes information on witness credibility. The report is not meant to be a comprehensive statement of the evidence, but rather only a summary. The responses to the report submitted by the parties are limited to addressing any material omissions or inaccuracies in the report. (Police Board Rules of Procedure, Section III-G.) The Board does not consider portions of the responses that do not comply with its Rules of Procedure. The Police Board's Rules of Procedure do not provide for motions to strike or for replies to responses to the Hearing Officer's Report. The Superintendent's Motion to Strike is therefore denied.

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. The Respondent was at all times mentioned herein employed as a sergeant of police 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 the 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 the Respondent appeared in person and was represented by legal counsel.

Introduction

4. **Summary of the 2004 and 2011 Investigations.** In the early morning hours of April 25, 2004, on the south side of Division Street, just west of Dearborn, David Koschman was struck or pushed to the ground by R.J. Vanecko (then-Mayor Daley's nephew), sustaining head injuries that caused his death on May 6, 2004.⁴ His death followed an altercation between the Koschman group (consisting of David Koschman, Scott Allen, James Copeland, Shaun Hageline, and David Francis) and the Vanecko group (consisting of R.J. Vanecko, Craig Denham, Kevin McCarthy, and Bridget McCarthy).⁵

⁴A drawing of the scene where this altercation occurred is at Joint Exh. 6, p. 8. Detective Yawger (one of the detectives who investigated the matter in 2004) placed the incident near 43 W. Division Street.

⁵Important parts of the background of this case are contained in the parties' Stipulation of Facts that is Joint Exh. 1. (The exhibits in this case were discussed at some length during pre-hearing conferences and admitted by stipulation as Joint Exhibits, and are so identified.)

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Chicago Police Officer Edwin Tremore responded to the scene, and it is stipulated that he took a statement from a bystander (Michael Connolly), and from Shaun Hageline (a member of the Koschman group). He also handcuffed and questioned Kevin McCarthy (a member of the Vanecko group) but released him when Koschman's friends indicated he had not punched Koschman. It is further stipulated that Officer Tremore did not secure the location, did not interview Bridget McCarthy (who remained on the scene), or canvass the area for witnesses, video or other evidence. The case was then assigned to Detectives Rita O'Leary and Robert Clemens, both of whom were set to leave on three-week furloughs. They spent about six hours on the case. They telephoned Northwestern Hospital and learned that Koschman was unconscious and could not give a statement, and then contacted his mother, who gave them contact information for Koschman's friends Scott Allen, James Copeland, and David Francis, as well as another friend (Vrej Sazian) who was not at the scene of the incident. They interviewed Kevin McCarthy at his home and spoke again with the bystander Michael Connolly, who identified a second bystander, Phillip Kohler. The detectives concluded their work without canvassing the area for witnesses or video, entering any of the nearby businesses, seeking or obtaining any telephone records, or interviewing Bridget McCarthy or any of the witnesses that Koschman's mother or the bystander provided them.

On May 9, 2004, three days after Koschman died, the case was assigned to Area 3 Detective Ronald Yawger and his partner, Anthony Giralamo. Nothing had been done since the earlier detectives spent six hours on the matter on April 25 and then left on furlough. Detective Yawger conducted interviews with various witnesses and conducted line-ups. They sought the opinion of Asst. State's Atty. Darren O'Brien, head of felony review for the State's Attorney's office. The detectives concluded that no charges should or could be brought because they

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concluded that David Koschman was clearly the aggressor and was punched or shoved in self-defense. Moreover, they could not identify who had punched or shoved Koschman, as the witnesses failed to pick Mr. Vanecko out of a line up.⁶ They concluded that the investigation should remain in progress, but they did no additional work on the case. Sergeant Cirone played no part in the 2004 investigation of this incident.

The case sat idle for more than six years until the Chicago Sun-Times submitted a Freedom of Information Act (FOIA) request related to the investigation and the Chicago Police Department realized that the case was still open. As a result, on January 13, 2011, senior Chicago Police officials, including Deputy Chief of Detectives Constantine “Dean” Andrews, ordered that the matter be re-investigated by Area 5 detectives, telling them that they were to conduct a thorough and complete investigation “from the very beginning.” Area 5 Commander Joseph Salemme selected Detectives James Gilger and Nicholas Spanos to investigate the matter. They were to work exclusively on this investigation and were not assigned any other new matters. Detectives Gilger and Spanos reported to and were supervised by Detective Sergeant Sam Cirone during this 2011 re-investigation of the Koschman matter, except when he was not at work. Detectives Gilger and Spanos concluded their investigation on February 28, 2011, recommending to Deputy Chief Andrews, in their Case Supplementary Report, that the case be “cleared closed, exceptionally,” without the filing of any charges, which was approved by Sergeant Thomas Mills as supervisor, and later approved by Deputy Chief Andrews.

After the conclusion of the 2011 investigation, Dan Webb was appointed by the Circuit

⁶The witness statements taken in 2004 suggested Vanecko had caused Koschman’s injuries, based on the witnesses’ physical description of the person who punched or pushed Koschman and their account of which individuals fled the scene going southbound on Dearborn Street.

Court of Cook County as a Special Prosecutor to investigate the Koschman killing. He convened a Cook County grand jury, which indicted R.J. Vanecko on the charge of involuntary manslaughter on December 3, 2012. In January of 2014, Mr. Vanecko pled guilty to involuntary manslaughter, receiving a sentence of sixty days in jail, sixty days of home confinement, as well as other conditions (Joint Exh. 1, p. 3, n.1).

5. The Charges Against the Respondent. Sergeant Cirone is charged with violating Department Rules 2, 3, 6, 10 and 11, in that he failed to ensure that Detectives Gilger and Spanos:

- 1) completed a thorough re-investigation of the Koschman death, in that they failed to:
 - a) interview Officer Edwin Tremore and/or any of the detectives involved in the 2004 investigation;
 - b) canvass the vicinity of 43 W. Division where the incident occurred;
 - c) attempt to secure telephone records of the individuals involved in the incident; and
 - d) question Craig Denham (part of the Vanecko group) regarding where he and the Vanecko group went after the incident and what statements, if any, Vanecko may have made about the incident.⁷
- 2) drafted an accurate, complete and/or objective concluding Case Supplementary Report (known as a “CSR”), in that they:
 - a) attributed a quote to David Koschman (“Fuck you! I’ll kick your ass!”) that is not supported by the evidence;
 - b) omitted the statement of Scott Allen (a member of the Koschman group) that people in the Vanecko group were the aggressors, or words to that effect;
 - c) included an inaccurate statement that before Koschman’s death, “efforts were being made to interview additional witnesses that were at the scene of the

⁷An additional allegation pertaining to the thoroughness of the investigation was withdrawn by the Superintendent at the beginning of the hearing; namely, an alleged failure by the detectives to identify and/or interview the individuals who attended the engagement party where the Vanecko group had been prior to the incident (Tr., pp. 3-4).

incident,” or words to that effect; and

d) provided a misleading characterization of an important element of the case based on a chance meeting between Detective Gilger and Asst. State’s Atty. Darren O’Brien in 2011.⁸

The investigation giving rise to these charges was done by the City of Chicago’s Office of Inspector General (OIG), which completed its report on December 4, 2015. Promptly thereafter, Deputy Chief Andrews resigned on December 8, 2015, and Commander Joseph Salemme resigned on December 9, 2015. In early 2016 Lieutenant Denis Walsh resigned after charges were filed with the Police Board seeking his discharge. On February 1, 2016, Detective James Gilger retired in lieu of discharge based on sustained allegations of violating Rule 14. Detective Nick Spanos was suspended for one year in 2016, and he has served that suspension. Because the Superintendent is recommending that Sergeant Cirone be suspended rather than discharged, Sergeant Cirone has remained in paid status up to and during the proceedings before the Police Board.

6. The Applicable Department Regulations and Special Orders Governing Sergeant Cirone’s Responsibilities. The Superintendent called Lieutenant Eric Winstrom, who is commanding officer of the Chicago Police Department’s Research and Development Division, which is responsible for developing and maintaining Department policies, and works with particular units, including the Detective Division, as they develop the Department Special Orders. He has a nineteen-year career doing police work for the Department, including as a detective and as a sergeant supervising and training detectives, and later became a lawyer. He

⁸An additional allegation pertaining to the accuracy and completeness of the CSR was withdrawn by the Superintendent at the beginning of the hearing; namely, an alleged failure to state that the 2004 Koschman homicide file and/or the Cook County State’s Attorney’s felony review file on the incident were missing (Tr., p. 4).

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also served as the Superintendent's expert in this case, in that he reviewed the OIG report, Special Prosecutor Dan Webb's report, and the materials in this case, opining that Sergeant Cirone violated Department Rules and policies.

Lieutenant Winstrom identified the Department Rules and Regulations (Joint Exh. 2) and Detective Division Special Orders (Joint Exhs. 3-5) that are pertinent to the charges here. He first described the Department's Regulations, including paragraph IV(B) (Joint Exh. 2, p. 6). This provision sets out the obligations of supervisors, including Sergeant Cirone, that include leading subordinate members of the Department, ensuring that they follow all Departmental rules and directives, and that such supervisors "(r)emain accountable for the failure, misconduct or omission by their subordinates," paragraph IV(B)(8).

Lieutenant Winstrom identified Detective Special Order 97-7 (Joint Exh. 3, pp. 1-17), which was in effect at the time of this incident. It sets forth the basic functions of a detective (paragraph II(B)), the required tasks to be completed by detectives in every investigation (paragraph IV(A)-(O)), what is to be contained in a detective's report of the results of his or her investigation (paragraph VIII(A)-(D)), and underscores the importance of completing "thorough, accurate and understandable" reports (paragraph VIII(D)(4)).

Lieutenant Winstrom then explained Detective Special Order 97-12 (Joint Exh. 4, pp. 1-8), which was also in effect at the time of this incident. It describes the responsibilities of supervisors, including sergeants, in the Detective Division. The responsibilities of sergeants are set forth in paragraph V, including that they are "the first line of supervision," are "accountable for the conduct of their subordinates," and will "stimulate competent performance by their subordinates... [and] constantly evaluate the effectiveness of their subordinates" (par. V(A)). In addition, the Special Order prescribes various duties for sergeants, including that they will

“review field investigation Supplementary Reports for completeness and accuracy” (par. V(B)(8)).

Finally, Lieutenant Winstrom identified Detective Special Order 07-05, which was also in effect at the time of the events in this case (Joint Exh. 5, pp. 1-5). This Special Order deals with the treatment of witnesses and provides, among other things, that detectives are to “[e]nsure the integrity of the investigation, including the integrity of the witnesses’ accounts and statements to the extent reasonably possible” (par. V(C)).

Sergeant Cirone conceded that he was bound by these Regulations and Special Orders in 2011 as a detective sergeant. His superior, Commander Salemme, testified that he expected Sergeant Cirone to follow the Regulations and Special Orders, and that if an officer did not follow them, they would be punished. Sergeant Cirone did add that detectives may complete General Progress Reports (“GPRs”) in addition to the CSR, and that GPRs are as important, if not more so, than the CSR, and must be maintained by the detectives for others to review. The Respondent’s expert, James Farrell, did not dispute that these rules were in effect, though he questioned whether they had to be followed in “cold cases” where the work required of the detective would not be reasonable.

7. The January 13, 2011, Assignment of Sergeant Cirone to the 2011 Investigation of the Koschman Death. The parties agree that on January 13, 2011, a meeting was convened at Chicago Police Department headquarters that involved Deputy Superintendent Steve Peterson (who is now deceased), Chief of Detectives Thomas Byrne, Deputy Chief of Detectives Constantine “Dean” Andrews, Area 5 Detective Commander Joseph Salemme, and Sergeant

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Cirone.⁹ A FOIA request had alerted the Department to the fact that the Koschman investigation was still open and had not been concluded, and this precluded a response to the FOIA. At the meeting, Sergeant Cirone was told that Area 5 Detectives Gilger and Spanos were being assigned to re-investigate the Koschman case, and he was given a verbal order by his Commander (Salemme) to be their immediate supervisor. He was also told that Detectives Gilger and Spanos should work on nothing other than the Koschman investigation.¹⁰ The detectives were supervised by others, if Sergeant Cirone was not on duty, but he was deemed the primary supervisor of the investigation by Commander Salemme. Sergeant Cirone concedes that the scope of this investigation was not limited in any way at the meeting, he was not told what the results of the investigation should be, and was not given a deadline by which the investigation was to be completed. Further, Sergeant Cirone was told that the 2011 investigation should be a complete and thorough investigation “from the very beginning.”

Sergeant Cirone testified that he spent more time supervising less-experienced detectives, and did not have to micro-manage detectives like Detective Gilger, who had a great deal of experience with homicide and other investigations. He let Detective Gilger work with autonomy and was confident in his abilities. Throughout the 2011 Koschman investigation, Sergeant Cirone insists that he never told Detectives Gilger and Spanos *not* to do any particular task.

⁹Sergeant Cirone added that Area 3 Commander Yamashiroya, Lieutenant Walsh and an attorney from the Chicago Police Department named Mr. Bazarek were also present at this meeting.

¹⁰Sergeant Cirone testified that Detectives Gilger and Spanos still had to work on cases that had been assigned to them before the January 13, 2011, meeting and that he was not limited to the Koschman investigation but supervised the approximately forty detectives who worked the third watch at Area 5 on many other cases. He worked four days on and two days off, then the next four days on.

Charges Against the Respondent

8. The Respondent, Sergeant Sam Cirone, Star No. 1808, charged herein, is **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 10, and Rule 11 in that the Superintendent proved by a preponderance of the evidence the following charges:

In or around January and/or February 2011, Sergeant Cirone failed to ensure that Detectives James Gilger and/or Nicholas Spanos completed a thorough investigation of the Koschman homicide, in that, under Sergeant Cirone's supervision, the detectives failed to complete one or more of the following investigative steps: interview Police Officer Edwin Tremore and/or any of the detectives involved in the 2004 Koschman homicide investigation; and/or canvas the vicinity of 43 West Division Street; and/or obtain or attempt to obtain telephone records of individuals involved in the incident; and/or question witness Craig Denham regarding where he and the Vanecko group went after the incident and/or what statements, if any, Vanecko may have made about the incident. Sergeant Cirone 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 Detective Division Special Order 97-12;
- d. Rule 10, which prohibits inattention to duty; and
- e. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in paragraph nos. 4 through 7 above, which are incorporated herein by reference. In addition, with respect to each of the subparts of this allegation:

9. **The Failure to Interview Officer Tremore and the 2004 Detectives.** There is no dispute that Detectives Gilger and Spanos did not speak with Officer Edwin Tremore, the officer who responded to the scene of Koschman's injury in 2004, or to any of the detectives who investigated the Koschman matter in 2004 (see, Joint Exh. 1, par. 29, and the testimony of Detective Yawger, Detective Spanos, and Sergeant Cirone). The original file from the 2004

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investigation was not available. Nor was the felony review file from the State's Attorney's office. So, Sergeant Cirone conceded he did not have all of the information that would have been in the original file, including all of the GPRs, but he did have Officer Tremore's original battery report (Joint Exh. 1, Exh. B, and see Joint Exh. 17, which is a Stipulation as to the role Officer Tremore played) and copies of other documents from the 2004 file, as well as what could be downloaded from the Department's CHRIS system (all of which is contained in Joint Exh. 6), including Case Supplementary Reports and a series of General Progress Reports from the detectives. Detective Yawger confirmed he was not contacted by Detectives Gilger and Spanos, and thought it was wrong that they did not speak to him, as it is his practice to contact detectives who originally investigated "cold cases" that he was working. He said he would have liked to speak with Detectives Gilger and Spanos during their 2011 investigation.¹¹

Sergeant Cirone testified that he felt Detectives Gilger and Spanos should have spoken with the 2004 detectives, but that he did not preclude Detectives Gilger and Spanos from contacting Officer Tremore, Detective Yawger or anyone else who worked the 2004 investigation. In any event, Sergeant Cirone felt that he had sufficient documentation of what had been done in 2004 in the documents that were available, and neither Officer Tremore nor the 2004 detectives were eyewitnesses to what transpired on Division Street that night. Further, Sergeant Cirone testified he was being asked to look at the Koschman matter with fresh eyes, and did not want to be influenced by what the 2004 investigators thought or had found. The Board does not credit his position, given the requirements of Detective Special Order 97-7, and the testimony from Detective Yawger and Officer Tremore (by stipulation) that they felt there

¹¹Detectives Gilger and Spanos also did not talk to the other 2004 detectives, i.e. Detectives O'Leary and Clemens.

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was information they could have provided, as well as the fact that Sergeant Cirone understood he did not have a complete copy of the original file.

The Respondent's expert, John Farrell, claimed that further contact was not necessary.¹² In addition, he testified that he had a conversation with Lieutenant Denis Walsh, who informed him that Walsh or Commander Salemme were supposed to talk to the 2004 investigators and did so,¹³ and so it was not necessary for Detectives Gilger and Spanos to go back to them. Commander Salemme knew nothing of this, and Lieutenant Walsh did not testify. Nor was this commitment to talk to the 2004 investigators recorded in any document that was part of the 2011 investigation. The Superintendent objects to Mr. Farrell offering an opinion on this point, given that the basis for his opinion is not in the record. The Board sustains the Superintendent's objection and does not credit Mr. Farrell on this point, given Commander Salemme's testimony and the absence of direct testimony by Lieutenant Walsh, or at least a written record of Lieutenant Walsh's purported statements.

Lieutenant Winstrom, the Superintendent's expert, testified that speaking with the original investigators was required by Detective Special Order 97-7, par IV(I), which requires detectives to "analyze all information obtained." He noted that Deputy Chief Andrews testified that one of the first things one would do during a re-investigation is contact the prior investigators. In his view, particularly when you do not have the complete, original file, you do not know what you are missing, you do not know if you have the impressions of the original

¹²Mr. Farrell found that any interview of Officer Tremore would not yield any significant information, as he had completed a very thorough general offense case report that contained everything he knew. Officer Tremore, however, in Joint Exh. 17, par. 15, indicated that his general offense case report was only a general summary of the incident and that there may be some things that were not included.

¹³Mr. Farrell does not know what Detective Yawger told Lieutenant Walsh, or if he provided more information than was in the part of the 2004 file Detectives Gilger and Spanos were given.

investigators reflected in the documents you have, you do not know what leads were followed by the original investigators that do not need to be followed again, or what leads were not followed by the original investigative team. He felt that speaking with Officer Tremore was necessary, as he testified he had a specific memory of this incident, and there may have been things he remembered that were not in his report. Lieutenant Winstrom indicated that if Lieutenant Walsh felt that others should have talked to the 2004 investigators, this would suggest that this was an appropriate step to take, and could have yielded important information. Moreover, he said that if someone else was to talk to the original investigators, it was incumbent upon Sergeant Cirone to determine if that was done and, if so, what information was learned. If Sergeant Cirone did not know someone else was covering this part of the investigation, he should have made sure his detectives followed up and analyzed all of the information previously obtained. The Board agrees with Lieutenant Winstrom that contact with Officer Tremore and the 2004 detectives was specifically required by the governing Detective Special Order. It would not have taken Detectives Gilger and Spanos long to have interviewed the 2004 investigators, and it was incumbent upon Sergeant Cirone, as the detectives' supervisor, to ensure that this was done. His failure to ensure contact with the 2004 investigators breached his duties as the supervising sergeant.

10. The Failure to Conduct a Canvass of the Vicinity of 43 W. Division Street.

Detective Division Special Order 97-7, paragraphs IV(B) and (C) require detectives to do a canvass of the area in the immediate vicinity of the crime and further to view the crime scene and location to secure and evaluate any evidence found. The experts (Lieutenant Winstrom and Mr. Farrell) said the rule is not discretionary, as did Commander Salemme, though Mr. Farrell felt there should be an exception when the incident occurred seven years before the investigation.

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Detective Spanos indicated that while he and Detective Gilger drove by the scene, they did not attempt to speak to managers, bouncers, or others in the businesses nearby or look for video.

Detective Yawger testified he did some investigation to determine if there was video available, but did not document his search, so Detectives Gilger and Spanos (who did not speak to Detective Yawger) would not have known what he did. Detective Yawger identified a Fifth Third bank immediately east of the scene, but did not check for video there. Nor did Detectives Gilger and Spanos investigate the possibility of video at the bank. It is undisputed that the Special Prosecutor did find video of the Koschman group at a bar more than seven years after the incident, but that video did not relate to the altercation (see, Joint Exh. 15). The Board finds that Sergeant Cirone did nothing to ensure that this mandatory requirement for detectives was satisfied in this case, and the Board agrees that Sergeant Cirone did not ensure that his detectives discharged their duty in this regard under Detective Division Special Order 97-7.

The Respondent (through his expert and through the testimony of Sergeant Cirone and Detective Spanos) maintains that a rule of reason must apply, and searching for witnesses to an altercation that occurred in a commercial area at 3:00 am seven years after the fact would be a waste of time. The Respondent further points out that the Special Prosecutor did not find witnesses or video that mattered to the case either. Respondent concludes that even if a witness came forward seven years later, his or her credibility would be seriously open to question. While this speculation may well be true, it does not excuse Sergeant Cirone from requiring his detectives to complete this mandatory part of their duties. The Detective Division Special Order requires a canvass, and Sergeant Cirone completely ignored it. As such, he is guilty of this violation.

11. The Failure to Seek the Telephone Records of Those Involved in the Altercation.

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Lieutenant Winstrom testified that the applicable Special Order 97-7, paragraph II-B requires all investigations to be thorough, and paragraph IV(K) further requires detectives to pursue all investigative leads. The Superintendent, through Lieutenant Winstrom, established that Detectives Gilger and Spanos never attempted to secure the telephone records of any of the individuals involved in the Koschman matter, and Sergeant Cirone breached the Special Order in not ensuring that they did so. The Special Prosecutor, more than seven years after the incident, obtained Bridget McCarthy's phone records (Joint Exh. 16), which show that she was speaking with R.J. Vanecko shortly after the incident (between 3:30 am and 4:00 am). Ms. McCarthy was part of the Vanecko group.

The Respondent, as well as Detective Spanos, Commander Salemme and Mr. Farrell, maintain that it was well understood that phone company retention policies would have indicated that phone records would not be available seven years after the fact, and so they did not seek these records. The evidence clearly, however, shows they were mistaken about this. They further point out that the Bridget McCarthy phone records recovered by the Special Prosecutor do not disclose what was said or even whether the calls were answered. Even if there was a conversation, R.J. Vanecko's lawyer would not let him speak with the police, and so the phone records could not have been used with him, and Bridget McCarthy would likely say she did not recall what the conversations were about. The Board finds this to be speculation that does not excuse the detectives, and their supervisor, from taking this relatively simple step to see if additional evidence could be developed. Ms. McCarthy did speak with Detectives Gilger and Spanos, without counsel, and we do not know what she might have said, if confronted with her phone records. The Board thoroughly rejects Sergeant Cirone's attempt to blame detectives Gilger and Spanos for this failure. He was their supervisor and on a case of this importance, it

was important for him to ensure that they completed this important task, whether or not it led to valuable evidence.

12. The Failure to Question Craig Denham About Vanecko's Whereabouts and Statements He May Have Made After the Altercation. Sergeant Cirone admitted that his detectives did not ask Craig Denham (part of the Vanecko group) where he and Vanecko went after the incident and what Vanecko said. Detective Spanos did not recall asking and did not document in a GPR that he or Detective Gilger asked Denham about these matters. The Superintendent emphasizes that Denham called the detectives back in 2011 and was willing to speak by phone from out of state about the incident, but the detectives failed to pursue this important lead and, as a result, their investigation was not thorough, according to Lieutenant Winstrom. The Board agrees that this represented a significant failure in the investigation of this matter.

The Respondent offers the testimony of his expert, Mr. Farrell, as well as Detective Spanos and Sergeant Cirone, to establish that the Denham interview was memorialized in a GPR that was retained by the detectives until they drafted the final CSR. As a result, Sergeant Cirone never saw the GPR and did not know what exactly was asked of Denham, so he could not have known about the failure to pursue Denham on where the Vanecko party went and what they said.¹⁴ While the final CSR had to be reviewed by a sergeant, and it would have referenced the Denham statement in 2011 (and the GPR would have been available for review then), as explained later, Sergeant Cirone was off duty when the CSR was approved and so Sergeant

¹⁴Commander Salemme, however, testified that supervising sergeants have access to and can review GPRs during the course of an investigation. Lieutenant Winstrom made the same point. Thus, the day off Sergeant Cirone took here really makes no difference.

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Thomas Mills approved it. Thus, according to Respondent, it was only Sergeant Mills who would have been aware of this alleged deficiency in the investigation. The Board rejects this position. Both Mr. Farrell and Sergeant Cirone conceded that it would have been important to know if Vanecko made any incriminating statements after the event. Sergeant Cirone was tasked with supervising this investigation. As explained further below, it was incumbent upon him to ensure that his detectives performed the basic steps of a solid investigation, even if it meant taking some additional time (because of his day off) to review their work before the final CSR was finalized and approved. At a minimum, he should have reviewed the GPRs before the CSR was finalized. Sergeant Cirone is guilty of this allegation.

13. The Respondent, Sergeant Sam Cirone, Star No. 1808, charged herein, is **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 10, and Rule 11 in that the Superintendent proved by a preponderance of the evidence the following charges:

In or around February 2011, Sergeant Cirone failed to ensure that Detectives James Gilger and/or Nicholas Spanos drafted an accurate, complete, and/or objective concluding case supplemental report, in that the concluding case supplemental report contains one or more of the following inaccuracies and/or omissions: a quote attributed to Koschman (“Fuck you! I’ll kick your ass!”) that is not supported by the evidence; and/or the omission of witness Scott Allen’s statement that people in the Vanecko group were the aggressors, or words to that effect; and/or an inaccurate statement that before Koschman’s death, “efforts were being made to interview the additional witnesses that were at the scene of the incident,” or words to that effect; and/or a misleading characterization of a chance meeting between Detective Gilger and Cook County Assistant State’s Attorney Darren O’Brien. Sergeant Cirone 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 Detective Division Special Order 97-12;

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- d. Rule 10, which prohibits inattention to duty; and
- e. Rule 11, which prohibits incompetency or inefficiency in the performance of duty.

See the findings set forth in paragraphs 4-12 above, which are incorporated herein by reference.

14. These allegations all relate to whether the final Case Supplementary Report (“CSR”) was accurate and complete. Sergeant Cirone offers a general defense that he is not responsible for the quality of the CSR, in that he was not the approving supervisor; Sergeant Thomas Mills approved it (Joint Exh. 12). Under Special Order 97-12, paragraph V(B)(8), Sergeant Cirone insists that the duties the Superintendent seeks to impose with respect to the CSR only apply to the reviewing or approving sergeant. This is supported by the Respondent’s expert, Mr. Farrell. In fact, the Superintendent’s expert, Lieutenant Winstrom, agreed as well, as did counsel for the Superintendent (Tr., pp. 963-66).

The Superintendent responds that the CPD command staff made Sergeant Cirone the primary supervisor for this investigation, and Sergeant Cirone knew this. Detective Spanos testified that he reported to Sergeant Cirone throughout the investigation and not Sergeant Mills, and Commander Salemme concurred that Sergeant Cirone was the primary supervisor on the re-investigation. Moreover, Sergeant Cirone conceded that a week before the CSR was finalized, he reviewed a draft of the CSR which included at least two of the statements the Superintendent claims are inaccurate, and then engaged in an email conversation with Deputy Chief Andrews on the night of February 27-28, 2011 (Joint Exhs. 10 and 11) about key language that was to be used in the final CSR. Sergeant Cirone testified, as did Detective Spanos, that Sergeant Cirone was off-duty on February 28, 2011, when the CSR was formally approved, and so it was signed by

Sergeant Mills.¹⁵ The Superintendent maintains (through Lieutenant Winstrom) that Sergeant Cirone is still accountable for what was in the final CSR based on his duties under paragraph IV(B) of the Department's Regulations (as they apply to ensuring that his detectives comply with the dictates of Special Order 97-7), Special Order 07-05, and the general provisions of paragraph V of Special Order 97-12. The Board wholeheartedly concurs with the Superintendent's position. The notion that Sergeant Cirone could escape from the inaccuracies of the CSR merely by taking a day off on the day it was to be approved reflects very poor leadership on his part and an unwillingness to fulfill the role of a supervisor on this investigation. Sergeant Cirone is responsible for the accuracy and completeness of the CSR. With respect to each of the subparts of this allegation:

15. The Inaccurate Statement of "Fuck you!, I'll Kick Your Ass!" Attributed to David Koschman. The CSR concludes that the investigation should be closed, without the filing of charges, mainly because Mr. Koschman was deemed the aggressor in the altercation and Mr. Vanecko acted in self-defense.¹⁶ In the critical, penultimate paragraph of the CSR (Joint Exh. 12, pp. 35-36), the detectives underscore this point by saying that Koschman yelled "Fuck you! I'll kick your ass!" in addition to breaking away from his friends and aggressively going after Vanecko. The Superintendent maintains that these "quoted" words are not to be found in any witness statement contained in the 2004 (Joint Exh. 6) or 2011 (Joint Exh. 7) investigation files,

¹⁵Deputy Chief Andrews had instructed the detectives to complete their report and submit it on February 28, 2011, after Andrews and Sergeant Cirone exchanged emails about corrections to the report (Joint Exhs. 10 and 11).

¹⁶In addition, the detectives noted that there was no reliable identification of Vanecko as the person who punched or pushed Koschman, as none of the eyewitnesses could pick him out of a line-up, Vanecko refused to speak with the police, and there was no physical evidence linking him to the injury to Koschman. Nonetheless, the detectives concluded that Vanecko was the white male who had struck or pushed Koschman based on the witnesses' identification of the attacker as the tallest white male in the Vanecko group, and the one who fled from the scene going south on Dearborn with the individual who had initially argued with Koschman (Denham), as well as Denham's admission that he and Vanecko ran from the scene south on Dearborn.

and the Board finds this to be correct. The Board notes further that while Sergeant Cirone did not approve the final CSR, he knew this quote would be in the report, as the testimony of Detective Spanos and Sergeant Cirone confirms he saw a draft of the report a week before it became final, which included this statement, and never questioned where the quote came from. Moreover, he exchanged emails with Deputy Chief Andrews about this paragraph the night before the CSR was submitted (Joint Exhs. 10 and 11), which focused on this quote and the paragraph containing it.

The Respondent relies on his own testimony, as well as that of Detective Spanos, Commander Salemme, and Mr. Farrell, to argue that the essence of the quote was contained in witness statements. Specifically, Kevin McCarthy (part of the Vanecko group) told Detective Yawger in 2004 that Koschman and another kid were saying things like I will kick your ass (Joint Exh. 6, pp.68, 117), and Scott Allen (part of the Koschman group) told Detectives Spanos and Gilger in 2011 that everyone was yelling “screw you” (Joint Exh. 7, p. 31). Respondent argues that when it comes to self-defense, only the “I’ll kick your ass” part of the quote matters, and there was one witness that linked this statement to Koschman, and that the difference between “fuck you” and “screw you” is trivial.¹⁷ Moreover, Respondent contends that only Deputy Chief Andrews could clear the case, and the email exchange between him and Sergeant Cirone made it clear that the Deputy wanted this language in the report, so Sergeant Cirone had no choice in the matter anyway. The Board agrees with the Respondent that the essence of this quote is contained in the witness interviews done in 2004 and 2011, and that the evidence clearly shows that Mr. Koschman was the aggressor during the altercation, but this does not excuse the

¹⁷Respondent also argues that Allen made this statement while on the phone from another state, and no one knows if there was someone else in the room, and he was just cleaning up his language, not wanting to say “fuck you.”

inaccuracy of the quotation in the CSR. Quoting witnesses implies exactness, and this quote was not exact. As such, the Board finds that Sergeant Cirone permitted this inaccurate quote to appear in the final CSR and is thus guilty of this part of the charged allegation.

16. The Omission of Scott Allen’s Statement that the Vanecko Group Were the Aggressors. In 2004, Scott Allen (part of the Koschman group) gave a statement to detectives (Joint Exh. 6, pp. 40, 112) indicating the two groups engaged in an altercation with lots of argument, that he and his friends eventually pulled Koschman away from the Vanecko group, but Koschman broke free and ran up to the Vanecko group, where he was punched. In 2011, Allen gave a statement to Detectives Gilger and Spanos where he indicated that the Vanecko group members “were the aggressors” (Joint Exh. 7, p. 31). This statement is documented in a GPR. It is undisputed that this statement, however, was not included in the final CSR (Joint Exh. 12). The Board finds Sergeant Cirone erred in not ensuring that it was in the final report. Sergeant Cirone conceded it should have been there, as did Lieutenant Winstrom and Mr. Farrell. The CSR is therefore not complete or accurate in this regard.

The Respondent argues that Allen’s statement (which was inconsistent with his 2004 statement and those of his friends in 2004 and 2011, and therefore not credible) was nonetheless documented in a GPR, and GPRs are as much part of the formal investigation record, as is the CSR. Thus, nothing was being hidden. This argument misses the point. The CSR is a summary document intended to lay out the details of the investigation. The Board agrees that Allen’s 2011 statement is not credible, and that it was documented in a GPR, but it should have been included if the CSR was giving a complete account of all witnesses’ positions in the case. Nor is it sufficient to write a summary and leave out one witness’s version of events, with the admonition that if someone dug through the GPRs, they would have found it. These are excuses and not

defenses. As such, Sergeant Cirone is guilty of this part of the allegation as well.

17. The Inaccurate Statement that Prior to Koschman’s Death, “efforts were being made to interview additional witnesses that were at the scene of the incident.” This statement appears in the CSR, after a description of the work 2004 detectives O’Leary and Clemens did on April 25, 2004 (Joint Exh. 12, p. 13). The parties stipulated that no investigative work was done on this case between April 25, 2004 (after detectives O’Leary and Clemens completed their initial work) and May 9, 2004 (three days after Mr. Koschman died). (Joint Exh. 1, pars. 14-15). The Superintendent says the statement is demonstrably false, and according to Lieutenant Winstrom was likely aimed at covering up an embarrassing lapse or gap in the investigation, when the assigned detectives went on vacation and no one else was assigned to pick up the investigation. While this statement is not pivotal to the CSR, the Board agrees that it was included in an effort to make the 2004 investigation look better than it was. Sergeant Cirone never asked his detectives what supported this statement when he read the draft report and so he failed in his duty to ensure the CSR was accurate and complete in this regard and is guilty of this allegation.

18. The Misleading Characterization of the 2011 Meeting Between Detective Gilger and Asst. State’s Attorney Darren O’Brien. In 2004, Darren O’Brien, as head of the State’s Attorney’s felony review unit, reviewed the work done by detectives and testified at the hearing that he felt the case did not warrant charges, as Mr. Koschman was the aggressor and the punch or push was done in self-defense. Further he testified that none of the witnesses identified, in a line-up, who threw the punch or pushed Koschman. These opinions of Mr. O’Brien in 2004, however, are not in dispute.

The issue is that Detective Gilger indicated in the 2011 CSR (Joint Exh. 12, p. 33) that he

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spoke with ASA O'Brien on January 21, 2011, at the 26th Street Cook County Courthouse, and informed him that he was re-investigating the Koschman matter "and informed ASA O'Brien of the current progress of the investigation." He then went on to report that O'Brien had been consulted by Area 3 detectives and determined that charges were not warranted. This statement was included as part of the editing work Sergeant Cirone did with Deputy Chief Andrews the night before the CSR was finalized (Joint Exh. 10), so Sergeant Cirone was aware of it. In fact, O'Brien testified that this was a chance encounter with Gilger that lasted one or two minutes in 2011, that he (O'Brien) was no longer in felony review or a supervisor in 2011, and that he had not been asked to review the Koschman matter or have anything further to do with it. He did not explain to Detective Gilger his 2004 findings or the facts that were important to him when he found no charges warranted in 2004. Given that O'Brien's 2004 work on the case had already been discussed earlier in the CSR (Joint Exh. 12, p. 22), the Superintendent properly takes the position, through Lieutenant Winstrom, that while the statement on p. 33 of the CSR is technically correct, it is misleading to include it and likely was added so as to bolster the ultimate recommendation the detectives made in the CSR---not to bring charges. Sergeant Cirone's willingness to leave this statement in the CSR, and his failure to rigorously verify it, make him guilty of this part of the allegation.

Penalty

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

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Sergeant Cirone's appointment date is June 29, 1992. His complimentary record consists of sixty-eight awards, including eight Department commendations, seven complimentary letters and thirty-nine honorable mentions. He has no sustained complaints on his disciplinary history. Sergeant Cirone called former Superintendent Philip Cline to testify to his good character and excellent work as a police officer. He also called Lieutenant Michael Kennedy, for whom he has worked for three and one-half years as a violent-crimes detective, assigned to the cold case unit, where he had cleared thirteen cold cases. Lieutenant Kennedy vouched for Sergeant Cirone's character and hard work as a police officer. Former Chief of Patrol Joseph Patterson also testified for Sergeant Cirone. Chief Patterson had supervised Sergeant Cirone as a detective and worked with him, off and on, for nineteen years, and confirmed Sergeant Cirone's excellent character and outstanding police work. The Superintendent did not offer evidence in aggravation.

While the Board has found that Sergeant Cirone supervised an investigation that was not entirely thorough and the detectives under his supervision completed and submitted a CSR that was not entirely accurate and complete, the Board finds that responsibility for the failures in this investigation lie more in the hands of Deputy Chief of Detectives Constantine "Dean" Andrews, who played a major role in designing an inaccurate CSR, Commander Salemme, who clearly exercised little command authority over the investigation, and most especially Detectives Gilger and Spanos, who were tasked with the actual investigation, as well as the preparation of the CSR and failed in numerous ways to honor the obligations contained in the Detective Special Orders. Sergeant Cirone failed as a supervisor, but his role in this investigation and his responsibility for its failures is clearly less than that of the actual detectives and those above him. Moreover, the Board finds that Sergeant Cirone's conduct is mitigated by the fact that he was supervising the investigation of many other serious cases while the 2011 Koschman re-investigation was taking

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place.

In addition, the Board finds that the Superintendent did not demonstrate that the detectives' failure to follow the minimum standards for detective work set out in the Detective Special Orders (and Sergeant Cirone's failure to ensure that they followed these rules) led to a loss of key evidence in this case. So, while the detectives should have interviewed Officer Tremore and the 2004 investigators, there is no evidence here to show what was lost in their failure to do so. While there was a failure to canvass the scene, the Board is not convinced that anything would have come of such a canvass seven years after the incident. While the telephone records of those involved in the altercation should have been sought, it was commonly understood that it was unlikely that seven-year-old records would be available. Nor is the Board convinced that questioning Craig Denham as to what happened after the incident with Mr. Vanecko would have yielded much, if any, new information. The incompleteness and the inaccuracy of the CSR are more troubling, particularly the loose use of an inaccurate quotation to bolster the ultimate recommendation in the case, and the mischaracterization of Darren O'Brien's role in the 2011 investigation. Sergeant Cirone should have done better, much better. And his effort to excuse himself from the deficiencies of the CSR by relying on Sergeant Mills' signature shows a disregard for the rules and regulations he was required to follow and a real lack of leadership on his part, as a sergeant, particularly given Commander Salemm's order that he serve as a supervisor and the obligations placed upon him by paragraph IV(B) of the Department's Regulations, and Detective Special Order 97-2, paragraph V (other than paragraph V(B)(8)).

Nonetheless, Sergeant Cirone has a commendable record at the Department, other than in connection with this investigation. Based on his record of service, and the mitigation evidence

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offered on his behalf, the Board finds that a suspension is not warranted in this case, but rather a written reprimand is the appropriate penalty to impose in this case. The Board recognizes that this written reprimand may well have an adverse impact on Sergeant Cirone's ability to secure future promotions or special assignments, but it is necessary here because of Sergeant Cirone's performance as a supervisor in this case and his failure to comply with Department regulations.

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POLICE BOARD DECISION

The following 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 votes of 5 in favor (Ghian Foreman, Paula Wolff, Eva-Dina Delgado, John P. O'Malley Jr., and Andrea L. Zopp) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 10, and Rule 11, as set forth in the paragraphs above.

As a result of the foregoing, the Board, by a vote of 5 in favor (Foreman, Wolff, Delgado, O'Malley, and Zopp) to 0 opposed, hereby determines that cause exists for reprimanding the Respondent for his conduct.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Sergeant Sam Cirone, Star No. 1808, as a result of having been found **guilty** of all charges in Police Board Case No. 16 PB 2901, be and hereby is **reprimanded** for his conduct.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Eva-Dina Delgado, John P. O'Malley Jr., and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 12th DAY OF DECEMBER, 2019.

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Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

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DISSENT

The following members of the Police 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 _____, 2019.

CHARLIE BECK
Interim Superintendent of Police