

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER BRETT KAHN,) **No. 18 PB 2946**
STAR No. 17785, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1069737)**
RESPONDENT.)

FINDINGS AND DECISION

On July 16, 2018, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Brett Kahn, Star No. 17785 (hereinafter sometimes referred to as “Respondent”), recommending the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct, which set forth expressly prohibited acts:

- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 14: Making a false report, written or oral.

A hearing on these charges against the Respondent took place before Hearing Officer Allison L. Wood on February 14, February 15, and February 28, 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 Wood made an oral report to and conferred with the Police Board before it rendered its findings and decision.

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 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 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. On June 5, 2014, Respondent and his partner, Officer Javier Escanio, were assigned to the 10th District. They were both dressed in uniform in a marked vehicle on routine patrol at or near 1425 South Ridgeway Avenue, in Chicago. At approximately 10:30 p.m. they noticed a man, later identified as Lamont Powell, walking down the street. They believed that he might have been in possession of cannabis. They decided to approach him to conduct a field interview and place him under arrest. Mr. Powell resisted arrest. Both officers pulled Mr. Powell to the ground as part of an effort to handcuff him and take him into custody. Mr. Powell continued to resist arrest by flailing his arms and kicking his legs. Respondent got on top of Mr. Powell and struck him multiple times around the face and head. Officers Michael Blanco and Officer Casey Kasper responded to the call for assistance. When Officer Blanco and Officer Kasper arrived at the scene, Respondent asked if they had a taser and whether he could use it. Officer Blanco gave Respondent his taser. While the

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

actual method of the use of the taser is in dispute, Respondent directed the taser at Mr. Powell, who shortly thereafter stopped resisting arrest. Mr. Powell was ultimately placed in a police vehicle and taken to the police station. Mr. Powell was put in a holding cell at the police station. Respondent advised then-Lieutenant Giltmier at the police station that he had a struggle with Mr. Powell who was resisting arrest. Respondent completed an internal investigative report in which he provided details about his struggle with Mr. Powell. Lieutenant Giltmier interviewed Mr. Powell in the holding cell and observed his injuries. Lieutenant Giltmier directed Respondent to take Mr. Powell to the hospital. As the result of the multiple strikes he received from Respondent, Mr. Powell sustained two black eyes, a swollen lip, facial abrasions and swelling, and a fracture to his nasal area.

The Superintendent presented testimony of Respondent as an adverse witness, Mr. Powell, Officer Paul Gerard (Tactical Training- Taser Instructor), Officer Michael Blanco (who was at the scene), Deputy Chief Eric Washington (Bureau of Internal Affairs – Rule 14 witness), Captain Beth Giltmier (who was a lieutenant at the time of the incident and interviewed Mr. Powell at the police station), Officer Casey Kasper (Officer Blanco’s partner who was also at the scene), and Dr. Donald Steiner (physician expert). The Superintendent also presented multiple photos of Mr. Powell after he was taken to the hospital, photos that were taken five days after the incident, Mr. Powell’s medical records, Mr. Powell’s arrest reports, statements given by Respondent about the incident, and copies of the following Police Department orders: General Order 03-02-02 – Force Options (effective date May 16, 2012); Special Order S03-02-02 – Other Weapon Discharge Incidents (effective date June 14, 2012); General Order G03-02-01 The Use of Force Model (effective date May 16, 2012); all of these orders were in effect on the date of the incident.

Respondent testified on his own behalf. He also presented the testimony of his partner, Officer Javier Escanio. Respondent maintained that Mr. Powell was resisting arrest by flailing his arms and legs in such a way that there was fear that Mr. Powell was trying to strike and/or cause injury to either him or Officer Escanio. Respondent also maintained that he used permissible methods to get control of the situation in that he used open-hand strikes and then, shortly thereafter, he arced the taser in order to scare Mr. Powell so that he would stop resisting arrest.

The Board unanimously finds Respondent guilty of all the charges brought against him by the Superintendent. The Board finds that Respondent used excessive and unreasonable force in striking Mr. Powell on or around his face. The Board is persuaded by the pictures of Mr. Powell that were taken directly after the incident, the testimony of Captain Giltmier about both the physical condition and tasing of Mr. Powell, as well as the testimony of the Superintendent's physician expert, Dr. Donald Steiner, who opined that the strikes by Respondent were made with his fists and not an open-hand that Respondent insisted he used.

The Board also finds not credible Respondent's testimony that he only arced the taser to scare Mr. Powell. The Board is persuaded by the testimony of Mr. Powell, Officer Blanco, and Officer Kasper, all of whom testified that Respondent placed the taser on Mr. Powell's body and tased him. Accordingly, the Board found that Respondent's written report to the District Commander and his oral statements to the Independent Police Review Authority that he did not physically place the taser on Mr. Powell were false.

Charges Against the Respondent

5. The Respondent, Police Officer Brett Kahn, Star No. 17785, charged herein, is **guilty** of violating Rule 2, Rule 6, and Rule 8 in that the Superintendent proved by a preponderance of the

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

evidence the following charges:

On or about June 5, 2014, at approximately 10:25 p.m., at or near 1425 South Ridgeway Avenue, in Chicago, Officer Brett Kahn, without justification, used objectively unreasonable force by punching and/or striking Lamont Powell on or about his face one or more times. Officer Kahn 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 6, which prohibits disobedience of an order or directive, whether written or oral, in that Officer Kahn disobeyed General Orders 03-02-01 and 03-02-02; and
- c. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty.

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

It is undisputed that Respondent struck Mr. Powell around his face and head while Mr. Powell was on the ground on his back. It is undisputed that as a result of Respondent's strikes, Mr. Powell sustained two black eyes, a swollen lip, facial abrasions and swelling, and a fracture to his nasal area. The Superintendent presented Mr. Powell's medical records and multiple pictures that were taken of Mr. Powell directly after his arrest that clearly show his injuries. Respondent did not deny striking Mr. Powell, but he testified that he used open-hand strikes that are consistent and permissible when trying to obtain compliance from an active resister like Mr. Powell. The Board finds not credible the testimony by Respondent that he used open-hand strikes.

According to General Order G03-02-02 (effective May 16, 2012), an active resister is defined as: "a person whose actions attempt to created distance between that person and the member's reach *with intent to avoid physical control and/or defeat the arrest.*" (Emphasis in the original.) One of the options identified that can be used in relation to an active resister is "stunning," which is defined as: "diffused-pressure striking or slapping and is an attempt to

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

increase control by disorienting the subject and interfering with the subject's ability to resist." It would have been permissible for Respondent to use an open-hand strike or a slap to disorient Mr. Powell so that he would stop resisting arrest. However, the evidence presented shows that it is more likely than not that Respondent did not use an open-hand strike. Mr. Powell testified credibly that Respondent punched him with a closed hand multiple times, and the Superintendent's medical expert, Dr. Donald Steiner, opined that the injuries sustained by Mr. Powell were consistent with blunt force trauma caused by a fist.

The Board finds the testimony and opinions of Dr. Steiner to be credible and persuasive. Dr. Steiner has been an emergency physician licensed in Illinois for 40 years, and he is board-certified in emergency medicine. He has seen and treated numerous patients who have been in fights and who have been punched with fists. He reviewed the emergency room medical records of Mr. Powell, photographs of Mr. Powell, the arrest reports, Chicago Police Department Policies on Use of Force, and transcripts of statements by Respondent and Mr. Powell. In reviewing the photographs of Mr. Powell taken after the incident, Dr. Steiner testified that he noted bruises on Mr. Powell's forehead, swelling of the eye and eye brow, swelling of the lip and swelling in the jaw. He further testified that based on his experience in emergency medicine, these injuries could not have been caused by open palm strikes. In particular, there is an injury between the eye and nose (non-displaced fracture) that an open palm strike would not be able to reach. He further opined that Mr. Powell's injuries were caused by closed fists with concentrated force.

According to the General Order G03-02-02, striking movements such as punching is a permissible use of force for an assailant defined as, "a subject who is using or threatening the imminent use of force against himself/herself or another person." Although Respondent and his partner Officer Escanio testified that Mr. Powell was flailing his arms and legs, and that he was

combative in resisting arrest, they also both testified that neither of them was harmed in any way by Mr. Powell. We find it significant that after then-Lieutenant Giltmier spoke with Mr. Powell and observed his injuries, she decided that all six of the charges listed by Respondent in the police report would be dropped.¹ The Board concludes that Mr. Powell was an active resister and not an assailant. The Board finds that Respondent used unreasonable force by punching and/or striking Mr. Powell on or about his face multiple times, and that he unjustly mistreated Mr. Powell. The Superintendent has met the burden to show that Officer Kahn violated Rules 2, 6, and 8.

6. The Respondent, Police Officer Brett Kahn, Star No. 17785, charged herein, is **guilty** of violating Rule 2, Rule 3, and Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about June 8, 2015, Officer Brett Kahn provided a false or misleading written statement to 10th District Commander Frank Valadez by stating that “Complainant/offender Powell was never tasered by R/O” [Reporting Officer], or words to that effect. Officer Kahn 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; and
- c. 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.

Officer Blanco and Officer Kasper both testified that when they arrived at the scene they observed Respondent struggling with Mr. Powell. Respondent asked if either of them had a taser,

¹Mr. Powell was charged with one count of criminal damage to property, two counts of aggravated assault, two counts of resisting arrest, one count of possession of cannabis of less than 2.5 grams.

and Officer Blanco gave Respondent his taser. Respondent testified that he did not use the taser on Mr. Powell, and in his report of the incident dated June 8, 2015, to 10th District Commander Frank Valadez, Respondent reported that, “Complainant/offender Powell was never tasered by R/O, nor did R/O place my knee on the offender’s stomach.”

The Superintendent presented Officer Paul Gerrard, who has been a member of the Chicago Police Department for 18 years. Since 2011, Officer Gerrard has been assigned to the Department’s Educational and Training Division, which provides taser instruction and taser use certifications. Officer Gerrard explained that according to Uniform and Property directive U4-02-04—Taser Devices (effective June 14, 2012), a taser is defined as, “a device used to control and subdue a subject through the application of electrical impulses that override the central nervous system and cause uncontrollable muscle contractions.” He testified that there are three ways an officer can use a taser: (1) spark display (also referred to as a warning arc), which is used as a warning only—the taser does not make contact with the offender, and the point is for the offender to actually see the taser; (2) drive stun (also referred to as a dry stun), which involves physical contact with the offender’s body; and (3) a probe discharge, in which two probes that are connected to wires of the taser are deployed into the offender’s body. If the officer chooses to use either a drive stun or a probe discharge, the officer must first alert a supervisor that the taser will be used, and request emergency medical personnel to come to the scene. The supervisor is required to take the taser and investigate that it was deployed properly.

Respondent testified that he arced the taser to scare Mr. Powell so he would stop resisting arrest; Respondent has maintained that he did not place the taser on Mr. Powell’s body. This testimony by the Respondent is not credible. Mr. Powell credibly testified that Respondent placed the taser on his stomach and that he felt an electrical shock that went through his entire body. Both

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

Officer Blanco and Officer Kasper testified that Respondent employed a dry stun, placing the taser on Mr. Powell's body. Officer Blanco testified that he heard Mr. Powell cry out and then lay still. Both Officer Blanco and Officer Kasper testified that they understood that a supervisor was supposed to be called if a taser is used and that medical emergency personnel were also supposed to be requested. They did not see either a supervisor nor medical-emergency personnel at the scene before or after Respondent pressed the taser against Mr. Powell's body. Then-Lieutenant Beth Giltmier who was first person Respondent reported the incident to about his struggle with Mr. Powell, testified that it was odd that Respondent reported that he arced the taser and Mr. Powell stopped moving. In her experience, when someone is resisting or fighting, they don't stop because they see a taser. Captain Giltmier also testified that Respondent did not notify a supervisor or request emergency personnel to the scene. The Board finds that the evidence is sufficient to show that Respondent did in fact place the taser on Mr. Powell's body and that he falsely reported that he arced the taser. We therefore conclude that Respondent intentionally made a false statement in his memo to District Commander Frank Valadez, when he reported that he never tasered Mr. Powell.

The Superintendent also presented the testimony of Deputy Chief Eric Washington of the Bureau of Internal Affairs, which is the unit that investigates complaints against officers and conducts confidential investigations. He is familiar with the disciplinary process for police officers, and he is familiar with Rule 14 which prohibits members from making false oral or written reports. Deputy Chief Washington testified that the Department is required to report to other entities they partner with, such as the Cook County State's Attorney's Office and the United States Attorney's Office that an officer has a sustained Rule 14 violation. A sustained violation of Rule 14 impedes the ability of officers to do their jobs, they won't be able to be assigned to special teams, and they cannot testify in any case. He also testified that the Department cannot put police

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

officers on the streets who are not truthful or are dishonest, because that inhibits citizen trust, which the Department needs in order to do its job.

7. The Respondent, Police Officer Brett Kahn, Star No. 17785, charged herein, is **guilty** of violating Rule 2, Rule 3, and Rule 14 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about October 13, 2015, Officer Brett Kahn provided a false or misleading oral statement to the Independent Police Review Authority by stating that “he did not drive stun Mr. Powell” with a Taser, or words to that effect. Officer Kahn 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; and
- c. Rule 14, which prohibits making a false report, written or oral.

See the findings set forth in paragraph nos. 4, 5 and 6 above, which are incorporated herein by reference.

On October 13, 2015, Respondent was interviewed by the Independent Police Review Authority about the incident with Mr. Powell. In explaining what happened in terms of his use of the taser, Respondent made the following statement: “I noticed that one of the assisting units had a taser. I requested the taser from that assisting unit and I displayed the arc of the taser to Mr. Powell and ordered to deter him from further combative nature.” Later in the interview, Respondent is asked, “And you arc’d it?” and he responded by saying, “Yes, ma’am I did not discharge any prongs. And I did not dry stun Mr. Powell.”

As stated above, the evidence presented shows that Respondent did in fact press the taser to the body of Mr. Powell resulting in an electrical shock. Accordingly, the Board finds that

Respondent intentionally made a false statement to the Independent Police Review Authority when he stated that he did not dry stun Mr. Powell.

Penalty

8. The Police Board has considered the facts and circumstances of the conduct of which it has found the Respondent guilty, and the evidence presented in defense and mitigation, including the Respondent's complimentary and disciplinary histories.

The Board has considered thoroughly the evidence Respondent offered in mitigation, which includes the fact that he is a married man with a 3-month old baby girl. He received leadership training in the army reserves. He extended his enlistment to serve in Iraq in 2007 for 15 months. He was honorably discharged. In addition, Respondent, who joined the Police Department in August of 2012, has a complimentary history of twenty total awards, including fifteen honorable mentions and one attendance recognition award; he has one sustained complaint on his disciplinary history, for which he was reprimanded.

Nevertheless, after considering Respondent's military service and work as a police officer, and his prior disciplinary history, the Board finds that Respondent's misconduct is incompatible with continued service as a police officer and warrants his discharge from the Chicago Police Department.

Respondent used objectively unreasonable force when he struck Lamont Powell in the face several times. By engaging in the use of excessive force, Respondent failed in his duty to treat each person with respect and dignity, and he diminished the public trust that is essential for effective law enforcement.

Respondent then made matters worse by intentionally making material false statements

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

about his actions during the arrest of Mr. Powell— Respondent submitted a false official report to his commander and lied in his interview with the Independent Police Review Authority. Such conduct by Respondent is antithetical to that expected and required of a police officer, who at all times has a duty to act with honesty and integrity, not falsify an official report and lie during the investigation of one's alleged misconduct. 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 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 false official report 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*, 408 Ill.App.3d 663, 671 (1st Dist. 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 Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the entire evidentiary hearing, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

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 the Respondent **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 8, and Rule 14, as set forth in paragraph nos. 5 through 7 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 the Respondent 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 Brett Kahn, Star No. 17785, as a result of having been found **guilty** of all charges in Police Board Case No. 18 PB 2946, 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.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 11th DAY OF APRIL, 2019.

Police Board Case No. 18 PB 2946
Police Officer Brett Kahn
Findings and Decision

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

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.

EDDIE T. JOHNSON
Superintendent of Police