

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER JAMES CASTRO,) **No. 12 PB 2825**
STAR No. 14762, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 314738)**
RESPONDENT.)

FINDINGS AND DECISION

On December 13, 2012, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer James Castro, Star No. 14762 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- 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 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10: Inattention to duty.
- Rule 13: Failure adequately to secure and care for Department property.
- Rule 14: Making a false report, written or oral.
- Rule 30: Leaving duty assignment without being properly relieved or without proper authorization.

The specific charges brought by the Superintendent are as follows:

Rule 1 charge: On or about August 6, 2006, Police Officer James Castro knowingly detained Bruce Jackson without legal authority, in the vicinity of 1059 West Addison Street to the

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vicinity of 1200 West Webster Avenue, in violation of Illinois Compiled Statutes Chapter 720, Section 5/10-3(a), thereby violating any law or ordinance.

Rule 2 charge (Count I): On or about August 6, 2006, Police Officer James Castro knowingly detained Bruce Jackson without legal authority, in the vicinity of 1059 West Addison Street to the vicinity of 1200 West Webster Avenue, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count II): On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count III): On or about August 6, 2006, Police Officer James Castro stated, "Nigger you're going to die today, I'm going to kill you," or words to that effect, to Bruce Jackson, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count IV): On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, which allowed Bruce Jackson to break a window of his squad car, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count V): On or about August 6, 2006, Police Officer James Castro left District 19, his district of assignment, and traveled to the vicinity of 1200 West Webster Avenue in District 18 without permission or authorization, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count VI): On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Chicago Police Department General Offense Case Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car he was told by an unknown citizen that the window had been broken, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count VII): On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Department Vehicle Traffic Crash or Damage Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car, it had sustained damage to the window by an unknown offender, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count VIII): On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane and/or Lieutenant J. Schmidt, when Officer Castro stated that he parked his vehicle at approximately 28 South Wabash Avenue and when

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he returned he found the window had been broken by an unknown individual, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 2 charge (Count IX): On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane when Officer Castro stated that he had written an Administrative Notice of Ordinance Violation to Bruce Jackson and then released him, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

Rule 8 charge: On or about August 6, 2006, Police Officer James Castro stated, "Nigger you're going to die today, I'm going to kill you," or words to that effect, to Bruce Jackson, thereby disrespecting or maltreating any person, while on or off duty.

Rule 9 charge: On or about August 6, 2006, Police Officer James Castro stated, "Nigger you're going to die today, I'm going to kill you," or words to that effect, to Bruce Jackson, thereby engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 10 charge: On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, thereby being inattentive to duty.

Rule 13 charge: On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, which allowed Bruce Jackson to break a window, thereby failing adequately to secure and care for Department property.

Rule 14 charge (Count I): On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Chicago Police Department General Offense Case Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car he was told by an unknown citizen that the window had been broken, or words to that effect, thereby making a false report, written or oral.

Rule 14 charge (Count II): On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Department Vehicle Traffic Crash or Damage Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car, it had sustained damage to the window by an unknown offender, or words to that effect, thereby making a false report, written or oral.

Rule 14 charge (Count III): On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane and/or Lieutenant J. Schmidt, when Officer Castro stated that he parked his vehicle at approximately 28 South Wabash Avenue and when he returned he found the window had been broken by an unknown individual, or words to that effect, thereby making a false report, written or oral.

Rule 14 charge (Count IV): On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane when Officer Castro stated that he had written an Administrative Notice of Ordinance Violation to Bruce Jackson and then released him, or words to that effect, thereby making a false report, written or oral.

Rule 30 charge: On or about August 6, 2006, Police Officer James Castro left District 19, his district of assignment, and traveled to the vicinity of 1200 West Webster Avenue in District 18 without permission or authorization, thereby leaving duty assignment without being properly relieved or without proper authorization.

The Police Board caused a hearing on these charges against the Respondent to be had before Michael G. Berland, Hearing Officer of the Police Board, on March 19, March 26, and April 10, 2013.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Berland 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. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

Statute of Limitations

4. The first question is whether this case is time-barred under 65 ILCS 5/10-1-18.1, which states in relevant part:

Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based. The statute of limitations established in this Section 10-1-18.1 shall apply only to acts of unreasonable force occurring on or after the effective date of this amendatory Act of 1992.

For the reasons stated in the Board's Memorandum Opinion and Order issued in Police Board Case No. 11 PB 2776, Bruce Askew, the Board unanimously determines that the above section of 65 ILCS 5/10-1-18.1 ("Statute of Limitations") applies to the City of Chicago.

The Board hereby dismisses the charges that the Respondent violated Rule 1, Rule 2 (Counts I and III only), Rule 8, and Rule 9 ("Dismissed Charges") based on the Statute of Limitations. The Board finds that the remaining charges against the Respondent do not fall within the ambit of the Statute of Limitations, and therefore are not dismissed on these grounds.

There is no dispute that the charges against the Respondent were filed more than five years after the incident that led to the charges—the incident occurred on August 6, 2006, and the Superintendent filed the charges on December 13, 2012.

In the Askew case, there was no dispute that the charges filed against Officer Askew were "based upon an allegation of the use of unreasonable force by a police officer." Here, there is such a dispute.

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a. Dismissed Charges. The Board finds that the charges that the Respondent knowingly detained Bruce Jackson without legal authority and stated to Bruce Jackson, “Nigger you’re going to die today, I’m going to kill you,” or words to that effect, are based upon an allegation of the use of unreasonable force by a police officer. Bruce Jackson alleged that a police officer threw him into a police car for no reason and threatened to kill him (see Bruce Jackson’s testimony at the hearing and his call to 911 on August 6, 2006, which is in evidence as Superintendent’s Exhibit Nos. 7 and 7A). The Board finds that Jackson’s allegation of physical maltreatment accompanied by a threat of physical harm is an allegation of the use of unreasonable force. The Board further finds that this allegation led directly to Officer Castro being charged with violating Rule 1, Rule 2 (Counts I and III only), Rule 8, and Rule 9. As a result, these charges fall within the ambit of the Statute of Limitations and therefore are time-barred.

(Board Members Conlon and Foreman concur in part and dissent in part from the above findings: We concur in the findings of the Board dismissing the charges alleged in Count III of the Rule 2 charge, the Rule 8 charge, and the Rule 9 charge as time barred under 65 ILCS 5/10-1-18.1. While the Statute of Limitations is expressly directed at charges that are “based upon an allegation of the use of unreasonable force by a police officer” the language alleged and proven here – racial slurs, epithets and crude and despicable race-tainted language which has no place in police work or our society – in combination with the other facts proven, combine to constitute “the use of unreasonable force” as alleged in Count III of Rule 2. We write separately to emphasize that our finding of “unreasonable force” here is based on the extreme life-threatening and race-tainted language used. See also, Rules 8 and 9, Chicago Police Department Rules of Conduct. We dissent from the finding that the Statute of Limitations applies to the Rule 1 charge and Count I of

the Rule 2 charge. We find that the plain reading of the Statute of Limitations makes the statute inapplicable to those charges; we decline to apply a time bar to those charges.)

b. Remaining Charges. The Board finds that the remaining charges against the Respondent are not based upon an allegation of the use of unreasonable force by a police officer. The charges that Officer Castro failed to properly restrain and/or handcuff Jackson¹, left District 19 without authorization², made false reports and provided false statements regarding the damage to his squad car³, and made a false statement about releasing Jackson after writing him a ticket⁴ are not directly related to Jackson's allegation of physical maltreatment, and the Statute of Limitations therefore does not apply to these charges.

(Board Members Carney, Ballate, and McKeever dissent from the above finding: We find that Jackson's initial allegation of physical maltreatment accompanied by a threat of physical harm is an allegation of the use of unreasonable force that led directly to *all* charges being filed in this case. If Jackson had not called 911 and made this allegation, none of the charges against Officer Castro would have been filed with the Police Board. As a result, we find that all of the charges fall within the ambit of the Statute of Limitations and therefore are time-barred.)

Motion to Strike and Dismiss

5. The Respondent filed a Motion to Strike and Dismiss the charges and the case for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; (c) the Respondent's rights under Section

¹ The charges that the Respondent violated Rule 2 (Counts II and IV), Rule 10, and Rule 13.

² The charges that the Respondent violated Rule 2 (Count V) and Rule 30.

³ The charges that the Respondent violated Rule 2 (Counts VI, VII, and VIII) and Rule 14 (Counts I, II, and III).

⁴ The charges that the Respondent violated Rule 2 (Count IX) and Rule 14 (Count IV).

8.4 of the Agreement between the Fraternal Order of Police Lodge 7 and the City of Chicago (“Collective Bargaining Agreement”) have been violated; (d) the investigation by the Independent Police Review Authority (IPRA) violated various Chicago Police Department General Orders; and (e) IPRA violated Section 2-57-070 of the Municipal Code of Chicago. For the reasons set forth below, the Respondent’s Motion to Dismiss Charges is **denied**.

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

The Respondent’s case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state’s decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. Here, the Respondent was working and was being paid a full salary and benefits during the entire period of the investigation

and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from “depriving any person of life, liberty or property [i.e. a public job] without due process of law.” Here, the Respondent was not suspended without pay until *after* the charges against him were filed. Therefore, the Respondent was *not* deprived of a job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent’s due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v. The Department of Children and Family Services*, 239 Ill.App.3d 325 (5th Dist. 1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’s investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent’s case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16

(2nd Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the ability to work.⁵

b. Laches. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him in losing his employment and in hampering his ability to locate witnesses and counter evidence years after the incident to defend against the charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). Under Illinois law, the Respondent must demonstrate that the Superintendent’s unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed

⁵ The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011).

The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board. He argues only that witnesses' memories have faded over time, and so the ability to cross-examine those witnesses was undermined. In fact, however, the witnesses provided statements close in time to the events in question. In addition, Officer Castro's acts on August 6, 2006, when he initially stopped Bruce Jackson and thereafter were corroborated by documents admitted into evidence as Superintendent's Exhibit Nos. 1-5, Castro showed no inability when testifying to recalling the events of that day, and Bruce Jackson's testimony was corroborated by a telephone call he made to 911 on August 6, 2006, which was admitted into evidence as Superintendent's Exhibit Nos. 7 and 7A.

On the issues resolved against the Respondent, he made no showing that he attempted to locate further witnesses or evidence but was unable to do so because of the passage of time. Consequently, any argument that there may be other witnesses out there, or that material evidence was overlooked and is now unavailable, is speculative.

The Respondent therefore has not demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of his case, and has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges.

b. Section 8.4 of the Collective Bargaining Agreement ("CBA"). Section 8.4 of the CBA states in relevant part:

All disciplinary investigation files, disciplinary history card entries, Independent Police Review Authority and Internal Affairs Division disciplinary records, and any other disciplinary record or summary of such record other than records relating to Police Board cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, except that not sustained files alleging criminal

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conduct or excessive force shall be retained for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and thereafter, cannot be used against the officer in any future proceedings in any other forum, except as specified below, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five- (5-) year period. In such instances, the Complaint Register case files normally will be destroyed immediately after the date of the final arbitration award or the final adjudication, unless a pattern of sustained infractions exists.

The Respondent argues that the investigation file and records pertaining to the incident in question should have been destroyed prior to the charges being filed against the Respondent, and therefore the use of this material to bring charges was unlawful and, consequently, the charges should be dismissed.

The Respondent's reading of Section 8.4 of the CBA is incorrect. Section 8.4 does not bring to a halt an open investigation of a disciplinary matter that ultimately becomes a Police Board case, nor does Section 8.4 regulate the amount of time allowed for the filing of charges with the Police Board. Rather, Section 8.4 governs the use in future proceedings of material and records of a disciplinary matter that has been concluded and closed.

In addition, applying Section 8.4 in the way the Respondent argues would regulate the amount of time allowed for the filing of any charge with the Police Board, including a charge based upon an allegation of the use of unreasonable force by a police officer. However, applying Section 8.4 in this way is prohibited by the state statute that establishes the Statute of Limitations discussed above, for this statute contains a home rule preemption (65 ILCS 5/10-1-18.2):

No municipality, including a municipality that is a home rule unit, may regulate the period of time or establish or enforce a statute of limitations relating to charges brought against a police officer before a Police Board, Civil Service Commission, or other board or officer empowered by law or ordinance to investigate police misconduct if the charge is based upon an allegation of the use of unreasonable force by a police officer. The statute of limitations established in Sections 10-1-18 and 10-1-18.1 for those charges are an exclusive exercise of powers and functions by the State under paragraph (h) of Section 6 of Article VII of the Illinois Constitution.

d. Police Department General Orders. The Respondent argues that the Police Department's General Orders require a prompt and thorough investigation, and that IPRA failed to fully comply with the provisions of the General Orders.

In fact, the Department's directives do not set an absolute deadline within which investigations must be completed, but provide that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Once the investigator completes the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

It is not clear from the record of this case whether the investigator regularly sought, and was granted, extensions of time, in compliance with the Department's directives. Even if, however, the General Orders were violated, there is no provision in the General Orders requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Orders in this manner.

e. Municipal Code Section 2-57-070. The Code provides that if the Chief Administrator of the Independent Police Review Authority (IPRA) does not conclude an investigation within six months after its initiation, the Chief Administrator shall notify the Mayor, the City Council, the complainant, and the accused officer. The Respondent argues that IPRA did not comply with this provision of the Code.

This provision of the Code took effect in September 2007, and does not contain any language making it retroactive. Because the investigation of the allegations against the Respondent was initiated in August 2006, and the six-month point of the investigation occurred in February 2007, this provision of the Code is, on its face, not applicable to the Respondent.

Even if this provision is applicable to the Respondent and was violated, neither Section 2-57-070 nor anything else in the Code states that dismissal of a Police Board case is the sanction for failing to make the report to the Mayor, the City Council, the officer, and the complainant. It is unpersuasive that such an extreme sanction would automatically follow, particularly where the alleged misconduct under investigation is as serious as it is here. There is no basis for the Board to dismiss the charges pursuant to Section 2-57-070, and the Board declines to extend the reach of the Code in this manner.

Remaining Charges Against the Respondent

6. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count II: On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 below, which are incorporated here by reference.

7. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

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Count IV: On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, which allowed Bruce Jackson to break a window of his squad car, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

The Board finds that Bruce Jackson ("Jackson") testified credibly at the hearing. Jackson testified that a police officer, whom the Board finds was Police Officer James Castro, gave Jackson an ordinance violation ticket for panhandling in a prohibited manner on August 6, 2006, at about 5:00 p.m. (See Superintendent Exhibit 1). Jackson testified that after he received the ordinance violation, the police officer (Castro) continued to drive the police car with Jackson in the car from Clark and Addison Streets to the vicinity of Webster and Racine Avenues. Jackson testified that he was never handcuffed from the time he was placed in the vehicle by the officer (Castro), including the time when the officer (Castro) drove him from the vicinity of Clark and Addison Streets to Webster and Racine Avenues. The failure to handcuff Jackson is a violation of General Order 02-06, Section VI.A. (See also Superintendent Exhibit No. 27.)

Jackson credibly testified that the officer (Castro) threatened to kill him and did not tell him why he remained in custody. Jackson kicked out the back passenger side window of the police car and went into a restaurant, John's Place, to call 911. The transcript of the 911 call reflects that Jackson made the initial telephone call to 911 from John's Place about five-to-ten minutes after Jackson had been picked up by Officer Castro in the vicinity of Clark and Addison Streets. (See Superintendent Exhibit Nos. 7 and 7A.)

Jackson's testimony that he was responsible for breaking the window of the police car was corroborated by the credible testimony of Alajandro Alvarez, an employee of John's Place, who saw an African-American male hanging out of the back window of a police car shortly before Jackson entered the restaurant to make a 911 call to the police. Dan Collins, another employee of

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John's Place, corroborated that Jackson entered the restaurant on August 6, 2006, and called 911.

The Board also found credible the testimony of Ralph Meyer, a forensic scientist for nearly 36 years for the Illinois State Police, who examined glass fragments submitted by the Chicago Police Department from the police car driven by Castro, glass fragments from the street in the vicinity of Webster and Racine Avenues gathered by a Chicago police officer, and glass fragments that Jackson had submitted to the Chicago Police Department. Meyer's conclusion was that there was a good probability of common origin of all of the glass fragments submitted for his examination. Meyer's opinion was that the glass fragments were all tempered glass and that "if you were to randomly reach out into a population of glass, you would have to reach out 75 times before you would find another glass sample that would have a tempered glass that would have this refractive index." (Tr. p. 231.) Meyer's testimony corroborated Jackson's testimony that Jackson was the person who broke the window of Castro's police car, since one of the samples examined by Meyer was tendered by Jackson.

The Board, in finding Officer Castro guilty on certain charges, took into consideration Jackson's statements in the 911 telephone call made on August 6, 2006, that the police officer who drove him to Webster and Racine Avenues was a white male. Castro is a Hispanic male. The Board also took into consideration Jackson's testimony at the hearing where he testified several times that he did not observe in the hearing room the person who had taken him from Addison and Clark Streets to Webster and Racine Avenues in a police car and who threatened to kill him during the drive to the latter location. Jackson had little opportunity to view Officer Castro on August 6, 2006, since he was in back seat of the police car and was scared because he believed Castro intended to kill him.

The Board finds the evidence overwhelming that it was Officer Castro who transported

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Jackson to Webster and Racine Avenues. That conclusion is supported by the following evidence:

1) Jackson's testimony that the officer who gave him the ordinance violation (Castro) was the police officer who transported him without his consent to Webster and Racine Avenues; 2) Alvarez's testimony that Jackson was hanging out of a police vehicle when he saw the police car at Webster and Racine Avenues; 3) Jackson's agitated state when he arrived at John's Place and the very short time from the issuance of the ordinance violation at Addison and Clark Streets to the time when Jackson made the 911 calls from John's Place; 4) Meyer's testimony that glass fragments found in the area of John's Place on August 6, 2006, by a Chicago police officer had a good probability of common origin and of matching the glass fragments given to the police by Jackson from when he broke the police car window and the glass fragments collected from Castro's police car, number 9510, on August 6, 2006, by Evidence Technician Valentin after the back window had been broken.

8. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count V: On or about August 6, 2006, Police Officer James Castro left District 19, his district of assignment, and traveled to the vicinity of 1200 West Webster Avenue in District 18 without permission or authorization, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference. Lieutenant Mullane testified that normally an officer is not permitted to leave his assigned district while on duty unless he is in a vehicle pursuit or for other reasons not covered by

Castro's decision to transport Jackson to Webster and Racine Avenues. When Officer Castro transported Jackson to the vicinity of Webster and Racine, he traveled outside his assigned district. Lieutenant Mullane testified that the southern boundary of the 19th District in August 2006 was Fullerton Avenue. Webster is two blocks south of Fullerton.

9. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count VI: On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Chicago Police Department General Offense Case Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car he was told by an unknown citizen that the window had been broken, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference. Castro testified that the back passenger window of his police car was broken at 28 South Wabash Avenue on or about August 6, 2006 (see also Superintendent Exhibit No. 3) and that he was told by an unknown citizen that the window in his police car was broken. The Board finds not credible Officer Castro's testimony that he had parked his police car at 28 South Wabash so that he could pick up a handcuff key Castro testified that he had lent to an unknown police officer. The Board finds that Castro falsified the contents of his police report entitled Department Vehicle Crash or Damage Report (Superintendent Exhibit No. 3) when he stated that the window (to his police car) was broken at 28 South Wabash, because Castro knew he had transported Jackson outside the District for no valid police purpose and knew that Jackson had broken the back window

of his police car.

10. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count VII: On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Department Vehicle Traffic Crash or Damage Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car, it had sustained damage to the window by an unknown offender, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 9 above, which are incorporated here by reference.

11. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count VIII: On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane and/or Lieutenant J. Schmidt, when Officer Castro stated that he parked his vehicle at approximately 28 South Wabash Avenue and when he returned he found the window had been broken by an unknown individual, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 9 above, which are incorporated here by reference.

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12. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count IX: On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane when Officer Castro stated that he had written an Administrative Notice of Ordinance Violation to Bruce Jackson and then released him, or words to that effect, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference. On or about August 6, 2006, Officer Castro provided a false statement to Lieutenant William Mullane when Castro stated that he had released Jackson shortly after writing him an Administrative Notice of Ordinance Violation at 5:00 p.m. Castro testified that he drove away from the corner of Clark and Addison with Jackson in the car but that he drove only about 30 or 40 feet and then released Jackson. Castro denied he ever drove the police car to the vicinity of Webster and Racine with Jackson in the vehicle. The Board finds this testimony of Castro not credible. Castro made the false statement to conceal the fact that he continued to drive the police car, after giving Jackson the ordinance violation, to the vicinity of Webster and Racine, during which time he made threats to kill Jackson and without telling Jackson why he had continued to remain in police custody after receiving the ordinance violation.

13. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

Rule 10: Inattention to duty,

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in that:

On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, thereby being inattentive to duty.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

14. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

Rule 13: Failure adequately to secure and care for Department property,

in that:

On or about August 6, 2006, Police Officer James Castro failed to properly restrain and/or hand-cuff Bruce Jackson while in the back seat of his squad car, which allowed Bruce Jackson to break a window, thereby failing adequately to secure and care for Department property.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

15. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count I: On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Chicago Police Department General Offense Case Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car he was told by an unknown citizen that the window had been broken, or words to that effect, thereby making a false report, written or oral.

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

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reference.

16. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count II: On or about August 6, 2006, Police Officer James Castro falsified and/or caused the falsification of an official Department Vehicle Traffic Crash or Damage Report when he reported that while he was on a station assignment at 28 South Wabash Avenue, upon his return to his marked squad car, it had sustained damage to the window by an unknown offender, or words to that effect, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 9 above, which are incorporated here by reference.

17. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count III: On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane and/or Lieutenant J. Schmidt, when Officer Castro stated that he parked his vehicle at approximately 28 South Wabash Avenue and when he returned he found the window had been broken by an unknown individual, or words to that effect, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 9 above, which are incorporated here by reference.

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18. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

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

in that:

Count IV: On or about August 6, 2006, Police Officer James Castro provided a false statement to Lieutenant William Mullane when Officer Castro stated that he had written an Administrative Notice of Ordinance Violation to Bruce Jackson and then released him, or words to that effect, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 12 above, which are incorporated here by reference.

19. The Respondent, Police Officer James Castro, Star No. 14762, charged herein, is **guilty** of violating, to wit:

Rule 30: Leaving duty assignment without being properly relieved or without proper authorization,

in that:

On or about August 6, 2006, Police Officer James Castro left District 19, his district of assignment, and traveled to the vicinity of 1200 West Webster Avenue in District 18 without permission or authorization, thereby leaving duty assignment without being properly relieved or without proper authorization

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

20. The Police Board has considered the facts and circumstances of the Respondent's conduct, the evidence presented in defense and mitigation, and the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A. The Board

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determines that the Respondent must be discharged from his position due to the serious nature of the conduct of which it has found him guilty.

Although Officer Castro may have found Jackson's method of panhandling objectionable, Jackson was entitled to receive the respect due to all citizens after receiving the ordinance violation, and should have been released from custody. Officer Castro apparently decided that a greater punishment was required than merely giving Jackson the ordinance violation. Officer Castro took Jackson outside of Castro's assigned district without authorization, and failed to handcuff Jackson while transporting him, which resulted in Jackson breaking the back window of the police car in an attempt to escape. Officer Castro then attempted to cover up his wrongful actions by falsifying an official Chicago Police Department Case Report and creating a totally fictitious vehicle-damage report so that he could attempt to justify how the back window of his police car was broken. In a further attempt to conceal his misconduct, Officer Castro made false statements to his superiors that he released Jackson after writing Jackson a ticket and that he had parked his police car at 28 South Wabash, where he found the window had been broken by an unknown individual.

Castro's lack of judgment in taking Jackson outside of his district without authorization for no valid police purpose, his disregard for Jackson's safety by failing to properly restrain him, and his lack of integrity by making false official reports and false statements to superiors are incompatible with continued service as a police officer. No police officer, even one such as Castro, who has no prior disciplinary history and numerous awards, can be allowed to remain on the job when he knowingly violates Department rules, puts a citizen at risk, and then intentionally makes numerous material false reports about matters as serious as those present in this case, false reports that bear directly on his duties as a police officer.

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The Board finds that Castro'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 which 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 testimony of the witnesses, 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 a vote of 7 in favor (Carney, Davis, Ballate, Fry, McKeever, Miller, Rodriguez) to 2 opposed (Conlon, Foreman), the Board dismisses the charges that the Respondent violated Rule 1 and Rule 2 (Count I only) based on the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1.

By a unanimous vote, the Board dismisses the charges that the Respondent violated Rule 2 (Count III only), Rule 8, and Rule 9 based on the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1.

By a vote of 6 in favor (Davis, Conlon, Foreman, Fry, Miller, Rodriguez) to 3 opposed (Carney, Ballate, McKeever), the Board finds that the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1 does not apply to the charges that the Respondent violated Rule 2 (Counts II and IV through IX), Rule 10, Rule 13, Rule 14, and Rule 30.

By a unanimous vote, the Board denies the Respondent's Motion to Strike and Dismiss.

By votes of 6 in favor (Davis, Conlon, Foreman, Fry, Miller, Rodriguez) to 0 opposed with 3 abstentions (Carney, Ballate, McKeever), the Board finds the Respondent guilty of violating Rule 2 (Counts II and IV through IX), Rule 10, Rule 13, Rule 14, and Rule 30.

As a result of the foregoing, the Police Board, by a vote of 6 in favor (Davis, Conlon, Foreman, Fry, Miller, Rodriguez) to 3 opposed (Carney, Ballate, McKeever), 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.

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NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer James Castro, Star No. 14762, as a result of having been found **guilty** of charges in Police Board Case No. 12 PB 2825, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JUNE, 2013..

/s/ Scott J. Davis

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

We dissent from the Decision of the majority of the Board. For the reasons set forth on page 7 above, we find that all of the charges against the Respondent fall within the ambit of the Statute of Limitations and therefore are time-barred.

/s/ Demetrius E. Carney

/s/ Melissa M. Ballate

/s/ Susan L. McKeever

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS _____ DAY OF _____, 2013.

SUPERINTENDENT OF POLICE

Report Date: 11 Dec 2012
 Report Time: 1239 Hrs

Chicago Police Department
 Personnel Division
**Only for active personnel*

Information Services Division
 Data Warehouse
 Produced by: ILO1656AEP

1 / 1 Main Report 100%

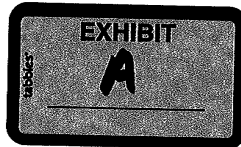
Complimentary History

Name	Title	Star	Unit	Detail Unit	Emp Number
CASTRO, JAMES J	9161	14762	019	376	

Achievements

Total No.

ATTENDANCE RECOGNITION AWARD	2
PRESIDENTIAL ELECTION DEPLOYMENT AWARD 2008	1
DEPARTMENT COMMENDATION	3
HONORABLE MENTION	35
2009 CRIME REDUCTION AWARD	1
COMPLIMENTARY LETTER	5
EMBLEM OF RECOGNITION - APPEARANCE	1
2004 CRIME REDUCTION RIBBON	1
DEMOCRATIC NATIONAL CONVENTION AWARD	1
TOTAL AWARDS	50



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BUREAU OF INTERNAL AFFAIRS
RECORDS SECTION

WEDNESDAY 12 DEC. 2012

TO: COMMANDING OFFICER OF UNIT 113

FROM: RECORDS SECTION
BUREAU OF INTERNAL AFFAIRS

SUBJECT: PREVIOUS DISCIPLINARY RECORD OF:

<u>CASTRO JAMES</u>	<u>14762</u>	<u>019</u>
NAME (LAST, FIRST, M.I.)	STAR	UNIT
<u>M</u>	<u>HIS</u>	<u>[REDACTED]</u>
SEX	RACE	EMP#

2012 738

REFERENCE: COMPLAINT REGISTER NUMBER (S) 314 738

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

<u>ATTY. HONG WINKLE</u>	<u>----</u>	<u>[REDACTED]</u>	<u>113</u>
RANK	NAME	STAR	UNIT

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

THE RECORD SECTION, BUREAU OF INTERNAL AFFAIRS, DISCLOSES THE FOLLOWING DISCIPLINARY ACTION (S) ADMINISTERED TO THE SUBJECT ACCUSED, FOR THE PAST FIVE (5) YEARS.

VERIFIED/PREPARED BY:

FOR: S.D.E.O Patricia JOHNSON/WALKER *[Signature]*
COMMANDING OFFICER
RECORDS SECTION
BUREAU OF INTERNAL AFFAIRS

No CR History
No SPAR History