

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER VICTORIA GUTIERREZ,) **No. 15 PB 2886**
STAR No. 15542, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1046947)**
RESPONDENT.)

FINDINGS AND DECISION

On April 27, 2015, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Victoria Gutierrez, Star No. 15542 (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 6: Disobedience of an order or directive, whether written or oral.
- Rule 7: Insubordination or disrespect toward a supervisory member on or off duty.
- Rule 47: Associating or fraternizing with any person known to have been convicted of any felony or misdemeanor, whether state or federal, excluding traffic and municipal ordinance violations.

The Police Board caused a hearing on these charges against the Respondent to be had before Hearing Officer Thomas E. Johnson on January 21, January 22, February 19, and February 29, 2016.

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 Johnson 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 personally 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.

4. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez knowingly and without legal justification made physical contact of an insulting or provoking nature with Sergeant Sean Martin of the Chicago Police Department while he was performing his official duties and/or to prevent him from performing his official duties. Officer Gutierrez hit Sergeant Martin in the chest area using her right elbow or forearm and/or used her hands to push Sergeant Martin, while he was attempting to execute a search warrant, in violation of 720 ILCS 5/12-3.05(d)(4).

The specific charge here is that Officer Gutierrez hit Sgt. Martin in the chest area with her right elbow or forearm and/or used her hands to push Sgt. Martin. The Board is fortunate to have Supt. Ex. 15, the video images from Officer Gutierrez's home security camera, retrieved by the

Respondent's expert, David Ratkovich. While there is a delay in Sgt. Martin actually entering the premises, the video does not show Officer Gutierrez striking Sgt. Martin at the front door or on the porch, and the testimony concerning the actual physical contact during the entry is confused and unhelpful. While it is clear that Officer Gutierrez did not cooperate with and obstructed the execution of the search warrant at her home (as discussed more fully below), the Board finds that the Superintendent has not discharged his burden of proof on this Count.

5. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, 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 the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez said to Sergeant Martin "You don't have no fucking warrant. You can't come in my house," or words to that effect, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence; and/or Officer Gutierrez hit Sergeant Martin in the chest area using her right elbow or forearm and/or used her hands to push Sergeant Martin, while he was attempting to execute a search warrant.

The home security video that is Supt. Ex. 15 clearly shows that Sgt. Martin was in a police vest as he approached Officer Gutierrez's door and showed her a piece of paper that he and DEA Agent Karountzos identified as a search warrant. The Board finds that the paper Sgt. Martin showed to Officer Gutierrez was a search warrant, based not only on the testimony of Sgt. Martin and DEA Agent Karountzos, but also on the testimony of the other officers as to why they were at the home at [xxxx] South LaCrosse Avenue. Officer Gutierrez conceded that Sgt. Martin was wearing a police vest or jacket, identified himself as a police sergeant, and that she knew he was a

police officer. Nonetheless, she concedes that she blocked the doorway and told him he could not come into her home. In doing so, the Board finds that she impeded the Department's effort to achieve its goals and brought discredit on the Department. In addition, the Board finds that Officer Gutierrez told Sgt. Martin that he did not have a "fucking warrant" or words to that effect. In her statement to the Bureau of Internal Affairs, Officer Gutierrez conceded she possibly said this, and not only Sgt. Martin but also Officer Edward Johnson heard this belligerent comment. The video that is Supt. Ex. 15, together with the testimony of DEA Agent Karountzos, makes clear that Officer Gutierrez had to be physically removed from the doorway in order for the officers to execute the search warrant, and the struggle that ensued inside the doorway was significant enough to make it difficult for the officers following Sgt. Martin and Agent Karountzos to promptly gain access to the residence, as the video that is Supt. Ex. 15 makes clear. Where, as here, a Chicago police officer understands that a fellow officer has a warrant and seeks to enter her home to execute that warrant, the officer has a duty to permit the search to go forward. Officer Gutierrez, however, chose to obstruct a legitimate police operation, and this squarely violates Rule 2.

The Board finds that the Superintendent did not prove by a preponderance of the evidence that the Respondent hit Sergeant Martin in the chest area using her right elbow or forearm and/or used her hands to push Sergeant Martin. See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

6. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, 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 the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez interfered with or obstructed an official investigation involving the Chicago Police Department and the United States Drug Enforcement Agency, while they were trying to execute a search warrant. Officer Gutierrez refused or blocked entry into the residence and/or hit Sergeant Martin with her right elbow or forearm and/or pushed him with her hands, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence.

The Board finds that Officer Gutierrez interfered with and obstructed the execution of the search warrant at her home, as explained in the findings set forth in paragraph no. 5 above, but that the evidence does not establish, by a preponderance, that Officer Gutierrez hit Sgt. Martin in the chest area or pushed Sgt. Martin, as explained in the findings set forth in paragraph no. 4 above.

7. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, 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 the Superintendent proved by a preponderance of the evidence the following charge:

Count III: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez was insubordinate to Sergeant Sean Martin, an on-duty sergeant, in that she refused his order(s) to stand aside and/or allow entry into the residence, or an order(s) to that effect, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence.

As indicated in the findings set forth in paragraph no. 5 above, Officer Gutierrez knew that Sgt. Martin was a sergeant of police, the video clearly shows the warrant he showed Officer Gutierrez, and nonetheless Officer Gutierrez blocked her doorway and refused to stand aside and let Sgt. Martin and his team execute the search warrant. This constitutes insubordination, and the Board notes it occurred during a raid that is inherently a dangerous operation for police officers.

8. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, 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 the Superintendent proved by a preponderance of the evidence the following charge:

Count IV: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez failed to properly secure her duty weapon(s), which was (were) found during the execution of a search warrant, loaded and unsecured in a dresser drawer and/or purse, in a house with one or more minors under the age of 14 and/or a convicted felon, which felon knew about the location of one or more of the weapons.

Officer Gutierrez testified that she kept two weapons in a bedside dresser about 2-3 feet tall. The guns were loaded but the magazines were released. She had a ten-year old son in her home and, on the day of the raid, an 8-year old friend was there. Supt. Ex. 4 is General Order U04-02, which governs the security of officers' weapons. It incorporates 720 ILCS 5/24-9, the state statute governing the security of weapons, which is Supt. Ex. 4A. These rules require weapons to either be secured by a firearm safety device that renders the weapon inoperable, kept in a locked box or container, or otherwise placed in a location that a reasonable person would believe to be secure from a minor under 14 years of age. Even, for the sake of argument, crediting Officer Gutierrez's testimony over that of Sgt. Martin, who said one gun was in a purse on the floor of the apartment, the manner in which Officer Gutierrez concedes she kept her weapons is a clear violation of the state statute and the Department's policy.

9. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, 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 the Superintendent proved by a preponderance of the evidence the following charge:

Count V: From at least about July 2009 to at least about the end of July 2011, or on one or more dates therein, Police Officer Gutierrez associated or fraternized with Albert Quiroz, a convicted felon, knowing he was a convicted felon.

There is no question that Albert Quiroz is a convicted felon. This is established by the criminal conviction records that are Supt. Ex. 5, and neither he nor Officer Gutierrez denied this. Officer Gutierrez also admitted that she knew Mr. Quiroz was a convicted felon prior to 2011. Officer Gutierrez and Mr. Quiroz had a son together but never married. They contend that they have no romantic relationship, but that after Officer Gutierrez's parents moved to Arizona (and therefore in 2011) Mr. Quiroz stayed in the basement of Officer Gutierrez's home in order to assist in the care of their son. Officer Gutierrez says that she had to leave early in the morning to work her shift at the police department, and so Mr. Quiroz would provide their son breakfast and get him to school. She conceded that she and Mr. Quiroz also would take vacations and go on outings with their son, as Mr. Quiroz wanted to serve as a good father to his son. The Board, however, finds that Mr. Quiroz lived regularly at Officer Gutierrez's home, and their relationship was more than just about child care. The pictures that are Supt. Ex. 7 show that Mr. Quiroz maintained a residence at the [xxxx] South LaCrosse Avenue location. He was caring for the property on July 14, 2011, when he was arrested, had a key for the home, and it is clear from the testimony and physical evidence that he maintained a regular presence at the home. Equally telling are the recorded conversations between Officer Gutierrez and Mr. Quiroz, while Mr. Quiroz was at the Cook County Jail, immediately after his July 14, 2011, arrest (Supt. Ex. 6). when they discuss a plan to sell "the houses" and move out to Phoenix together, the jewelry Mr. Quiroz kept in the bathroom upstairs, Mr. Quiroz's need to have Officer Gutierrez get him out of jail on bond, how they will

protect their family, a plan to start all over and just move, and otherwise relate to each other on a close personal level. While the Board understands that Rule 47 cannot be used to end a father's relationship with his son, that relationship could have been preserved here without the ongoing and extensive association Officer Gutierrez had with Mr. Quiroz, as Commander Robert Klimas explained in his testimony. It is particularly troubling to the Board that in addition to the association present here, Mr. Quiroz engaged in continued criminal and improper activity while living at Officer Gutierrez home, as evidenced by his plea to the possession of controlled substance charge which arose out of the July 14, 2011, search of Officer Gutierrez's home, as well as the seizure of \$7,000 in cash from the room where Mr. Quiroz lived, including money that was pre-marked and used in connection with an undercover drug purchase. This is a very different situation than that which occurred in the case of Dante Walker (Police Board Case No. 14 PB 2857), offered by the Respondent as Ex. 20, where the officer corresponded and called a felon while the felon was in prison (not engaged in unlawful activity) and the officer was assisting in the raising of the felon's children while she was incarcerated.

10. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **not 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 the Superintendent did not prove by a preponderance of the evidence the following charge:

Count VI: From at least about July 2009 to at least about the end of July 2011, or on one or more dates therein, Police Officer Gutierrez associated or fraternized with Albert Quiroz, a known member of a criminal street gang.

The Board finds that Officer Gutierrez associated with Mr. Quiroz for a significant period

of time prior to the July 14, 2011, arrest of Mr. Quiroz at her home, as explained in the findings set forth in paragraph no. 9 above. Mr. Quiroz acknowledged that he had been a member of the Satan Disciple street gang but claims to have left the gang in 1999, upon his release from prison. Officer Gutierrez conceded she knew Mr. Quiroz had been a gang member when she was fourteen years old and he was seventeen or eighteen, but denied knowing of any gang involvement during the 2009-11 period that is the subject of this charge. The Board finds that Mr. Quiroz was a gang member on February 20, 2010, when he was arrested by Officer Thomas Laurin on a warrant. Officer Laurin testified credibly that Mr. Quiroz admitted membership in the Satan Disciples street gang at the time of the arrest, and this admission was documented in Officer Laurin's arrest report. This satisfies section IV(B)(1) of General Order G08-03 (Supt. Ex. 1). The Board, however, finds that the Superintendent has failed to discharge his burden of establishing that Officer Gutierrez knew or should have known of Mr. Quiroz's continued gang membership. While the Superintendent argues that Mr. Quiroz' criminal activity at her home (possession of controlled substance) and his possession of pre-marked drug money should have put her on notice of his continued gang activity, there is no proof in this record that Officer Gutierrez knew of his criminal activity at her home or of the drug money found in his possession. As such, the Board finds that the Superintendent has not proved this charge by a preponderance of the evidence.

11. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South

LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez was insubordinate to Sergeant Sean Martin, an on-duty sergeant attempting to execute a search warrant, in that she refused his order(s) to stand aside and/or allow entry into the residence, or an order(s) to that effect, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence.

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

12. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez failed to properly secure her duty weapon(s), which was (were) found during the execution of a search warrant, loaded and unsecured in a dresser drawer and/or purse, in a house with one or more minors under the age of 14 and/or a convicted felon, in violation of General Order 07-01 XVII, or Uniform and Property U04-02 XVI or U04-02 X.

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

13. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

Count III: From at least about July 2009 to at least about the end of July 2011, or on one or more dates therein, Police Officer Gutierrez associated or fraternized with Albert Quiroz, a known member of a criminal street gang, in violation of General Order G.O. 97-1 or its successor General Order G08-03.

See the findings set forth in paragraph no. 10 above, which are incorporated here by reference.

14. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **guilty** of violating, to wit:

Rule 7: Insubordination or disrespect toward a supervisory member on or off duty, in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez was insubordinate to Sergeant Sean Martin, an on-duty sergeant attempting to execute a search warrant, in that she refused his order(s) to stand aside and/or allow entry into the residence, or an order(s) to that effect, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence.

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

15. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **guilty** of violating, to wit:

Rule 7: Insubordination or disrespect toward a supervisory member on or off duty, in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about July 14, 2011, at approximately 2008 hours, at or about [xxxx] South LaCrosse Avenue, Chicago, Illinois, Police Officer Gutierrez said to Sergeant Martin "You don't have no fucking warrant. You can't come in my house," or words to that effect, after Sergeant Martin identified himself and/or told Officer Gutierrez that he had a search warrant for the residence; and/or Officer Gutierrez hit Sergeant Martin in the chest area using her right elbow or forearm and/or used her hands to push Sergeant Martin, while he was attempting to execute a search warrant.

See the findings set forth in paragraph no. 5 above, which are incorporated here by

reference.

16. The Respondent, Police Officer Victoria Gutierrez, Star No. 15542, charged herein, is **guilty** of violating, to wit:

Rule 47: Associating or fraternizing with any person known to have been convicted of any felony or misdemeanor, whether state or federal, excluding traffic and municipal ordinance violations,

in that the Superintendent proved by a preponderance of the evidence the following charge:

From at least about July 2009 to at least about the end of July 2011, or on one or more dates therein, Police Officer Gutierrez associated or fraternized with Albert Quiroz, a convicted felon, knowing he was a convicted felon.

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

17. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation.

The Police Board determines that the Respondent must be discharged from her position due to the serious nature of the conduct of which it has found her guilty. It is clear from the evidence that Officer Gutierrez knew that the police were at her door to execute a search warrant. Her interference with this legitimate police operation is inexcusable. Police encounter enough difficulty on the street without having to confront obstruction by one of their own, as occurred here. Further, Officer Gutierrez blocked her door to prevent entry to her home, knowing that a felon lived at her home. Inasmuch as pre-marked drug money was found with Mr. Quiroz's belongings, as well as cocaine sufficient to support a guilty plea to possession of a controlled substance, Officer Gutierrez's interference with the raid at her home was particularly serious. Officer Gutierrez made several very poor decisions that show she is not fit to further serve as a

police officer. She decided not to cooperate with the officers executing the search warrant, not to comply with the state statute and department policy on how to keep her weapons safe, and to associate in a continuing fashion with a known felon. These decisions, taken together, constitute serious misconduct and demonstrate extensive lack of judgment on the part of Officer Gutierrez that are incompatible with continued service as a police officer with the Chicago Police Department and that warrant her discharge.

The Respondent offered evidence in mitigation, which the Board has considered thoroughly.¹ Several Chicago police officers who worked closely with the Respondent testified that she is a great officer and that they have no concerns about her character and ethics. The Respondent has a complimentary history of 19 total awards, including 14 honorable mentions. She has no disciplinary history. However, the Respondent's accomplishments as a police officer, the testimony regarding her positive job performance and character, her complimentary history, and the lack of prior disciplinary history, do not mitigate the seriousness of her misconduct.

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

¹ The Board considered the mitigation evidence (including the Respondent's complimentary history) only for purposes of determining the penalty. The Superintendent objected to the Board reviewing this evidence prior to making its findings regarding guilt, requesting that mitigation evidence be reviewed after any guilty findings (see pp. 546-548 of the hearing transcript). This objection is overruled. The Board's Rules of Procedure do not require mitigation evidence to effectively be sealed until after a finding of guilt. The Rules of Procedure state in relevant part:

“The Superintendent shall present evidence in support of the charges filed, and the respondent may then offer evidence in defense *or mitigation*....At the close of *all* the evidence and arguments, the case will be taken under advisement by the Police Board, which in due course will render its findings and decision as provided by law. The Board *may, in its discretion*, after finding a respondent guilty of one or more rule violations, set the matter for additional proceedings for the purpose of determining administrative action. (Sections III-D and III-H, emphasis added).

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 votes of 7 in favor (Lori E. Lightfoot, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Rita A. Fry, John H. Simpson, and Rhoda D. Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 2 (Counts I – V), Rule 6 (Counts I – II), Rule 7, and Rule 47; and

By votes of 6 in favor (Lightfoot, Ballate, Conlon, Fry, Simpson, and Sweeney) to 1 opposed (Foreman), the Board finds the Respondent **not guilty** of violating Rule 1, Rule 2 (Count VI), and Rule 6 (Count III).

As a result of the foregoing, the Board, by a vote of 7 in favor (Lightfoot, Foreman, Ballate, Conlon, Fry, Simpson, and Sweeney) to 0 opposed, hereby determines that cause exists for discharging the Respondent from her position as a police officer with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Victoria Gutierrez, Star No. 15542, as a result of having been found **guilty** of charges in Police Board Case No. 15 PB 2886, be and hereby is **discharged** from her position as a police officer with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Lori E. Lightfoot, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Rita A. Fry, John H. Simpson, and Rhoda D. Sweeney,.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF MAY, 2016.

Police Board Case No. 15 PB 2886
Police Officer Victoria Gutierrez

Attested by:

/s/ LORI E. LIGHTFOOT
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]

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THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2016.

EDDIE T. JOHNSON
Superintendent of Police