

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER KEVIN F. CAREY,) **No. 11 PB 2739**
STAR No. 3145, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) **(CR No. 312759)**

FINDINGS AND DECISION

On March 22, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Kevin F. Carey, Star No. 3145 (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 15: Intoxication on or off duty.

The Police Board caused a hearing on these charges against Police Officer Kevin F. Carey to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on September 21 and September 22, 2011.

Following the hearing, the members of the Police Board read and reviewed the record of 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 charges were filed in writing and a Notice, stating the time, date, and place, when and where a hearing on the charges was to be held, together with a copy of the original charges, 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.

4. The Respondent's Motion to Dismiss Charges is **denied**. The Respondent maintains that the delay between the date of the incident involving Officer Carey (May 5, 2006) and the dates charges were filed with the Police Board (March 22, 2011) and Officer Carey was suspended (March 24, 2011) was unlawful. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist. 2007), the Respondent seeks dismissal of all charges against him. *Morgan*, however, involved delay in *adjudication* of misconduct after the plaintiff had been suspended from his practice as a psychologist, not delay in the *investigation* leading to the initial suspension, as is the case here. In *Morgan*, the state took fifteen months to decide whether the clinical psychologist involved was guilty of sexually abusing a patient. The Respondent's case here is different. The Respondent challenges the lengthy delay by the Department in deciding whether to initiate charges against the Respondent,

and not the time the Police Board took to resolve those charges.¹

This difference is important because the due process analysis in *Morgan* was triggered by the state's decision to deprive the psychologist of his license and therefore of his job, and then have him sit for a prolonged period of time before he was accorded the opportunity to have a hearing and obtain a decision to clear his name. Here, the Respondent was working during the entire period of the investigation and, indeed, going to law school, partly at the Department's expense. The Respondent therefore cannot assert a due process claim related to the length of the investigation, as the Due Process Clause (of both the federal and state constitutions) precludes a state or local government only from "depriving any person of life, liberty, or property [i.e. a public-sector job] without due process of law". Here, there was no deprivation of Respondent's property interest in his job until charges against him were filed with the Police Board (following the investigation) and he was suspended from his position without pay.

The Respondent also seeks dismissal because Department General Order G08-01 states that: "Prompt, thorough investigations will be conducted into allegations of misconduct to establish facts which can absolve the innocent and identify the guilty" (Section I-B). The Respondent notes that similar language can be found in Section 2-84-430 of the Municipal Code. Special Order S08-01-01, Section II-C-11, also provides that investigations shall be completed within thirty days of when the complaint is received, unless the investigator obtains an extension of the deadline through a request to his commanding officer. There is no question that the investigation in this case took longer than thirty days, but the only evidence in the record relating

¹ After the Respondent was served with charges, several continuances were granted, without objection from either party, to enable the parties to conduct discovery, address other pre-hearing matters, and schedule a hearing date convenient with both parties' schedules.

to approved extensions of the investigation is the testimony of Sergeant Cannizzo. He testified that he did submit requests to extend the time of the investigation on numerous occasions, and they apparently were granted. Respondent did not submit any evidence to the contrary. On the motion, the Respondent bears the burden of proof, and this record therefore does not support a finding that the Department violated the terms of either the Municipal Code, General Order G08-01 or Special Order S08-01-01.

Even if the thirty-day requirement of Special Order S08-01-01 was violated in this case, there is nothing in the General Order, the Special Order, the Municipal Code, or any case law to support the contention that dismissal of the charges is an appropriate sanction for such a violation. It is unpersuasive that such an extreme sanction would automatically follow, especially where the alleged misconduct under investigation is as serious as it is here. Without any legal authority, and none is cited by the Respondent, there is no basis for the Board to dismiss the charges in this case.

5. The Respondent, Police Officer Kevin F. Carey, Star No. 3145, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count I: On or about May 5, 2006, at approximately 0430 hours, at or about 2600 North Kedzie Avenue, Chicago, the Respondent, without lawful justification or authority, pointed a loaded .38 caliber revolver at Willie Flood, thereby placing Willie Flood in a reasonable apprehension of receiving a battery, in violation of 720 ILCS 5/12-2(a)(1), Aggravated Assault.

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Willie Flood, a man in his fifties with no criminal record, was driving on his way to his long-time job as a waiter. His testimony was that, for no reason, Office Carey chased him at high speeds from Western Avenue on the South Side of the City, along the Ryan and Kennedy expressways, and then through surface streets to Logan Square. Mr. Flood testified that Officer Carey pulled a gun on him while chasing him near Hubbard's Cave and then also pulled a gun on him at the Logan Square circle. The Board credits Mr. Flood's testimony in its entirety, as he was very convincing on the witness stand, his testimony is corroborated by the 911 tape put into evidence as Superintendent Ex. No. 1, and by both Sergeant Baniszkiewicz and Officer Fergus, who testified that Officer Carey pulled his gun at Logan Square. The Board finds that Officer Carey's testimony was patently false when he insisted that Mr. Flood pulled a gun on him, as no gun was found either on Mr. Flood or in his car. Officer Carey's testimony was severely undercut by his admitted intoxication, and by his false assertion that he complied with the officers' commands for him to drop his gun at Logan Square. The Board finds this assertion by Officer Carey to be false based on the contrary testimony of Sergeant Baniszkiewicz (who had to tackle Officer Carey to get him to put his gun down) and Officer Fergus (who testified credibly that when commanded to drop his gun, Officer Carey turned toward the officers on the scene with his gun still in his hand, thereby endangering the lives of everyone on the scene). The Board further finds that Officer Carey's account of his chase with Mr. Flood is false because Officer Carey lied to the Board when he denied using racial epithets when describing or talking about Mr. Flood. Sergeant Baniszkiewicz, Sergeant Cannizzo, Officer DeBose and Office Fergus all convincingly testified that Officer Carey used racist and offensive language in talking about Mr. Flood.

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6. The Respondent, Police Officer Kevin F. Carey, Star No. 3145, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count II: On or about May 5, 2006, at approximately 0430 hours, at or about 2600 North Kedzie Avenue, Chicago, the Respondent knowingly drove an automobile while under the influence of alcohol, having a Blood Alcohol Content of 0.145, in violation of 625 ILCS 5/11-501(a)(2), Driving Under the Influence.

The Respondent pleaded guilty to this charge.

7. The Respondent, Police Officer Kevin F. Carey, Star No. 3145, 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 I: On or about May 5, 2006, at approximately 0430 hours, at or about 2600 North Kedzie Avenue, Chicago, the Respondent, without lawful justification or authority, committed Aggravated Assault by pointing a loaded .38 caliber revolver at Willie Flood, thereby placing Willie Flood in a reasonable apprehension of receiving a battery, and thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

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

8. The Respondent, Police Officer Kevin F. Carey, Star No. 3145, 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,

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in that:

Count II: On or about May 5, 2006, at approximately 0430 hours, at or about 2600 North Kedzie Avenue, Chicago, the Respondent knowingly drove an automobile while under the influence of alcohol, having a Blood Alcohol Content of 0.145, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Respondent pleaded guilty to this charge.

9. The Respondent, Police Officer Kevin F. Carey, Star No. 3145, charged herein, is **guilty** of violating, to wit:

Rule 15: Intoxication on or off duty,

in that:

On or about May 5, 2006, at approximately 0430 hours, at or about 2600 North Kedzie Avenue, Chicago, the Respondent submitted to an Administrative Breathalyzer which revealed a Blood Alcohol Content of 0.145.

The Respondent pleaded guilty to this charge.

10. 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 his position due to the reckless and dangerous nature of his conduct on May 5, 2006. The Respondent engaged in an unjustified high-speed vehicle pursuit from the South Side to the North Side of the City while heavily intoxicated, thereby endangering the lives of himself, Willie Flood, and countless members of the public. At the end of this pursuit, while still intoxicated and without justification, he pointed a loaded gun at Flood,

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thereby endangering the lives of Flood and responding on-duty police officers. The Board finds that the 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 which the law recognizes as good cause for his no longer occupying his office.

BY REASON OF THE FINDINGS set forth herein, cause exists for the discharge of the Respondent, Police Officer Kevin F. Carey, Star No. 3145, from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

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, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

IT IS HEREBY ORDERED that the Respondent, Police Officer Kevin F. Carey, Star No. 3145, as a result of having been found **guilty** of charges in Police Board Case No. 11 PB 2739, 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 17th DAY OF NOVEMBER, 2011.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

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DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

RECEIVED A COPY OF
THE FOREGOING COMMUNICATION
THIS ____ DAY OF _____, 2011.

SUPERINTENDENT OF POLICE

Report Date: 30 Jan 2008
Report Time: 1010 Hrs

Information Services Division
Data Warehouse
Produced by: PC01338

Chicago Police Department Personnel Division



Complimentary History

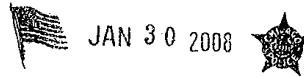
Name	Time	Star	Unit	Dist/Unit	Emp Number
CAREY, KEVIN F	9161	3145	003	166	[REDACTED]

Achievements

Total No.

EMBLEM OF RECOGNITION - PHYSICAL FITNESS	1
HONORABLE MENTION	6
DEPARTMENT COMMENDATION	1
COMPLIMENTARY LETTER	2

PERSONNEL SERVICES

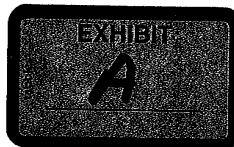


JAN 30 2008



CHICAGO POLICE DEPARTMENT

CR# 312759



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C. R. 312759

ATTACHMENT # 47

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INTERNAL AFFAIRS DIVISION
RECORDS SECTION

28 January 2008

TO: COMMANDING OFFICER OF UNIT 121

FROM: RECORDS SECTION
INTERNAL AFFAIRS DIVISION

SUBJECT: PREVIOUS DISCIPLINARY RECORD OF:

CAREY KEVIN 003 003
NAME (LAST, FIRST, M.I.) STAR UNIT

M WHI [REDACTED]
SEX RACE EMP.#

REFERENCE: COMPLAINT REGISTER NUMBER (S) 312 759

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

SGT. BRODERDORF RAY 1125 [REDACTED] 121
RANK NAME STAR EMP# UNIT

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

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

ISSUED FOR USE IN CR 312 759 ONLY

VERIFIED/PREPARED BY:
Patricia JOHNSON
FOR: COMMANDING OFFICER
RECORDS SECTION
INTERNAL AFFAIRS DIVISION

NO CR History
No SPAR History

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ATTACHMENT # 48