BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST	**)**	
POLICE OFFICER BRANDON TERNAND,	**)**	**No. 17 PB 2940**
STAR No. 2717, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	**(CR No. 1058279)**
RESPONDENT.	**)**	

FINDINGS AND DECISION

On November 6, 2017, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Brandon Ternand, Star No. 2717 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct, which set forth expressly prohibited acts:

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

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

Rule 38: Unlawful or unnecessary use or display of a weapon.

The specific charges brought by the Superintendent are as follows:

1. On or about November 8, 2012, at approximately 3:34 p.m., at or near 6727 South Indiana Avenue, Chicago, Officer Brandon Ternand, without justification, used force likely to cause death or great bodily harm without a reasonable belief that such force was necessary when he fired one or more shots at a minor during a foot chase, hitting the minor once in the back of the head, thereby violating Rule 2, Rule 6 (by disobeying General Order 03-02-03), and Rule 38.

2. On or about November 8, 2012, at approximately 3:34 p.m., at or near 6727 South Indiana Avenue, Chicago, Officer Brandon Ternand unlawfully and unnecessarily used and displayed his weapon when he fired one or more shots at a minor during a foot chase, hitting the minor once in the back of the head, thereby violating Rule 2 and Rule 38.

A hearing on these charges against the Respondent took place before Police Board Hearing Officer Allison L. Wood on May 11, May 17, May 18, and June 22, 2018. 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 Wood made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board Member Steve Flores recused himself from this case pursuant to §2-78-130(a)(iii) of the Municipal Code of Chicago.)

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. A copy of the charges filed, and a notice stating the date, place, and time the initial status hearing would be held, were personally served upon the Respondent not fewer than five (5) days before the date of the initial status hearing for this case.

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

4. Respondent has been with the Chicago Police Department since 2007. Between 2007 through 2016 he was a tactical officer. In 2012, his partner was Officer Victor Razo. Tactical officers focus on gang related activities and crime on the South Side of Chicago.

On the afternoon of November 8, 2012, Respondent and Officer Razo responded to a burglary call at a building located at or near 6727 S. Indiana Avenue in Chicago. After they concluded that it had been a false call, they returned to their vehicle with the intention of going

back to the police station driving eastbound. They saw an individual wearing a red hoodie and red sneakers step into the alley with a gun in his hand. He was medium build about 150 to 170lbs. This individual was later identified to be Dakota Bright. When Mr. Bright saw Respondent and Officer Razo, he began to run. Respondent got out of the car and began to chase Mr. Bright on foot. Officer Razo remained in the car. Mr. Bright ran through a vacant lot, through the alley, scaling fences at 6715, 6719, 6721, and 6725 S. Indiana Avenue. Respondent scaled the fence at 6715 S. Indiana and was standing in the backyard of 6719 S. Indiana. At the same time, Mr. Bright has just scaled the fence at 6727 S. Indiana. At a distance of approximately 50 feet, Respondent, believing Mr. Bright was reaching for his gun, shot Mr. Bright once, with the bullet striking Mr. Bright in the back of his head, causing his death.

The Superintendent has the burden to prove by a preponderance of the evidence that Respondent unlawfully and unnecessarily used and displayed his weapon when he fired one or more shots during a foot chase, and that such use of his weapon was without justification and without a reasonable belief that such force was necessary.

The Superintendent presented testimony of Respondent as an adverse witness, and expert testimony from Michael Gennaco, an expert in police practices and use of force cases. They presented various diagrams of the backyard where the shooting took place; photos of the crime scene; a postmortem report; laboratory report; and copies of the applicable General Order 03-02-03 and the Deadly Force statute, 720 ILCS 5/7-8 of the Illinois Compiled Statutes, that were in effect at the time of the events in this case.

Respondent testified on his own behalf, presented expert testimony from use of force and weapons expert Patrick McGhee, and a series of photos and diagrams from the crime scene. He also presented testimony from Officer Victor Razo (Respondent's partner at the scene), Officer

Anthony Bruno (who was also at the scene), Officer Salvador Lara (arrived at the scene after the incident to investigate); and Detective Matthew Benigno (arrived at the scene after the incident to investigate). Also testifying on Respondent's behalf were Vernisha Ternand (Respondent's wife), Jayson Deptner (Respondent's friend), and Commander Kevin Johnson (Respondent's superior).

The majority of the Board finds Respondent not guilty of the charges brought against him by the Superintendent. The Board found the testimony of Respondent to be credible and persuasive that before he shot Mr. Bright, he observed Mr. Bright turn around, look at him, and reach for his left side, which gave rise to Respondent's reasonable fear for his safety and life in that he believed that Mr. Bright was reaching for the gun of which the officers had previously seen him in possession and was going to shoot him. The majority also found that Respondent's credibility was bolstered by the fact that at the time of the incident, Respondent had been a tactical officer for 5 years, is a highly decorated officer, and that his reputation for honesty was established by his character witnesses.

Findings on the Charges Against the Respondent

5. The Respondent, Police Officer Brandon Ternand, Star No. 2717, charged herein, is **not guilty** of violating Rule 2, Rule 6, and Rule 38 in that the Superintendent did not prove by a preponderance of the evidence the following charges:

> On or about November 8, 2012, at approximately 3:34 p.m., at or near 6727 South Indiana Avenue, Chicago, Officer Brandon Ternand, without justification, used force likely to cause death or great bodily harm without a reasonable belief that such force was necessary when he fired one or more shots at a minor during a foot chase, hitting the minor once in the back of the head, thereby:
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> a. Violating Rule 2, any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;

b. Violating Rule 6, disobedience of an order or directive, whether written or oral, by disobeying General Order 03-02-03; and/or

c. Violating Rule 38, unlawful or unnecessary use or display of a weapon.

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

It is undisputed that on the afternoon of November 8, 2012, Respondent shot Dakota Bright at or near 6727 S. Indiana, Chicago, Illinois. It is also undisputed that this shooting was a terrible tragedy, only made more so by the fact Mr. Bright was 15 years old, and that Respondent has expressed sincere sympathy for the death of Mr. Bright. The issue to be decided by the Board is to determine whether Respondent used excessive force when he displayed his weapon and when he shot Mr. Bright.

The Supreme Court held in *Graham v. Connor,* No. 87-6571 (1989) that determining whether a police officer engaged in excessive force requires a judgment under the Fourth Amendment's "reasonableness" standard. The Supreme Court stated:

> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight…. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.
>
> As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional. (*Graham v. Connor,* 490 U.S. 386, 396-397, citations omitted.)

Respondent testified that he was with his partner, Officer Victor Razo, when they were responding to a burglary call that came from a building located at or near 6727 S. Indiana Avenue in Chicago. That call turned out to be a false alarm. Respondent and Officer Razo got

back into their police car with the intention of returning to the police district, heading eastbound. While coming through the alley, both officers saw an individual, later identified as Dakota Bright, step into the alley holding a gun. When Mr. Bright saw Respondent, he began to run away. Respondent exited the car and began to chase after Mr. Bright on foot. Officer Razo, who remained in the car, called into the radio that a suspect was holding his left side, a statement commonly understood by police officers to believe that someone has a gun, confirmed by the OEMC dispatcher's admonition to officers at the scene, after advising them that Mr. Bright was holding his left side, to "use caution". By the time Respondent approached Indiana and Marquette Avenues, Mr. Bright was running west of the vacant lot heading toward the backyard of 6715 S. Indiana Avenue. In pursuing Mr. Bright, Respondent ran into Officer Anthony Bruno, who had been in a car with his partner, Officer Eugene Sledge, which was parked parallel to the lot. Officer Bruno was also responding to the burglary call and took no action because Respondent and Officer Razo had addressed the call first. Respondent told Officer Bruno that he was chasing an individual with a gun. Officer Bruno, also a tactical officer, got back in his car and drove to the end of the alley in an attempt to close off paths so that Mr. Bright would not be able to escape.

Mr. Bright continued to run south scaling fences in the backyard of 6715, 6719, 6721, 6725, and 6727 S. Indiana Avenue. (See Figure 1 below, which is Superintendent Exhibit No. 2, a diagram of the area in which the shooting took place.) Respondent testified that he scaled the fence at 6715 S. Indiana. He had his weapon out the entire time he was running and he returned his gun to the holster so he could use two hands to scale the fence. Respondent testified that as he approached the fence at 6719 S. Indiana, he yelled to Mr. Bright, "Police, stop running- drop the gun!" He thought Mr. Bright would stop running and put his hands up, but Mr. Bright continued

to run. After Mr. Bright scaled the fence at 6727 S. Indiana, Respondent testified that he observed him turn his head to the right and look at him, and then reach for his left side. Respondent, believing that Mr. Bright was still in possession of the gun he saw in his hand when he entered the alley, believed that Mr. Bright was going to shoot him. Respondent shot Mr. Bright once from a distance of what appears to have been approximately 50 feet, resulting in his death.

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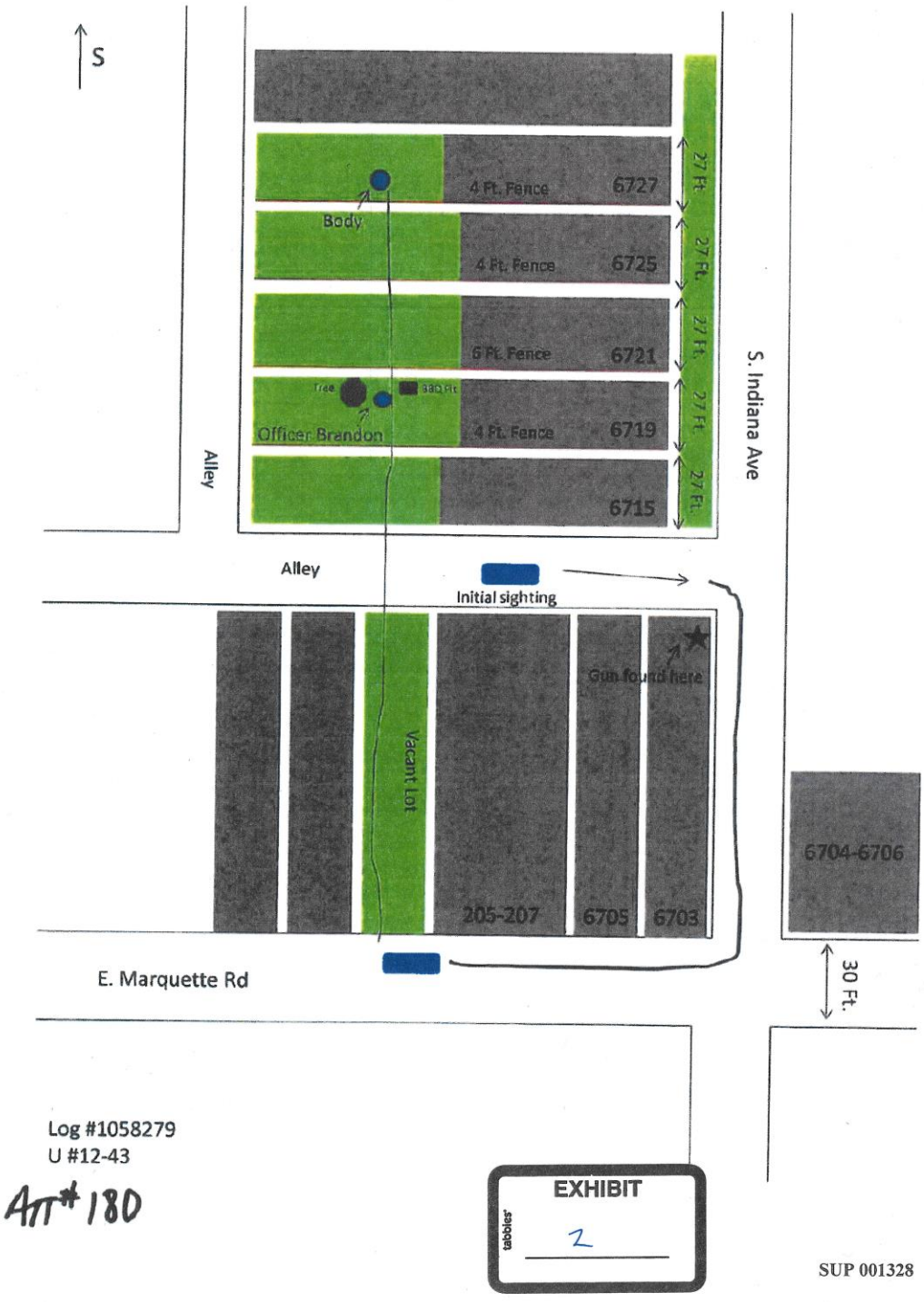
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4 Ft. Fence
6727
Body
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27 Ft.
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Alley
Alley
S. Indiana Ave
Initial sighting
Gun found here
Vacant Lot
205-207
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30 Ft.
E. Marquette Rd
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EXHIBIT
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Figure 1

Respondent's expert witness, Patrick McGhee, is currently a Police Commander with the town of Cicero, where he has been the Director of Training for 9 years. He was a Cook County Police Officer for 32 years. He has testified in 25 cases as an expert in use of force, firearms, and weapons cases. He has been accepted as an expert in those areas in State and Federal Courts. Commander McGhee reviewed the police reports, photographs, interviews, files, training records, General Orders, and Chicago Police Department use of force guidelines. He opined that Respondent acted reasonably under the circumstances and that he did not deviate from Chicago Police Department policy. He testified that Respondent had no choice but to pursue the suspect because he is walking around with a gun. He further testified that when the suspect reached for his left side, where Respondent believed he had a gun, it was instinctive that Respondent would shoot on the belief that the suspect was going to shoot him.

Evidence collected by the investigating officers after the scene showed that a gun believed to belong to Mr. Bright was found near or around the alley where he first saw Respondent. A cell phone believed to belong to Mr. Bright was found at the backyard of 6721 S. Indiana.

Collectively, all of the character witnesses testified that Respondent is a good family man, honest, and a leader among his fellow officers. Commander Kevin Johnson testified Respondent is in the top 10 of the best officers he has ever supervised. Respondent has vast knowledge of the gangs and gang culture that make him an asset to the police department. He has been highly decorated for his bravery.

The majority of the Board believed that Respondent's use of force was "objectively reasonable" in light of the facts and circumstances confronting him when he shot Dakota Bright on November 8, 2012, at or near 6727 S. Indiana Avenue, Chicago, Illinois.

Officer Ternand testified that (i) he believed Mr. Bright had a gun, (ii) Mr. Bright failed to follow commands to stop or to drop his weapon, (iii) Mr. Bright took physical steps to access that gun (reaching for his left side) and turned toward Officer Ternand; and (iv) Officer Ternand believed Mr. Bright was going to shoot him. There is no evidence to contradict Officer Ternand's testimony that that is what he believed, and the evidence strongly supports the conclusion that, under the facts and circumstances, those beliefs were reasonable. Given all that, we believe that Respondent was objectively reasonably in fear for his life and that his use of deadly force was justified.

The dissent reaches a different conclusion, based primarily on the testimony of the Superintendent's expert. An examination of that testimony is therefore warranted.

- The Superintendent's expert testified that the autopsy report shows that the trajectory of the bullet is such that Mr. Bright was hit in the midline of the back of his head. This, according to him, indicates that Mr. Bright was not turning his head when he was shot. Instead, he must have been facing away from Respondent, concludes the dissent. The Superintendent's expert is not a forensic pathologist, and he is not an expert in reading and interpreting autopsy reports or in firearms or bullet trajectories. He is a lawyer. We do not believe he has any basis for knowing whether the gunshot could have been fired as Mr. Bright was turning his head around, or the time that would have taken, and there was no physical or scientific evidence or calculations offered to this effect. As such, while we are certainly troubled by the fact Mr. Bright was shot in the back of his head, this does not constitute conclusive evidence that he was facing forward (away from Officer Ternand) when Officer Ternand formed his belief that Mr. Bright was going to shoot him.

- The Superintendent's expert purports to testify to Mr. Bright's state of mind. As noted by the dissent, "Respondent testified that he observed Mr. Bright reaching for his left side just before he shot him. Although Respondent believed Mr. Bright had a gun, the evidence shows that Dakota tossed the gun right after he saw Respondent; and his phone was found at the second fence (6721 S. Indiana). Respondent shot Mr. Bright at 6727 S. Indiana which means Mr. Bright did not have any reason to reach for his left side since there was nothing on his left side." However, there is no evidence that Mr. Bright "tossed the gun." That is simply made up. Instead, there is evidence that the gun believed to have belonged to him was found at the corner of the alley and S. Indiana. Whether it was dropped (and whether Mr. Bright knew he had dropped it), whether it was "tossed" or otherwise how it got there is unknowable. Moreover, Mr. Bright could have been reaching to pull up his pants, to find his cell phone which he was unaware he had dropped, to reach for his gun which he was unaware he had dropped, or for any other number of reasons.

- The Superintendent's expert testified as to Officer Ternand's state of mind and certainty as to the apprehension of Mr. Bright. As stated by the dissent, "Respondent believed that the other officers at the scene were securing the perimeter to block any paths where Mr. Bright might escape, but he shot Mr. Bright knowing that he could have been safely apprehended by the other officers." We do not agree that the fact that a perimeter was being established means Mr. Bright, who to Officer Ternand's best knowledge was running through a series of backyards with a gun and actively evading arrest, is inevitably going to be captured by others. It means simply that a perimeter is being established and the hope is to apprehend him.

- According to the Superintendent's expert, "Respondent shot Dakota one time. Police officers are trained to keep shooting at a threat until the threat is subdued. It is more common for police officers to shoot 2 to 5 times. After one shot, Respondent does not know if the threat has been subdued." We believe that, having shot him once, and observing him prone and motionless on the ground, Officer Ternand could safely assume Mr. Bright was subdued. Moreover, had Officer Ternand shot Mr. Bright several times, we have a high degree of confidence that the Superintendent's expert would suggest that constituted an excessive use of force.

  The Superintendent's expert suggests that Officer Ternand could and should have taken cover behind a tree. This is an easy conclusion for the expert to reach in hindsight, and when tunnel vision occurs under the stress of a dangerous situation. It is less obvious, we believe, in the instant before one believes he is going to be shot.

- Finally, the argument is made that it was not objectively reasonable for Officer Ternand to have been fearful for his life when Mr. Bright was 50 feet away. However, a greater distance, 75 feet is the precise distance between the shooter and the target at the Department's own firing range, as it is at most law enforcement firing ranges around the United States. Someone with considerably more expertise than we, and while perhaps not a lawyer certainly an expert in police shootings, determined that was the appropriate range to practice. It is unclear how in the field 50 feet has become a distance at which no reasonable person would fear a handgun. Moreover, as Officer Ternand was able, tragically, to shoot and kill Mr. Bright at 50 feet, the likelihood of being fatally shot at that distance would seem to be greater than is suggested. Finally, the dissent observes that "just because police are trained to shoot at seventy-five feet, that does not mean that every time an officer is seventy-five feet from someone that he or she shoots the person," That is, of course, true. It is equally true that every time an officer is seventy-five feet from someone that he believes is trying to shoot him, he likely is justified in shooting him which, of course, is the case here.

- As to the use of sights, the dissent omits the Officer's testimony that the checked box on the Tactical Response Report indicating he used the sights on his weapon is not correct, and that he did not in fact use the sights.

We find, to the contrary, that the weight of the evidence establishes that Officer Ternand, who engaged almost daily in these types of chases, and who is a highly decorated and respected tactical officer with years of experience, was truthful in his testimony and justified in his use of deadly force.

We also note that this is another of the seemingly interminable number of cases submitted to us that are many years old. The events at issue here occurred in 2012, approximately six years ago. We continue to believe delays in bringing these cases, as in this one generally accompanied by no explanation, should receive a high level of scrutiny given the serious issues raised.

The real disagreement in this case is as to whether Officer Ternand is to be believed at all. The dissent believes that Mr. Bright never had a gun, that the gun was planted, that Officer Ternand's testimony and that of his partners was fabricated, and that this case was intentionally suppressed for many years until a change in management at COPA caused it to be brought. We simply do not accept that thesis, and we find no evidence to support it.

6. The Respondent, Police Officer Brandon Ternand, Star No. 2717, charged herein, is **not guilty** of violating Rule 2 and Rule 38 in that the Superintendent did not prove by a preponderance of the evidence the following charges:

> On or about November 8, 2012, at approximately 3:34 p.m., at or near 6727 South Indiana Avenue, Officer Brandon Ternand unlawfully and unnecessarily used and displayed his weapon when he fired one or more shots at a minor during a foot chase, hitting the minor once in the back of the head, thereby:
>
> a. Violating Rule 2, any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
>
> b. Violating Rule 38, unlawful or unnecessary use or display of a weapon.

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

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 5 in favor (Eva-Dina Delgado, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp) to 3 opposed (Ghian Foreman, Paula Wolff, and Michael Eaddy), the Board finds the Respondent **not guilty** of violating Rule 2, Rule 6, and Rule 38 as set forth in paragraph no. 5 above; and

By a vote of 5 in favor (Delgado, O'Malley, Simpson, Sweeney, and Zopp) to 3 opposed (Foreman, Wolff, and Eaddy), the Board finds the Respondent **not guilty** of violating Rule 2 and Rule 38 as set forth in paragraph no. 6 above.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Brandon Ternand, Star No. 2717, as a result of having been found **not guilty** of all charges in Police Board Case No. 17 PB 2940, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective November 23, 2017.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Eva-Dina Delgado, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp. (Board Member Steve Flores recused himself from this case pursuant to §2-78-130(a)(iii) of the Municipal Code of Chicago.)

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 11th DAY OF OCTOBER, 2018.

Attested by:

/s/ EVA-DINA DELGADO

/s/ RHODA D. SWEENEY

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We hereby dissent from the Findings and Decision of the majority of the Board.

It is the Board's role to base its findings and decision only on the record of the hearing and to determine whether the Superintendent met the burden to prove the charges against Respondent by a preponderance of the evidence. Specifically, the Superintendent has the burden to prove by a preponderance of the evidence that it is more likely than not that the shooting of Dakota was not justified or "objectively reasonable" in light of the circumstances the Respondent faced at the time. *See generally, People v. Brown,* 892 N.E. 2d. 1034, 229 Ill.2d 374, 325 Ill. Dec. 42 (2008) *Graham v. Connor,* No. 87-6571 (1989).

We find that Respondent is not a credible and compelling witness, and that his use of deadly force was not justified. We find that Respondent's version of events is refuted by the evidence presented by the Superintendent, particularly the expert testimony. Our opinion is based on the totality of the hearing, especially the testimony of the expert; we respect that the Superintendent provided the Board with an experienced and credentialed expert whose job it was to review evidence and testify to the best of his ability what the circumstances were in this case. The very essence of this deliberation is for the Board members to review the facts and the opinions of both experts (and other witnesses) and to decide whether the Respondent's testimony about his fear for his life was credible and if his actions support that. For that reason, the expert's explanation of facts and understanding of the Respondent's state of mind are at the heart of our dissent.

The Superintendent called Michael Gennaco, an expert in police practices and use of force cases. He is a graduate of Stanford Law School who previously worked for the Department of Justice as a Federal Prosecutor in the Civil Rights Division. He focused on police misconduct

cases from the criminal justice perspective. As a Federal Prosecutor for 15 years he has reviewed a thousand of police misconduct cases in over 20 states around the country. For the past 14 years he has been qualified as an expert in use of deadly force cases about a half-dozen times. He has worked with municipalities in providing independent assessments as to whether an officer's conduct or actions was within or outside of the existing policies. He has provided assessments in over 200 cases. He testified that only in a small percentage of cases, maybe 1.5%, he has found that deadly force was not justified. He trains police officers and supervisors on best practices for excessive force. He reviewed the information in the investigative file, the physical evidence from the case, videos and statements; training records of Respondent; the expectations of the policies in place for police officers to follow; the General Orders in place at the time of the incident; and he visited the crime scene.

We found his testimony to be very credible, and we were particularly persuaded by his assessment that Respondent's testimony was inconsistent with the evidence in the following ways:

- Respondent testified that he observed Mr. Bright reaching for his left side just before he shot him. The Superintendent's expert credibly testified that it was not likely that Mr. Bright reached for his left side. The evidence shows that a gun was found near the spot where Respondent says Mr. Bright first saw him; and a phone was found at the second fence (6721 S. Indiana). The expert opined, "There was no weapon. There was nothing in his pocket for him to reach toward. He was successfully scaling fences and either maintaining or increasing the distance between himself and Officer Ternand. He was, I think, getting away" (Tr. 277). While the majority opinion disagrees with the expert's attempt to evaluate the actions of Mr. Bright, we find credible the expert's explanation that in evaluating Respondent's observations during the chase, "it's important to circumstantially evaluate the actions of the individual being pursued." (Tr. 275). We note for example, that Respondent and Officer Razo were both allowed to opine about Mr. Bright's intention when they first saw him. Both of them testified as to their belief that when Mr. Bright saw them, he recognized them as police officers and decided to run away. It was undisputed that Mr. Bright was trying to run away; and it was equally undisputed that Mr. Bright did not have a gun on him when he was shot. The only logical conclusion that can be drawn is that since Mr. Bright did not have a gun, he could not have been reaching to his left side for it.

- We believe it significant not only that no gun was found on Mr. Bright, there was no evidence that the gun found at the scene belonged to him. There was no evidence that Mr. Bright ever possessed or handled the gun found at the scene. Parenthetically, there was no evidence that the cell phone found at the scene belonged to Mr. Bright. Detective Matthew Benigo, who found the cell phone, testified that the cell phone was password protected and ownership was never determined (Tr. 416, 425).

- Respondent testified that he observed Mr. Bright turn his head to the right just before he shot him. The autopsy report shows that the trajectory of the bullet is such that Mr. Bright was hit in the midline of the back of his head. The Superintendent's expert testified that it was more probable than not that Mr. Bright was "facing away from Officer Ternand when he was shot" (Tr. P. 275). There was no evidence presented in the hearing to refute this conclusion. With no countervailing evidence, the logical conclusion is the obvious one: if someone is shot in the back of the head, his head was facing away from the person who shot him.

- The Superintendent's expert witness testified that to meet the Supreme Court standard that the actions of the Respondent were objectively reasonable, the Respondent would have to believe that Mr. Bright posed a threat—in this instance, by virtue of possessing a gun. At one point in his testimony, the expert says that standard would have been met "assuming that he [Mr. Bright] was armed" (Tr. p. 328), raising doubts about whether the expert believed the evidence proved Mr. Bright did possess a gun. Just as the majority dismisses the commonsense conclusion that Mr. Bright was facing away from Ternand when he was shot because there was "no physical or scientific evidence" introduced in the hearing, we find there is no scientific or physical evidence in the record that Mr. Bright was ever in possession of the gun that was found.

- The proposition that the Respondent thought Mr. Bright had a gun is further negated, in our view, by the fact that although the Respondent testified that he thought that Mr. Bright had a gun during the chase, neither he, the other officers involved in the pursuit nor the dispatcher stated in recorded evidence that Mr. Bright had a gun during the pursuit. The Respondent testified that he told Officer Bruno that Bright had a gun "because he did not want him to be shot." (Tr.74) It would seem reasonable, then, that someone would have officially relayed that information to protect anyone else on the scene. The officer who did call in only said he was "holding his left side". The majority posits that this is commonly used language—code perhaps—for the fact that a suspect has a gun. It was Officer Vincent Razo who made the radio call who used the words "He was holding his left side." When asked about the language he used, he testified that, "not saying gun and saying holding his left side were- I know they're not one and the same, but it's the – those are the way the words came out." In addition, there is undisputed evidence at the hearing that the Respondent at one point during the chase over the fences actually holstered his gun to go over a fence when he was closer to Mr. Bright than at the time he actually shot him, at which time he purportedly feared for his life. If he believed Mr. Bright had a gun and that his life was in danger, holstering his gun would have been inconsistent with that fear.

- Respondent testified that when pursuing a fleeing offender the tactic used is to secure the perimeter by boxing in the offender so that the offender can be placed in custody. He further testified that this tactic is used almost all the time on a daily basis when there is a fleeing suspect (Tr. 130). Both Officer Razo and Officer Bruno testified that the tactic of boxing in a fleeing offender is typically used to prevent the offender from escaping (Tr. 159 & Tr. 186). The Superintendent's expert, who trains police officers in how to conduct effective pursuits, testified that Respondent believed that the other officers at the scene were securing the perimeter to block any paths where Mr. Bright might escape, which was inconsistent with his decision to shoot Mr. Bright. The testimony reflects the expert's opinion, based on years working with police departments training officers about the use of deadly force. Again, his testimony was intended to address whether the Respondent was justified in using deadly force in these circumstances; and the expert testified that this was another reason he was not.

- Respondent shot Mr. Bright one time. The Superintendent's expert testified that based on the hundreds of cases he had reviewed, this is evidence that the Respondent was not responding as one who is justified to use deadly force, that he was not behaving as one who thought Bright was a serious threat to his life. He testified first, that police officers are trained to keep shooting at a threat until the threat is subdued. It is more common for police officers to shoot 2 to 5 times or more (Tr. 364). Second, in the short time after the one shot, he testified that the Respondent would not have known if the threat has been eliminated if he actually believed that Mr. Bright had a gun and would have kept shooting. Further support for the single-shot argument undermining the Respondent's credibility is that the Respondent testified that he was not sure whether he hit Mr. Bright, which would strongly suggest that he was not in fear of his life.

- The majority makes much of the fact that police are trained to fire at targets from seventy-five feet, asserting that this means that the Respondent must have feared for his life—otherwise why would the training include this distance? The obverse is also true: just because police are trained to shoot at seventy-five feet, that does not mean that every time an officer is seventy-five feet from someone that he or she shoots the person. The distance is an incidental variable in a case which is filled with evidence that the Respondent would not objectively, in light of the totality of the situation, have reasonably feared for his life.

- Respondent testified that he "punched out" the shot and didn't use his sights (Tr. 93). He explained that there are two sights; a front sight, and a rear sight made up of two pieces of metal that come up from the rear of the weapon. If he was at the range, he would use both sights. Respondent's testimony was found to be inconsistent with the information he provided as a part of a Tactical Response Report (TRR). In the TRR, there was a question as to whether he used his sights. The box was checked "yes", and this report was reviewed by the Superintendent's expert. The expert opined that it was significant that Respondent reported he used his sights "because when officers face a deadly threat and are experiencing a sudden movement causing them to reach and use deadly force they don't have time to line up the target using the sights the way they are trained on the range. They are forced to point and shoot" (Tr. 291).

We are also persuaded by the Superintendent's expert when he made the following criticisms about poor judgment calls made by Respondent.

- The Superintendent's expert was critical of the fact that Respondent separated from his partner when police officers are trained to stay with their partners. This left Respondent alone and vulnerable in the backyard with the suspect. The suspect has a tactical advantage in that he controls where the officer goes.

- Respondent never communicated via radio with any of the other three officers on the scene. He only communicated with Officer Bruno in the alley, but they did not coordinate their efforts to apprehend the suspect; and Respondent was again alone in the backyard with the suspect. The Superintendent's expert testified that Respondent should have worked with the other officers at the scene to safely apprehend the suspect (Tr. 369).

- Respondent was in the backyard where there was a large tree and a barbeque grill. The Superintendent's expert was critical that Respondent did not think to use the tree as cover. The expert testified that officers are trained in the principles of cover, to not put themselves out in the open. The priority should be in considering their own safety (Tr. 373). Evidence suggests that the tree was certainly big enough to shield the Respondent if he actually feared for his life.

- When Respondent returned his gun to the holster in order to scale the fence, he elevated his position and left himself vulnerable. If his partner had been with him, they could have covered each other.

Respondent created the circumstances of the shooting by the judgments he made. He chose to exit the car alone and pursue Mr. Bright on foot. Throughout the entire chase, he chose not to communicate via radio with any of the three other officers on the scene. He made no effort to work with any of the other officers to safely apprehend Mr. Bright. Respondent returned his gun to his holster to scale the first fence at 6715 S. Indiana, leaving himself vulnerable. By the time Respondent scaled the first fence, Mr. Bright had scaled 3 fences (6721 S. Indiana, 6725 S. Indiana, and 6727 S. Indiana).

The evidence showed that the distance between Respondent and Mr. Bright was 50 feet. Respondent was in the backyard of 6719 S. Indiana, when he shot Mr. Bright. In that yard there was a tree and a barbeque grill. Respondent did not use the tree as cover. Respondent's testimony

as to his observations that Mr. Bright turned around, looked at him, and reached for his left side, were the same observations he said he observed when the distance between him and Dakota was 40 feet. Yet, at 40 feet, Respondent did not feel any threat to his safety or his life. Further, if Respondent had actually felt a threat to his safety or his life, he would not have had time to use his sights and he would have shot Mr. Bright multiple times.

We believe that when the entirety of the record is considered, Respondent's version of the events is not credible. We believe that a reasonable officer would have worked with and communicated with the three other officers at the scene to maintain the safety of the officers and to safely apprehend Mr. Bright. We do not believe that a reasonable officer, under the facts and circumstances presented in this case, would be in fear of his safety and life from a suspect who is running away from him at a distance of 50 feet. Accordingly, we find that the Respondent's use of excessive force in this case was not justified.

Finally, the Majority adds at the end of their opinion that this is one of a series of cases that are many years old. This tragic incident occurred approximately six years ago. We agree with the Majority that it should receive a high level of scrutiny because it took so long; one part of that scrutiny should be: given the highly contentious arguments and complex evidence (and lack of evidence) delineated by the conflicting views of the Majority and the dissent, why would the case not have come to our Board sooner? It appears that is it now before us because of changes in personnel implementing the police accountability process, and we applaud that it is finally before us. The age of the case is not evidence that the Superintendent's charges are unfounded; the fact that the Superintendent is now bringing the case to light supports its importance. Unfortunately and gratuitously, the majority attributes some motivation to the

authors of this dissent that we believe is not relevant to this decision. Justice delayed is justice denied; but never permitting justice to be done is injustice.

Accordingly, we believe Respondent is guilty on all counts and that he should be discharged from the police department. Respondent exhibited poor judgment, lack of leadership, and conduct of "a nature that sound public policy would recognize as good cause" for Respondent to no longer serve the City of Chicago as a police officer. *See generally* Humbles v. Board of Fire & Police Commission, 53 Ill.App.3d 731, 734, Ill. Dec. 441, 368 N.E. 2d 1049 (1977).

/s/ GHIAN FOREMAN
President

/s/ PAULA WOLFF
Vice President

/s/ MICHAEL EADDY

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THESE FINDINGS AND DECISION

THIS _____ DAY OF _____, 2018.

_____
EDDIE T. JOHNSON
Superintendent of Police