

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER DANIEL J. SMITH,) **No. 17 PB 2926**
STAR No. 13941, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1060844)**
RESPONDENT.)

FINDINGS AND DECISION

On January 19, 2017, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Daniel J. Smith, Star No. 13941 (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 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

A hearing on these charges against the Respondent was had before Hearing Officer Jacqueline A. Walker on July 18, July 20, August 10, August 14, and August 24, 2017.

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 Walker made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board Members Eva-Dina Delgado, Ghian Foreman, and Rhoda D. Sweeney recused themselves from this case pursuant to §2-57-060(c) 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 will be held, were personally served upon the Respondent not fewer than five (5) days before the date of the initial status hearing of this case.
3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.
4. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, 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 I: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith used deadly force without justification in that he fired one and/or more shots at Ryan G. Rogers hitting him in the back with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Smith or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

The Superintendent's witness, L'Nea Lancaster ("Lancaster") testified that on March 19, 2013, at approximately 9:00 p.m., she was with Ryan Rogers ("Rogers"), her boyfriend, outside of 1905 West 171st Street, East Hazel Crest, Illinois. She stated that she and Rogers were walking to her white Trailblazer vehicle, which was parked on the south side of the street in front and a little to

the west of 1905 when she saw (now known to be) Officer Smith and Sergeant Joseph Petrenko drive up in unmarked vehicles. Lancaster testified that she and Rogers were outside of the white Trailblazer; she was on the passenger side of her vehicle, while Rogers was on the driver's side when two unmarked vehicles, a green SUV and a tan-colored van, pulled up to the side of her Trailblazer. She testified that the two unmarked vehicles came off Lincoln Street and turned right onto 171st Street. The two unmarked vehicles were facing west, the opposite direction that the Trailblazer was facing. Lancaster testified that the green SUV pulled up alongside the Trailblazer, that the van pulled up right behind the green SUV, and that a red car was parked in front of the Trailblazer. (See Figure 1 below, which is the relevant portion of Superintendent Exhibit No. 1B that includes drawings by Lancaster and was made part of the record.)

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Figure 1. Lancaster's white Trailblazer is marked "SUV"; the green SUV (driven by Petrenko) is marked in black ink; the tan van (driven by Smith) is marked "2" in red ink; the red car parked in front of the Trailblazer is marked "RN".

Lancaster testified that she saw a white male in the green SUV (Sergeant Petrenko) and could not then identify the driver of the tan-colored van. Lancaster testified that she believed the persons in the green SUV and tan-colored van were there to rob her and Mr. Rogers.

Lancaster testified that she and Rogers entered the white Trailblazer after the unmarked cars pulled up and that she did not hear Sergeant Petrenko say anything to Rogers. Lancaster testified that after entering her white Trailblazer she witnessed Officer Smith exit the tan-colored

van and that Officer Smith stood at the driver's side of the van. Lancaster testified that after Officer Smith exited the van Rogers pulled away from the curb angling between the red vehicle that was already parked in front of the Trailblazer and Smith's van that was next to the Trailblazer. Lancaster testified that Officer Smith was standing outside of driver side door at the time Rogers pulled away. She also stated that when the Trailblazer left the curb, she heard a shot and then heard two additional shots. Lancaster testified that the shots immediately followed each other. Finally, she stated that Rogers said to her that he was shot, that she then sat on top of Rogers behind the wheel of the Trailblazer and continued driving, intending to go to Ingalls Hospital, but that she then saw the police lights in her rearview window, realized it was the police, and that she stopped the Trailblazer.

Lancaster testified at the hearing that Rogers was not trying to run Officer Smith down; however, impeachment testimony was presented that Lancaster's prior statement to Detective Thomas Downes, on the evening of the incident, was that Rogers drove the Trailblazer in Officer Smith's direction, that Rogers hit something with the Trailblazer, and that Lancaster then heard the gunshot.

Impeachment testimony presented from Lancaster's prior statements to an IPRA investigator included a statement that the space between the tan-colored van and the red car parked in front of the Trailblazer was probably just barely wide enough for Rogers to squeeze the Trailblazer into and that the Trailblazer would have sideswiped one of the two cars given the space Rogers was trying to go through to get away. Physical evidence consisting of paint transfer was presented that Lancaster's white Trailblazer struck Smith's van. Further impeachment testimony was presented from Lancaster's statements to an IPRA investigator that Rogers drove off at a fast rate of speed—that he peeled off.

Detective Downes was called by the Respondent to perfect the impeachment of Lancaster's testimony. Detective Downes confirmed that Lancaster's statements to him when he interviewed her three times during the early morning of March 20, 2013, were that Rogers (i) "floored" the Trailblazer, (ii) drove it in the direction of Officer Smith, (iii) heard a shot and ducked down in the car, (iv) heard several more shots, and then (v) heard the driver's side of the Trailblazer hit something.

Additionally, Detective Richard Sullivan was called to perfect Lancaster's impeachment. He confirmed that he interviewed Lancaster with his partner, Detective Brian Johnson, and with Detective Downes present, also during the early hours of the next day, and that Lancaster essentially gave the same information to him that she provided to Detective Downes regarding the incident.

Officer Smith testified as follows. He related that on the evening of March 19, 2013, he was assigned to surveillance of the residence located at 1905 West 171st Street, East Hazel Crest, Illinois, as an assist unit, and was parked outside the residence in an unmarked brown GMC van, along with Sergeant Petrenko, his supervisor, who was in an unmarked green Bravada SUV. He testified further that when he observed three individuals exit the residence under surveillance, he was instructed by Sergeant Dowd to detain these individuals, as a search warrant was being obtained for the residence. He stated that he was also informed that an individual who previously left the residence during the surveillance was detained by police officers who were stationed on the periphery of the surveillance location and was arrested for possession of stolen cell phones.

Officer Smith testified that Sergeant Petrenko took the lead as they drove closer to the individuals who exited the residence; Sergeant Petrenko stopped his vehicle next to the Trailblazer facing the opposite direction, and Officer Smith drove his van to the rear of Sergeant Petrenko's

SUV, parked the van at an angle, and both Officer Smith's van and Sergeant Petrenko's SUV were facing west in the east-bound lane of the street. Officer Smith stated that he exited the van as a back up to Sergeant Petrenko, and that he was in the street with the van door closed behind him when he yelled "police" as Rogers got into the driver's seat and he heard Sergeant Petrenko also yell "police, police." He explained that he had his gun drawn when he exited the van, as he believed, based on prior information that he had received, that the persons who left the residence were armed and dangerous. Officer Smith testified that (i) after he exited the van and while he was standing in the street Rogers drove the Trailblazer towards him at a high rate of speed, (ii) Officer Smith turned around to get out of the way of the Trailblazer, ran up against his van and stood on the tips of his toes to minimize his size, (iii) the Trailblazer crashed into the driver side front bumper of his van and the side view mirror of the Trailblazer also hit the side view mirror of his van, and that (iv) the Trailblazer's side view mirror hit his arm. Officer Smith demonstrated at the hearing how he squeezed himself against his van while on his toes to avoid being hit or dragged by the Trailblazer, and that he could not outstretch his arm to shoot his gun because of his close proximity to his van and the closeness of the Trailblazer speeding towards him. He also pointed out that after the incident there was white paint on the front bumper of the van as well as on the side view mirror of the van. He testified that when he heard the first crash against the bumper he began shooting at the driver of the Trailblazer, as the Trailblazer was being driven directly towards him at a high rate of speed, and that when the Trailblazer was about 1½ feet from him, he shot the first of four shots in rapid succession; the second and third shots were as the Trailblazer almost hit him, and by the fourth shot before Trailblazer had passed him. He explained that there were split seconds between the first and last shots fired.

Officer Smith explained that because the Trailblazer was coming towards him at a high rate

of speed with the engine revving, he believed that the Trailblazer was either going to directly hit him, or drag him under the vehicle, or fishtail and hit him in that manner; he thought he was going to lose his life and fired his weapon at the driver of the Trailblazer to save his life. He testified that prior to discharging his weapon he tried to get out of the way of the Trailblazer but that the position of his van and the Trailblazer prevented escape. He continued that it was his belief at the time of the incident that he had no choice but to use force by discharging his weapon to stop the Trailblazer that was coming towards him in order to prevent death or great bodily harm to himself and felt he was in compliance with the general orders by discharging his weapon. Finally, Officer Smith agreed that once the Trailblazer fully passed him he was no longer in fear for his life.

Lieutenant Petrenko (a Sergeant at the time of the incident) was called as a witness for the Superintendent, and confirmed in his testimony that on the day and time of the charges he was supervising Officer Smith at the surveillance of the residence located at 1905 West 171st Street, East Hazel Crest, Illinois. Lieutenant Petrenko stated that he pulled up to the white Trailblazer when he saw the individuals going to the vehicle in order to complete an investigatory stop that may have led to an arrest and that he announced his office twice; the first time was when the driver of the Trailblazer was outside of the vehicle. He noted that he recognized the driver as being one of the persons in the suspected robbery crew.

Lieutenant Petrenko testified that he attempted to open his door to exit, but that Rogers, who was driving the Trailblazer, immediately took off at a high rate of speed with his tires squealing, was out of Lieutenant Petrenko's sight in a split second, and that he then heard a crash followed almost simultaneously by gunshots. He testified that Officer Smith reported to him that the Trailblazer hit Officer Smith's arm.

Lieutenant Petrenko further testified on cross-examination that he closed his door and

leaned into his vehicle when he was attempting to exit, because he felt threatened by Rogers driving off at a high rate of speed and he understood Rogers was suspected of being a part of an armed robbery crew and was attempting to flee from the police. He explained that Rogers drove the Trailblazer directly in the direction of Officer Smith. He also stated that he heard the shots fired by Officer Smith simultaneously with hearing the impact of the crash of the Trailblazer with Officer Smith's van, and that Rogers never stopped the Trailblazer after the impact but that the Trailblazer continued speeding down 171st Street.

Lieutenant Petrenko further testified that he announced his office very loudly and that his badge was exposed and worn on his lapel. He also confirmed that there was damage to the side view mirror of Officer Smith's van.

The Respondent called John Farrell as an expert witness giving testimony as to Officer Smith's use of force. Farrell testified that he reviewed General Order 03-02-03, Section II(A)(2), which is in the charges against Officer Smith, witnesses' statements, and the Independent Police Review Authority (IPRA) Report in reaching his opinion. He testified that it was his expert opinion that Officer Smith's firing the four shots at the driver of the Trailblazer on the evening of the incident was justified and in compliance with the law and the Department's policy as to Officer Smith's use of force.

He further explained that Rogers was using the Trailblazer as a deadly weapon against Officer Smith by driving the Trailblazer at a high rate of speed directly towards Officer Smith. He elaborated that the Department does not require that the police officer be struck by the vehicle before the police officer is allowed to shoot at the vehicle that is coming towards him, in the manner that Rogers was driving the Trailblazer.

Farrell addressed the final bullet hole that was in the rear of the Trailblazer by explaining

that the short period of time Officer Smith would have had to shoot with the fast movement of the Trailblazer explained the bullet entering the rear of the Trailblazer. He stated that Officer Smith's first decision to move out of the path of the Trailblazer failed as Officer Smith's van was in the way. Therefore, with the Trailblazer coming towards Officer Smith at a fast speed, Officer Smith had no choice but to shoot at the Trailblazer. He confirmed that Officer Smith's shots occurred while the Trailblazer was coming towards Officer Smith and passing Officer Smith and that the threat to Officer Smith's life was not fully diminished until the Trailblazer had fully passed Officer Smith. Farrell opined that the shots fired by Officer Smith were fired in approximately a second and a third to a second and a half.

On cross-examination, Farrell concluded that Officer Smith pushed back up against the side of his van when Officer Smith attempted to get out of the way of the Trailblazer. Farrell reached this conclusion by his examination of the location where Officer Smith's shell casings were found in relation to Officer Smith's van and the damage by the Trailblazer caused to Officer Smith's side view mirror of the van.

The Superintendent called no expert witnesses to provide expert testimony as to Officer Smith's use of force.

The majority concludes that the testimony and evidence presented support Officer Smith's contention that following Officer Smith's exit from his van Rogers drove the Trailblazer at a high rate of speed into a narrow opening between Officer Smith's van and the red car parked in front of the Trailblazer in an attempt to escape. It is undisputed that Officer Smith was positioned within this narrow opening. The Superintendent's witness, L'Nea Lancaster, confirmed through her prior statements that Rogers "floored" the Trailblazer and drove it at a high speed in Officer Smith's direction. Sergeant Petrenko's testimony also corroborated that Rogers took off from the curb at a

high rate of speed with squealing tires, enough to put Sergeant Petrenko in fear of continuing to exit his vehicle, and that Rogers drove the Trailblazer in Officer Smith's direction. By taking these actions, the evidence supports Smith's position that he reasonably concluded that Rogers was using the Trailblazer as a deadly weapon in order to escape. Officer Smith credibly testified, and this testimony was supported by evidence of shell casings, that prior to discharging his weapon he attempted to move out of the Trailblazer's path but that he ran into the side of his van and that prevented his escape. Further, he credibly testified that he was convinced that, given the proximity of the Trailblazer and the speed in which it was traveling, the Trailblazer was either going to directly hit him, or drag him under the vehicle, or fishtail and hit him. Furthermore, there was credible evidence presented that when the threat to Officer Smith's life passed, by way of Rogers having driven the Trailblazer past Officer Smith, Officer Smith stopped shooting.

Additionally, Lancaster's testimony that she believed the two individuals (Officer Smith and Sergeant Petrenko) were robbers was not credible, as at least one if not both of Officer Smith and Sergeant Petrenko had their badges visible, and they both testified that they loudly announced their office several times. Further, Lancaster's belief that the two officers were robbers provides limited insight as to whether Rogers perceived the officers to be robbers or police officers.

The expert testimony of John Farrell was that with the Trailblazer coming towards Officer Smith at the high rate of speed, Officer Smith had no choice but to shoot at the oncoming vehicle once Officer Smith determined that escape was not possible. He opined further that Officer Smith fired the shots as the Trailblazer was coming towards him and as it was passing him. He further testified that the shots occurred in quick succession—in approximately a second and a third to a second and a half. He further noted that the damage to the Trailblazer and Officer Smith's van, as well as shell casings at the site of the incident, support the conclusion that the Trailblazer was in

very close proximity to Officer Smith.

Despite the fact that the central issue in this case is whether the use of force by Officer Smith was justified, the Superintendent provided no expert witness as to the use of force either to support his position or to rebut Farrell's testimony. The Superintendent's counsel suggests in closing argument that the Superintendent did not call such an expert because this case does not in his view call for expert testimony, but that instead common sense can be applied to reach what the Superintendent seems to believe is an obvious conclusion. We do not agree, and do not believe this case is obvious at all, particularly as evidenced by our split decision in the matter. In the case of something as serious as the use of deadly force, particularly when the Superintendent has highly experienced experts as to that topic readily at hand, their testimony, regardless of their views, would have been very helpful to the Board in this case, whether or not it would have been helpful to the Superintendent's position.

General Order 03-02-03, Section II(A)(2), as stated in the charges against Officer Smith, provides that use of force is justified by a police officer if the "person... is attempting to escape by use of a deadly weapon," and the police officer reasonably believes that the police officer's life is in danger and the use of force is necessary.

We conclude that Officer Smith's shooting was justified and his use of force necessary.

In respect to our colleagues' thoughtful dissent, we note the following. The dissent makes essentially five points.

- It was not proven that Mr. Rogers "specifically targeted Officer Smith."
 - The City has the burden of proving by a preponderance of the evidence that Officer Smith violated the General Order in effect at the time of this incident, viz., that it was not necessary for Officer Smith to fire into a moving vehicle to "prevent death or great bodily harm to the sworn member...."
 - Mr. Rogers's subjective intent is not relevant to that question.

- What is relevant, and in our view dispositive, as noted by the dissent, is that “there is no dispute that Rogers and his live-in girlfriend, L’Nea Lancaster, got into the SUV and sped off at a high rate of speed on a narrow street lined with cars” and that “the only forward path for the vehicle was in Officer Smith’s direction.”
 - Given these undisputed facts, the conclusion by Officer Smith that Mr. Rogers was going to inflict death or great bodily harm on him was entirely reasonable conclusion.
- Officer Smith had no probable cause or reasonable suspicion to arrest or detain Mr. Rogers.
 - Officer Smith is not charged with improperly arresting or detaining Mr. Rogers or attempting to do so. This Board is responsible for deciding the merits of charges made by the Superintendent. Further, Officer Smith is entitled to notice of the rule violations which may result in Officer Smith’s termination. Officer Smith was not so charged in this case and, as a result, he and his counsel, like the Superintendent’s counsel, were not given the opportunity to present evidence or expert testimony on those issues. It would be improper to find Officer Smith guilty of something with which he was not charged. Whether Officer Smith would have been acting appropriately had he followed his superiors’ instructions and attempted to detain Mr. Rogers has nothing to do with whether Mr. Rogers entered the SUV and drove it at a high rate of speed directly at Officer Smith, either recklessly or with intent to kill him, and whether Officer Smith’s response to Mr. Rogers’s actions was justified.
- Officer Smith should have anticipated that Mr. Rogers was going to drive his vehicle at him and moved out of the way as soon as he saw Mr. Rogers enter the vehicle.
 - Our opinion, and the dissent, are written over several weeks and after much thought and reflection. Officer Smith’s decision was, of necessity, made in a matter of seconds and was, as are all such decisions, inherently reactive. To suggest that Officer Smith was required to conclude that Mr. Rogers entry into his vehicle and engaging the ignition meant that Mr. Rogers inevitably intended to drive directly at Officer Smith at a high rate of speed and that he should therefore move out of the way to avoid being killed, belies the dissent’s suggestion that Mr. Rogers was not specifically targeting Officer Smith and, in fact, that Officer Smith did not know that Mr. Rogers was driving the vehicle in the first place. We do not believe that police officers are required, in order to avoid discharge, to assume that someone entering their vehicle inevitably intends to kill them or behave so recklessly as to endanger those in their path.
- One of Officer Smith’s shots hit Mr. Rogers in the back, and of the four shots fired, three were in the side of the SUV and one entered the rear.

- This of course is true. There was uncontroverted testimony that this entire incident occurred over a few seconds. Whether or not one credits Mr. Farrell's expert testimony, and again we contrast that with the lack of any expert offered by the Superintendent, what is clear and not argued by either the dissent or the Superintendent is that Officer Smith had mere seconds to determine that Mr. Rogers was driving his vehicle directly at him at a high rate of speed and that, absent action on his part, Mr. Rogers's vehicle would inevitably strike him, inflicting great bodily harm or death. In those few seconds, he determined Mr. Rogers's actions and his own situation, attempted to retreat, drew his weapon, formed the intent to fire and fired. That had he fired one fraction of a second earlier his shots would have entered the front instead of the side of the vehicle to us is not determinative.
- Finally, and most importantly, the fundamental argument made in the dissent is that because the dissent does not agree with the tactics employed by Officer Smith, it believes that the shooting is therefore ipso facto unjustified. As the dissent puts it, because they believe that Officer Smith and his supervisors (who are not charged here, and for whose conduct Officer Smith bears no responsibility) created the "exigent circumstances" that led to Mr. Rogers's death, the shooting cannot be justified.
 - First, we do not need to, and we do not, reach this question in this case. Officer Smith never attempted to, nor did he detain or arrest Mr. Rogers. No one has argued that Officer Smith did not have every right to conduct surveillance and be on a public way. The circumstances of this incident were entirely of Mr. Rogers's creation.
 - Second, we do not agree that if an officer makes a tactical error as a result of which a suspect such as Mr. Rogers is put in a position where he endangers the life of that officer, that the officer is thereafter never justified in defending him or herself. There is no support for such a notion in the General Order at issue here, and we are unaware of any other basis for such a theory. Such an officer may well be subject to discipline for poor tactics, and the Superintendent should charge the officer for employing those poor tactics where warranted.

5. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, 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 II: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith fired at or into a moving vehicle without

authorization in that he fired one and/or more shots at or into a moving vehicle driven by Ryan G. Rogers when the moving vehicle was the only force used against Officer Smith and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Smith or another person, thereby engaging in action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

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

6. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, charged herein, is **not guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count I: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith used deadly force without justification in that he fired one and/or more shots at Ryan G. Rogers hitting him in the back with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Smith or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2), thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

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

7. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, charged herein, is **not guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

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

Count II: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith fired at or into a moving vehicle without authorization in that he fired one and/or more shots at a moving vehicle driven by Ryan G. Rogers when the moving vehicle was the only force used against Officer Smith and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Smith or another person, thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

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

8. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, 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 I: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith used deadly force without justification in violation of General Order 03-02-03 in that he fired one and/or more shots at Ryan G. Rogers hitting him in the back with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Smith or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

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

9. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, 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 II: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West

171st Street in East Hazel Crest, Illinois, Officer Smith fired at or into a moving vehicle without authorization in violation of General Order 03-02-03 in that he fired one and/or more shots at or into a moving vehicle driven by Ryan G. Rogers when the moving vehicle was the only force used against Officer Smith and when firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Smith or another person.

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

10. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, charged herein, is **not guilty** of violating, to wit:

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

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

Count I: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at Ryan G. Rogers hitting him in the back with one shot when such force was not necessary and could not reasonably be believed to be necessary to prevent death or bodily harm or unreasonable endangerment to Officer Smith or another person and when such force was not necessary and could not reasonably be believed necessary to prevent an arrest as described in General Order 03-02-03(A)(2).

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

11. The Respondent, Police Officer Daniel J. Smith, Star No. 13941, charged herein, is **not guilty** of violating, to wit:

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

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

Count II: On or about March 19, 2013, at approximately 2150 hours, at or around 1905 West 171st Street in East Hazel Crest, Illinois, Officer Smith unlawfully and/or unnecessarily used a weapon in that he fired one and/or more shots at or into a moving vehicle driven by Ryan G.

Rogers when the moving vehicle was the only force used against Officer Smith and firing at or into the vehicle was not necessary to prevent death or great bodily harm or unreasonable endangerment to Officer Smith or another person.

See the findings set forth in paragraph no. 4 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 votes of 3 in favor (Steve Flores, John P. O'Malley Jr., and John H. Simpson) to 2 opposed (Lori E. Lightfoot and Michael Eaddy), the Board finds the Respondent **not guilty** of violating Rule 2, Rule 3, Rule 6, and Rule 38.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Daniel J. Smith, Star No. 13941, as a result of having been found **not guilty** of all charges in Police Board Case No. 17 PB 2926, 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 February 17, 2017.

This disciplinary action is adopted and entered by a majority of the members of the Police Board who participated in the case: Steve Flores, John P. O'Malley Jr., and John H. Simpson.

Board Members Eva-Dina Delgado, Ghian Foreman, and Rhoda D. Sweeney recused themselves from this case pursuant to §2-57-060(c) of the Municipal Code of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF NOVEMBER, 2017.

Police Board Case No. 17 PB 2926
Police Officer Daniel J. Smith

Attested by:

/s/ STEVE FLORES

/s/ JOHN P. O'MALLEY JR.

/s/ JOHN H. SIMPSON

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We dissent from the Findings and Decision in this case.

We dissent because by a preponderance of the evidence as found in the record, Officer Smith (1) created the exigent circumstances in which he used deadly force resulting in death by acts and omissions contrary to common sense, best tactical practices; and (2) the ballistic and other forensic evidence undermines Officer Smith's claim that he feared for his life at the time he fired his weapon. Thus, the use of deadly force was simply not justified.

We must begin by detailing certain relevant facts that are not reflected in the majority's opinion. Officer Smith and other CPD supervisors and officers went to Hazel Crest as part of an on-going investigation of robberies from cell phone stores. By the time the surveillance moved from a nearby street to in front of the victim's residence, it was dark.

Officer Smith made the following important admissions during his testimony:

- No one ran the plates of the white Trailblazer to determine ownership. (Tr. 397)
- It was dark enough that he could not tell the make of the SUV. (Tr. 410)
- A supervisor instructed Officer Smith to watch the residence in question while search warrants were sought. (Tr. 429)
- Initially, Smith was given no instructions on how to respond if, in the interim period, people left the residence. (Tr. 431, 438) "I was not given an order at that point by supervisors on what to do if I saw anybody leave."
- Smith "wasn't for sure (sic)" if Rogers was even in the residence immediately before the shooting. (Tr. 432)
- He later got instructions to stop the three individuals Officer Smith had reported to a supervisor were leaving the house. (Tr. 445)
- Officer Smith believed he saw three male blacks leaving the residence when in fact one was female. (Tr. 464)
- Officer Smith did not recognize any of the three people even though one was the robbery suspect, Rogers. (Tr. 466)

- Officer Smith saw no weapon on either of the three. (Tr. 469)
- Officer Smith lost track of one of the three and did not know where he went, whether in the car or elsewhere (Tr. 467); Officer Smith only saw the driver get into the SUV. (Tr. 467)
- Officer Smith had no idea who the driver was. (Tr. 469)

There is no dispute that Rogers and his live-in girlfriend, L'Nea Lancaster, got into the SUV and sped off at a high rate of speed on a narrow street lined with cars. However, there is no credible evidence that Rogers specifically targeted Officer Smith. The majority relies on the testimony of the two detectives who interviewed Ms. Lancaster in the immediate aftermath of the shooting. Despite taking her from Hazel Crest Chicago, bypassing Area South, to Area Central, holding her for hours after the shooting, and interviewing Lancaster multiple times, none of the detectives bothered to memorialize her statements either using readily available video-recording technology or simply through a written statement signed off by her. Instead, they testified before this Board through a series of leading questions by counsel for Smith, and contradicted each other on the critical point whether Ms. Lancaster said that the SUV took off in the *direction of* Officer Smith or whether Rogers drove with the intent of turning the vehicle into a weapon to harm Officer Smith. Further, it strains credibility to say that Lancaster, who stopped answering the detectives questions, would admit to them that her boyfriend who she just witnessed getting shot and killed, intentionally tried to harm a police officer. That conclusion defies common sense.

What we do know from the evidence? Officer Smith and his supervisors took up surveillance in front of the residence without any real plan. Officer Smith apparently did not know what Rogers looked like or that he had any connection to the SUV. One of his supervisors gave him an instruction to stop the three people who left the residence. On what grounds? Probable cause and the lesser standard of reasonable suspicion still require the officer to have particularized evidence as to each individual. In the absence of knowing the identities of either of the three

individuals leaving the residence, Officer Smith had no legitimate basis on which to stop any of the three. Neither probable cause or reasonable suspicion can be applied after the fact, i.e. one has to have the sufficient evidentiary basis to make such a stop immediately before the stop. Neither legal requirement can be deployed like a dragnet and cast over individuals who come into view. That is not how our Constitution works. Therefore, in the absence of knowledge about the identities of the three individuals, coupled with no individualized reasons to believe that all three had committed or were about to commit a crime, any such stop violated the Fourth Amendment of the Constitution.

Even assuming that there was a legitimate basis for detaining the three as Officer Smith had been instructed, and there was not, the best tactical practice for officer safety and the safety of others would have been to stop them *before* any of them entered the SUV not afterward. By allowing the individuals to enter the SUV, Officer Smith and his supervisor increased the risks to themselves, the individuals and any nearby third parties.

We must also ask why Officer Smith, upon seeing that these individuals got into the car, turn on the ignition and started moving toward him, simply did not get out of the way? He had enough time to see at least the driver, on whom he was focused, get into the SUV. The only forward path for the vehicle was in Officer Smith's direction. Why not just move?

Another troubling aspect of this case is the undisputed ballistic evidence. Given the positioning of the SUV and Officer Smith, one would have expected that he would have shot at the front of the vehicle. Instead, the bullet holes were in the driver's side door, back side panels and then the last shot through a back window. The location of the shots on the SUV raises serious questions in our mind as to whether in fact the SUV posed a imminent, dangerous threat to Officer Smith at the actual time that he began firing off rounds.

We also place no value on the so-called expert opinion of John Farrell. Experts are intended to provide information that is outside of the normal experience of lay people. They should have unquestioned training and experience. Also, they should never testify as to the ultimate fact, something that is reserved, in this instance to the Police Board. Farrell is a paid representative of the Fraternal Order of Police, Lodge 7 whose membership are Chicago Police Officers. He had minimal training in analyzing officer involved shootings, and predictably, testified that the shooting was entirely justified. We do not share the majority's seeming confidence in Farrell's testimony and certainly would not rely on it as credible and important information in our decision-making.

In sum, we believe that in this tragic instance, Officer Smith engaged in a series of tactical errors which lead him to the unjustified conclusion that his only recourse was to use deadly force. These mistakes were avoidable and unfortunately led to the loss of a man's life. We simply cannot validate this shooting as justified under these circumstances, particularly because in our view of the evidence, Officer Smith created the exigent circumstances. The mistakes of Officer Smith and his supervisors directly led to the avoidable death of Mr. Rogers who died from a gunshot to his back.

For these reasons, we dissent.

/s/ LORI E. LIGHTFOOT

/s/ MICHAEL EADDY

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THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2017.

EDDIE T. JOHNSON
Superintendent of Police