

**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

**IN THE MATTER OF CHARGES FILED AGAINST )**  
**POLICE OFFICER MARK JOHNSON, )** **No. 22 PB 3004-1**  
**STAR No. 8781, DEPARTMENT OF POLICE, )**  
**CITY OF CHICAGO, )**  
**RESPONDENT. )** **(CR No. 2019-4852)**

**FINDINGS AND DECISION**

On April 27, 2022, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Mark Johnson, Star No. 8781 (“Respondent”), recommending that Respondent be discharged from the Chicago Police Department (“Department” or “CPD”) for violating CPD’s Rules of Conduct.<sup>1</sup>

A hearing on the charges against Respondent took place before Hearing Officer April M. Perry January 20 and February 7, 2023. Following this evidentiary hearing, the members<sup>2</sup> of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer’s Report and the Superintendent’s response to this report (Respondent did not file a response), and viewed the video recording of the entire evidentiary hearing. The Hearing Officer made an oral report to and conferred with the Board before it rendered its findings and decision.

During the proceedings of this case, from the filing of charges through the evidentiary hearing, the Hearing Officer made rulings and entered orders. None of the Hearing Officer’s rulings and orders is overruled or reversed.

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<sup>1</sup>The Superintendent also filed charges against Police Officer Timothy Mason. On November 17, 2022, the Police Board entered an order granting the Superintendent’s motion to withdraw the charges against Timothy Mason because he resigned from the CPD.

<sup>2</sup>Board Vice President Paula Wolff recused herself from this case pursuant to §2-78-130(a)(iii) of the Municipal Code of Chicago.

## **POLICE BOARD FINDINGS**

As a result of its hearing on the charges, the Police Board finds and determines that:

1. 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 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 Respondent appeared and was represented by legal counsel.

### **Introduction**

4. On November 28, 2019, CPD officers near the corner of Cottage Grove Avenue and 79<sup>th</sup> Street in Chicago radioed for assistance. Respondent, who was nearby on patrol with Probationary Police Officer Timothy Mason, responded to the call and arrived a short time later. At the time Respondent and PPO Mason arrived, civilian Bernard Kersh was lying on the ground, with two plain clothes officers standing above him. Respondent immediately asked one of the officers, “is he out?” The officer responded, “No, he spit in my partner’s face and my partner took him down.”<sup>3</sup> The officers briefly discussed the spit on the other officer’s face, and a bystander started yelling. One of the officers responded, “get the fuck out of here and mind your own business.” Respondent then grabbed Mr. Kersh by the arm and turned him over so PPO Mason could handcuff him. Respondent told PPO Mason, “you don’t got to get rough with him, he can’t do shit...if he spits, he gets knocked out again, no matter what, you stay calm.” After

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<sup>3</sup>These quotes are taken from the body-worn camera (BWC) of PPO Mason. Respondent’s BWC was not activated until just under four minutes after Respondent and PPO Mason arrived at the scene.

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Mr. Kersh was handcuffed, Respondent stated over the radio, “everybody is fine squad, tell them to slow down, nobody is hurt.” Respondent then lifted Mr. Kersh up by his arms and pants and carried Mr. Kersh to Respondent’s squad car. Once arriving at the car, it took several officers to lift and shove Mr. Kersh completely into the car, laying him across the back seat torso facing down. As they moved Mr. Kersh into the car, someone said, “I know he's conscious, he’s closing his eyes.”

From the time of Respondent’s arrival on the scene to the time Mr. Kersh was taken to the police car, approximately 80 seconds elapsed. It took approximately two more minutes to put Mr. Kersh fully into the squad car. Respondent then moved Mr. Kersh’s head to the side and said “we don’t want positional asphyxiation.” After Mr. Kersh was positioned in the squad car, Respondent placed his fingers on Mr. Kersh’s neck to feel his pulse. One officer asked, “is he awake yet,” and Respondent answered “yeah, he’s going in and out, he’s off a pill.”

Respondent stayed beside Mr. Kersh while waiting for the paramedic to arrive. Respondent asked Mr. Kersh, “you gonna tell me what you took? You been going in and out on me.” He also told another officer, “let your partner know this dude is conscious and talking,” before saying to Mr. Kersh, “you want some help sitting up? Because you was playing like you was out of it for a second.” When the paramedic arrived, Respondent told her, “he’s conscious. He spit on an officer, officer took him down, but he’s talking.” The paramedic then asked, “why is he going to the hospital,” and after some cross talk Respondent stated “...he was unconscious.”

Respondent and PPO Mason eventually drove Mr. Kersh in their squad car to the emergency room at University of Chicago hospital. During the drive, Mr. Kersh was not secured with a seatbelt. Once at the hospital, Mr. Kersh was combative and uncooperative and ultimately

had to be sedated. Respondent and PPO Mason stayed with Mr. Kersh at the hospital for some time. When Respondent eventually returned to the police station to write his supplemental report, several hours had passed since Mr. Kersh's arrest. In his two-page handwritten report, Respondent wrote three times that Mr. Kersh had been alert while on the scene and two times that Mr. Kersh had been feigning unconsciousness. Respondent also wrote that Mr. Kersh had "refused to respond and or answer the directives and requests to stand" and that officers had been "repeatedly admonishing the alert offender to stand" prior to putting him into the police car.

### **Charges Against the Respondent**

5. Police Officer Mark Johnson, Star No. 8781, is **guilty** of violating Rules 2, 3, 6, 8, 9 and 10 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 1:

On or about November 28, 2019, at or near 802 E. 79<sup>th</sup> Street in Chicago, at approximately 3:58pm, Police Officer Mark Johnson dragged and/or carried Mr. Bernard Kersh ("Mr. Kersh") to a Chicago Police Department vehicle while Mr. Kersh was unconscious; and/or failed to treat Mr. Kersh with dignity and/or respect and/or failed to show concern or consideration for Mr. Kersh's physical and/or medical state or condition. Officer Johnson thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, by disobeying CPD General Order 03-02-01;
- d. Rule 8, which prohibits disrespect to or maltreatment of any person, while on or off duty;
- e. Rule 9, which prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty; and

f. Rule 10, which prohibits inattention to duty.

As the BWC recording from PPO Mason makes clear, Respondent's treatment of Bernard Kersh on November 28, 2019, was disrespectful to Mr. Kersh and not consistent with CPD's standards for transporting arrestees. Setting aside for the moment the parties' dispute regarding whether Mr. Kersh was unconscious when Respondent arrived on the scene, Mr. Kersh clearly had some type of medical problem. Moreover, Respondent's own statements at the time about Mr. Kersh "going in and out" and being "off a pill," as well as Respondent's careful treatment of Mr. Kersh after the transport make it clear that Respondent knew Mr. Kersh needed medical attention. However, Respondent spent fewer than two minutes assessing Mr. Kersh and the scene before deciding to lift Mr. Kersh up and carry Mr. Kersh by the arms and pants, and then trying to physically shove Mr. Kersh into the squad car. Given Mr. Kersh's size and the fact that he was hanging limp, a transport of this type was guaranteed to be problematic. While we credit Respondent's explanation that he assumed both that the police car was closer to him and that other officers would assist him, neither of those assumptions proved to be accurate. What resulted was a transport of a civilian in need of medical attention that this Board concludes violated CPD rules. We therefore find Respondent guilty of the charges in Specification No. 1.

6. Police Officer Mark Johnson, Star No. 8781, is **guilty** of violating Rules 2, 3, 6, and 10 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 2:

On or about November 28, 2019, at or near 802 E. 79<sup>th</sup> Street in Chicago, at approximately 3:58pm, Police Officer Mark Johnson failed to activate his body-worn camera at the beginning of an incident involving Mr. Bernard Kersh and/or failed to activate his body-worn camera while he was engaged in law-enforcement-related activities. Officer Johnson thereby

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violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, by disobeying Special Order S03-14(III)(A); and
- d. Rule 10, which prohibits inattention to duty.

Respondent has acknowledged and the BWC recording shows that Respondent did not activate his BWC until nearly four minutes after arriving on scene pursuant to a request to assist other officers. During that time, Respondent conversed with officers about Mr. Kersh's offense and condition, handcuffed Mr. Kersh, and transported Mr. Kersh to the police car—all events that are categorized in Special Order S03-14 as law-enforcement-related activities mandating activation of the BWC. Respondent provided no justification for his failure to properly activate his BWC, and we therefore find Respondent guilty of the charges in Specification No. 2.

7. Police Officer Mark Johnson, Star No. 8781, is **guilty** of violating Rules 2, 3, 6 and 10 in that the Superintendent proved by a preponderance of the evidence the following charges set forth in Specification No. 3:

On or about November 28, 2019, at or near 802 E. 79<sup>th</sup> Street in Chicago, at approximately 3:58pm, Police Officer Mark Johnson failed to secure Mr. Bernard Kersh with a vehicle safety belt while transporting him in a Chicago Police Department vehicle. Officer Johnson thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals;

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- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral, by disobeying Uniform and Property Directive U02-01-03(III)(B)(6); and
- d. Rule 10, which prohibits inattention to duty.

Respondent acknowledged at the hearing that he transported Mr. Kersh to University of Chicago Hospital in the back of Respondent's squad car without using a seat belt. Pursuant to CPD Directive U02-01-03, "unless an articulable exigent circumstance exists, arrestees will be secured with a vehicle safety belt...." Although Respondent testified that he did not place the seatbelt around Mr. Kersh because Respondent did not want to be bit or spit at, we do not believe that under these facts such a fear qualifies as an "articulable exigent circumstance." Presumably, CPD officers never want to be bit or spit at. That said, Respondent was in close contact with Mr. Kersh for some time prior to leaving for the hospital, and during that time Respondent had his hands near Mr. Kersh's face to feel for Mr. Kersh's pulse, offered to help Mr. Kersh sit up, and spoke with Mr. Kersh about what was happening. At no point was there any sign that Mr. Kersh was attempting to bite or spit at Respondent, and we therefore conclude that Respondent is guilty of the charges in Specification No. 3.

8. Police Officer Mark Johnson, Star No. 8781, is **not guilty** of violating Rules 2, 3, and 14 in that the Superintendent did not prove by a preponderance of the evidence the following charges set forth in Specification No. 4:

On or about November 28, 2019, Police Officer Mark Johnson made one or more false and/or misleading and/or incomplete and/or inaccurate statements in the Chicago Police Department Supplementary Report (RD # JC527821), to wit: by indicating that Mr. Bernard Kersh was alert and/or responsive prior to being placed into a marked Chicago Police Department vehicle, or words to that effect; and/or stating, "The offender who was at the feet of the LEMART trained R/Os was alert," or words to that effect; and/or stating, "the offender refused to respond and or answer the directives and requests made to stand made by R/O's,"

or words to that effect; and/or stating “[a]fter repeatedly admonishing the alert offender to stand, R/O’s placed the offender who was...feigning unconsciousness into restraints, or words to that effect; and/or by omitting that Mr. Bernard Kersh lost consciousness, or omissions to that effect. Officer Johnson thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals; and
- c. Rule 14, which prohibits making a false report, written or oral.

The false and misleading statements alleged by the Superintendent in Specification No. 4 fall into two categories: (1) statements about Mr. Kersh’s physical condition prior to his transport; and (2) statements about commands given to Mr. Kersh prior to his transport. Because this Board concludes that the Superintendent has not met his burden of proving any of these statements willfully false, we find Respondent not guilty of the charges in Specification No. 4.

#### **Statements About Mr. Kersh’s Physical Condition**

Respondent’s report contains several references to Mr. Kersh’s physical condition immediately prior to Mr. Kersh’s transport to the police car. Among other things, Respondent referred in the report to Mr. Kersh being “alert” and “feigning unconsciousness.” The Superintendent argues that these statements were provably false, as shown by the BWC recording and various comments made by Respondent on the scene about how Mr. Kersh had been unconscious. Specifically, the Superintendent points to four comments made by Respondent on the BWC as proof that Respondent knew Mr. Kersh was unconscious: (1) to PPO Mason: “if he spits, he gets knocked out again”; (2) to Mr. Kersh: “you been going in and out”; (3) to another officer: “let your partner know this dude is conscious and talking”; and (4) to the paramedic: “he was unconscious.”



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In response, Respondent argues that he believed that Mr. Kersh was alert and feigning unconsciousness prior to his transport. Both Respondent and PPO Mason testified that they saw Mr. Kersh with his eye open and tracking movement around him at the time they arrived on the scene. PPO Mason even brought to the hearing a photograph from a nearby surveillance camera which showed Mr. Kersh with his eye open. Both Respondent and PPO Mason further testified that when they touched Mr. Kersh to put handcuffs on him, they felt his body tense up or otherwise respond to their touch.

We conclude that the Superintendent has not met his burden of proving that Respondent's statements about Mr. Kersh being alert and conscious were intentionally false. It is of course possible for Mr. Kersh to have been unconscious at some points and alert at others. Respondent's statements on the scene that Mr. Kersh had at some prior time been unconscious or "in and out" do not prove that Respondent believed Mr. Kersh had been unconscious the entire time. To the contrary, Respondent also made statements on the scene indicating that he believed Mr. Kersh had been feigning unconsciousness, including telling Mr. Kersh, "you was playing like you was out of it for a second." In addition, at least two officers on the scene expressed their contemporaneous belief that Mr. Kersh was not unconscious: immediately upon Respondent's arrival he asked another officer if Mr. Kersh was "out," and the officer responded "no." Additionally, during the transport someone said: "I know he's conscious, he's closing his eyes." Moreover, the BWC recording does not clearly depict Mr. Kersh's face for much of his interaction with Respondent, and therefore it is not enough to establish by a preponderance of the evidence that Mr. Kersh was unconscious for his interactions with Respondent.

### **Statements About Commands Given to Mr. Kersh Prior to His Transport**

The Superintendent also alleges that Respondent falsely reported that Mr. Kersh was given various verbal commands prior to his arrest. Specifically, Respondent's report states: "the offender refused to respond and or answer the directives and requests made to stand made by R/O's" and that Mr. Kersh was "repeatedly admonish[ed] ...to stand...". Respondent acknowledged at the hearing that these statements were not accurate. However, an inaccuracy in a report does not always equate to a rule violation. For a Rule 14 violation to occur, a false statement must be both material and willful.

In this case, we do not believe that the Superintendent has met his burden of proving that Respondent's inaccurate statements were made willfully. We found compelling Respondent's testimony about his mental state on November 28, 2019. Specifically, Respondent testified that just two days before, Respondent had given chest compressions to a gunshot victim who had died, an experience that Respondent described as leaving him a little "messed up." In addition, we believe that the circumstances surrounding the writing of Respondent's report increase the likelihood of unintentional mistakes being made. First, the report was written several hours after Respondent arrested Mr. Kersh. Second, the portion of the report at issue involves a very brief period of time—just the first 80 seconds of Respondent's interactions with Mr. Kersh. Third, following those 80 seconds Respondent had numerous interactions with Mr. Kersh that would have been much fresher in his memory. During those interactions, the BWC showed that Mr. Kersh was combative and refused to follow numerous directives and requests, including requests to sit in the wheelchair after arriving at the hospital, to calm down, to provide his name to the hospital staff, and to stand up and walk to the hospital bed. Considering the totality of the circumstances, we do not believe the Superintendent has met his burden of proving by a

preponderance of the evidence that Respondent's inaccuracies in his report were willful. In addition, we do not find that Respondent's inaccuracies in the report rise to the level of impeding the Department's efforts to achieve its policy and goals or failing to promote the Department's efforts to implement its policy or accomplish its goals, and so do not violate Rules 2 and 3.

For all of these reasons, we find Respondent not guilty of the charges in Specification No. 4.

### **Disciplinary Action**

9. The Board has considered the facts and circumstances of the conduct of which it has found Respondent guilty and the evidence presented in mitigation, including Respondent's complimentary and disciplinary histories. Based upon all of the evidence, we believe that a 90-day suspension is warranted.

As is described above, the early part of Respondent's interactions with Mr. Kersh violated several CPD rules and do not reflect the standards that CPD has set for its officers. That said, all of Respondent's interactions with Mr. Kersh which followed those first few minutes show nothing but courtesy and respect under difficult circumstances. After he was placed into Respondent's squad car, Mr. Kersh was consistently combative with officers and later hospital staff. Respondent spoke politely to Mr. Kersh, explained repeatedly what was happening, and generally behaved solicitously towards Mr. Kersh despite Mr. Kersh's yelling, cursing, and refusals to cooperate.

The Board also appreciates Respondent's candor at the hearing about Respondent's mistakes and acknowledgment of things that Respondent should have done differently during his early interactions with Mr. Kersh.

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We have also considered Respondent's complimentary history. Since his appointment to the CPD in 2013, Respondent has earned a total of 56 awards, including the Superintendent's Award of Valor, five Life Saving Awards, a Chicago Police Leadership Award, seven Department Commendations, and 32 Honorable Mentions.

Finally, the Board has considered the testimony offered in mitigation and the letters submitted on Respondent's behalf. That evidence shows that Respondent is a conscientious employee and compassionate person who is on the whole an asset to CPD.

For all of the reasons set forth above, the Board finds that a suspension of ninety (90) days is appropriate disciplinary action based on the facts of his particular case.

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**POLICE BOARD DECISION**

The members of the Police Board of the City of Chicago hereby certify that they have read and reviewed the record of the proceedings, viewed the video recording of the entire evidentiary hearing, received the oral report of the Hearing Officer, and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. The Police Board hereby adopts the findings set forth herein by the following votes.

By votes of 5 in favor (Ghian Foreman, Steven Block, Mareilé Cusack, Nanette Doorley, and Jorge Montes) to 0 opposed, the Board finds Respondent **guilty** of the charges in Specification Nos. 1, 2, and 3, and **not guilty** of the charges in Specification No. 4, as set forth in Section Nos. 5 – 8 above.

As a result of the foregoing and for the reasons set forth in Section No. 9 above, the Board, by a vote of 5 in favor (Foreman, Block, Cusack, Doorley, and Montes) to 0 opposed, hereby determines that cause exists for suspending Respondent from his position as a police officer with CPD and from the services of the City of Chicago, for a period of ninety (90) days.

**NOW THEREFORE, IT IS HEREBY ORDERED** that Police Officer Mark Johnson, Star No. 8781, as a result of having been found **guilty** of charges in Police Board Case No. 22 PB 3004-1, be and hereby is suspended from his position as a police officer with CPD for a period of ninety (90) days, from May 6, 2022, (the date he was suspended upon the filing of charges) to and including August 4, 2022.

**IT IS FURTHER ORDERED** that Officer Johnson be and hereby is restored to his position as a police officer and to the services of the City of Chicago, with all rights and benefits, effective August 5, 2022.

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This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Steven Block, Mareilé Cusack, Nanette Doorley, and Jorge Montes. (Board Vice President Paula Wolff recused herself 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 18<sup>th</sup> DAY OF MAY, 2023.

Attested by:

/s/ GHIAN FOREMAN  
President

/s/ MAX A. CAPRONI  
Executive Director

**DISSENT**

The following members of Board hereby dissent from the findings and decision of the majority of the Board.

[None]

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RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

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FRED L. WALLER  
Interim Superintendent of Police