

No. 1-10-3825

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

REYNALDO VALDEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
POLICE BOARD OF THE CITY OF CHICAGO,)	
DEMETRIUS E. CARNEY, SCOTT J. DAVIS,)	
PHYLLIS L. APELBAUM, VICTOR GONZALEZ,)	
PATRICIA C. BOBB, WILLIAM C. KIRKLING,)	No. 09 CH 21039
D.D.S., REV. JOHNNY L. MILLER, ART SMITH)	
GEORGE M. VELCICH, MAX CAPRONI,)	
Executive Director of the Police Board of the City of)	
Chicago, THOMAS E. JOHNSON, Hearing Officer,)	
and GARRY F. McCARTHY, Superintendent of Police)	
of the City of Chicago,)	Honorable
)	Rita Mary Novak,
Respondents-Appellees.)	Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Presiding Justice Steele and Justice Salone concurred in the judgment.

ORDER

¶ 1 *Held:* Police board's finding that petitioner violated multiple departmental rules and was subject to discipline was not against the manifest weight of the evidence; judgment affirmed.

¶ 2 Petitioner Reynaldo Valdez appeals from an order of the circuit court of Cook County affirming the ruling of the Police Board of the City of Chicago (Board) that he was guilty of the charges filed in Board Case No. 08 PB 2695, and ordering his discharge from his position as a

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police officer for the City of Chicago. On appeal, petitioner contends that the Board's findings of guilt were contrary to the manifest weight of the evidence.

¶ 3 The record shows, in relevant part, that the Superintendent of the Chicago Police Department (Department) filed disciplinary charges against petitioner for violating the following departmental rules on multiple counts:

"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 8: Disrespect to or maltreatment of any person, while on or off duty;

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty; [and]

Rule 14: Making a false report, written or oral."

¶ 4 The Department generally alleged that on February 16, 2006, petitioner approached Javan Hill in the vicinity of 2519 West 63rd Street, in Chicago, put him in a choke hold, placed a gun to his head, threatened to kill him, pushed him into a gated window, directed profanity toward him and Nigel Sherwood, and threatened to arrest the latter. The Department also alleged that petitioner falsely denied this altercation when questioned by investigators at the Office of Professional Standards (OPS).

¶ 5 At the hearing held on this matter, the City presented testimony establishing that the Independent Police Review Authority (IPRA)¹ conducted an investigation into the allegations of petitioner's misconduct. The following information, *inter alia*, led to a determination that petitioner was the alleged offender: (1) witnesses described the gunman as a Hispanic male, 5' 8"

¹ Formerly known as OPS.

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to 5' 9" tall, driving a gray or silver Chevy Impala; (2) the license plate number provided by Sherwood and Hill (L348) corresponded to a vehicle that was permanently assigned to petitioner; (3) an assignment and attendance sheet showed that petitioner was working on the day of the incident under vehicle number L348; and (4) a supplementary case report showed that petitioner was a surveillance officer during the arrest of Steven Riley at 6302 South Campbell Avenue, where part of the incident in question occurred. The following testimony, as pertinent to this appeal, was also presented at the hearing.

¶ 6 Petitioner testified that he attended court on the morning of February 16, 2006, signed out at 11 a.m., then acted as a surveillance officer for an undercover narcotics transaction near 6302 South Campbell Avenue. Officers Harris and McCabe, and Sergeant Stec, his supervisor, also participated in the operation which resulted in the arrest of one person, Steven Riley. Petitioner testified that on the day in question, he was in his late 30's, about 5' 7" to 5' 9" tall, weighed about 180 pounds, drove car number L348, and was the only male Hispanic officer working the undercover mission. Petitioner denied entering the Bold Prints store with his gun drawn, placing anyone in a choke hold, forcing anyone out of that store, taking that person to the corner of 63rd Street and Campbell Avenue, or threatening to arrest Nigel Sherwood. When presented with Hill's photo, petitioner testified that he had never seen him before this case.

¶ 7 Marcia Campbell testified that on the day in question, she and her daughter had gone to see Sherwood at Bold Prints. He was not there when they arrived, and so they waited for him in their van, which was parked in front of the store. A little while later, a short, slightly stocky, Hispanic male walked into the store with his gun "pointed," grabbed a male employee from behind, put the gun to his temple, and walked him outside the store and down the street toward two unmarked cars at the corner. When the employee, who she thought was named "Mr. Hill," subsequently returned to the store, he had a bruise where the gun had been put to his head and complained that it hurt.

¶ 8 Joseph Barron testified that on the day in question, he was working at Bold Prints, which

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is located at 2519 West 63rd Street, between Campbell and Maplewood Avenues. While he was in back getting a pair of jeans for a customer, Barron heard the front door "kick open loudly," then looked at the monitor and saw a man enter with his pistol drawn, put his arm around the neck of Hill, place the gun to Hill's neck, and yell, "Come here, mother fucker." The gunman dragged Hill out of the store using his foot to open the door, and took him east towards Campbell Avenue. Barron described the gunman as about 5' 9" tall, 195 pounds, and in his early to mid-30's.

¶ 9 Barron went to the front of the store and saw Sherwood pull up with his phone in his hand. At that point, the gunman walked back and said to Sherwood, "What? I'll lock you up, too, mother fucker." He then entered a silver car that was double-parked in front of the store and drove away. When shown a photograph of petitioner, Barron testified "that seems like the picture" of the gunman, noting, "I couldn't tell you the goatee, but definitely the eyes and the hair." On cross examination, Barron admitted that he has a prior conviction for "felony weight narcotics," and stated that the gunman's weapon was silver. On redirect, he testified that the gunman was wearing officer equipment, and on recross, he described that equipment as a black police vest with a badge and name tag that was covered by his jacket, and a police belt with handcuffs and a holster.

¶ 10 Saida Herrera testified that on the day in question, she was working the counter at Bold Prints when an individual entered the store, grabbed Hill around the neck from behind, put a shiny, silver gun to his temple, dragged him out of the store, and took him rightward from her location. About five minutes later, Herrera saw Sherwood double-parked in front of the store, and the gunman returned and spoke with him, but she did not hear what was said. When Hill returned to the store, he was "all worked up, hysterical, he had tears and stuff."

¶ 11 Herrera described the gunman as a short, fit, light-complected Hispanic male, about 5' 8" to 5' 9" tall. She was in shock at the time of the incident, and did not hear the gunman say anything to Hill, or notice him wearing any indicia of a police officer. However, she noted that

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he looked like a "narc" because of his "whole persona, just like the tough guy, don't mess with me type of guy," and the fact that he "had on the boots like most of the narcotic cops" and was wearing jeans and a black jacket. Herrera further testified that the gunman and another individual had been sitting in a silver car parked in front of the store "that whole morning," and that she was able to tell that the gunman was the same person because the majority of people in the neighborhood are black, "[s]o when somebody's Hispanic there, they stick out." On cross-examination, Herrera stated that the gunman weighed about 250 pounds, and acknowledged that she told police after the incident that the gunman did not have facial hair.

¶ 12 Hill testified that he was working near the cash register at Bold Prints on the day in question when a Hispanic male "burst into the store" and pointed a chrome revolver in his face, saying "Don't move. Bring your mother fucking ass outside." Hill put his hands up and walked towards the gunman, who then put him in a choke hold with his left hand and used his right hand to push the gun into the side of Hill's face. The gunman subsequently walked Hill outside the store and down the street, and when Hill asked, "What is going on," the gunman responded that Hill had killed one of his friends.

¶ 13 The gunman brought Hill to the corner by some unmarked cars and police officers who had "other black males in handcuffs," and pushed him into a gate with both hands, telling him, "Don't move." Hill then saw the gunman whisper something to one of the officers and walk away, at which point Hill turned around and saw a black walkie-talkie in his back pocket. The officer, who received the whisper from the gunman, handcuffed Hill, told him to calm down, and explained that someone in the area had just been robbed. He then searched Hill's pockets, and asked him what he was doing in the area. When Hill responded that he worked down the street, the officer uncuffed him and told him "to go back where I came from." Hill then returned to the store where Sherwood told him that he had called for a lieutenant.

¶ 14 Hill described the gunman as a Hispanic male, about 5' 7" tall and 150 pounds, with a shaven face. When shown a photograph of petitioner, Hill identified him as the gunman, and

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testified that he had never seen petitioner prior to the day in question. On cross-examination, Hill acknowledged that he was arrested for disorderly conduct in 2000, and stated that he did not notice the gunman wearing any indicia of a police officer.

¶ 15 Nigel Sherwood, the owner of Bold Prints, testified that he was looking for a parking spot near his store on the day in question when a silver four-door Impala backed up and almost hit him. Sherwood stopped to confront the driver, but the individual exited the car and went to the curb so quickly that he decided to park and then confront the person. As Sherwood made a U-turn and parked on the north side of the street, the driver went into his store, put Hill in a choke hold from behind, and used his right hand to place a short-nosed, silver or chrome .38 revolver to Hill's head. The gunman then dragged Hill down the street "saying something about he looked like a guy that killed his partner," and Sherwood called 911 from his car, got out, took down the license plate number of the gunman's vehicle, and informed the 911 dispatcher that the gunman was approaching a uniformed police officer who had two black males up against a "blue-and-white car."

¶ 16 At the corner, the gunman pushed Hill into the gate of a supermarket. He then walked back toward his car with a radio in his hand, and, as Sherwood was looking at him and making sure he had taken down the license plate number correctly, the gunman said, "Police, mother fucker. Say something and I'll arrest your ass." When Hill subsequently came back to the store, he had a bruise on his face, and appeared to be "shaken up." He "looked flushed, you know, the nervousness, shaking of the hands, stuff like that. You could hear it in his voice, you know."

¶ 17 Sherwood testified that the gunman was wearing a black hat, black jacket, blue jeans, and black shoes. On cross-examination, Sherwood stated that the gunman was "clean shaven," by which he meant that he "didn't have any stubble on the side of his face, but he had like a little goatee," and on redirect, he identified petitioner as the gunman from a photograph.

¶ 18 For petitioner, Chicago police officer Shayon Harris testified that he did not see petitioner walk anyone down the street at gunpoint on February 16, 2006, and that only one person, Riley,

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was detained that day. He also testified that petitioner is left-handed; he has never seen petitioner with any weapon other than a semiautomatic handgun worn on his left side; petitioner uses a vest made of a "[c]anvas blue jean type material," and that petitioner usually had "a lot of facial hair" during the time in question. On cross-examination, Officer Harris stated that he did not know petitioner's location during the undercover narcotics buy, never saw him during the course of the mission, and only saw him when they returned to the office.

¶ 19 Chicago police officer Sean McCabe testified that Riley was the only person detained on the day in question. Officer McCabe said he never saw petitioner break surveillance, and that he never saw him at the corner with his gun pointed at the head of another person. He also testified that petitioner was wearing a suit that day because he had been in court earlier; petitioner is left-handed; petitioner carries a 9 millimeter semiautomatic gun, and petitioner uses a denim-covered vest. On cross-examination, Officer McCabe stated that petitioner was not present for the meeting prior to the mission because he was in court, and that he never saw petitioner at the scene of the narcotics transaction.

¶ 20 Chicago police sergeant Lawrence Stec testified that Riley was the only person detained on the day in question; he never saw petitioner break surveillance; he never saw him at the corner where the arrest occurred, and he never saw him with a gun pointed at someone's head near that corner. Sergeant Stec further testified that petitioner had facial hair which he generally wore as a "light beard," that petitioner is left-handed, that petitioner carried an automatic handgun, and that petitioner wore a "blue jean cover[ed]" vest. Sergeant Stec identified a photo of petitioner's gun and described it as three-quarters black with a metal slide, and he testified that he has never seen petitioner with a shiny chrome revolver which, by department rule, he cannot carry. On cross-examination, Sergeant Stec acknowledged that he never saw petitioner at the site of the narcotics transaction.

¶ 21 Chicago police sergeant Thomas Taglioli testified that on the date in question, he received an assignment regarding a police officer drawing his gun on someone at 2519 West 63rd

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Street. He testified that neither Sherwood nor Hill told him the make and model of the officer's car, or the license plate number of it. He also testified that Hill did not report any injuries; he did not observe any injuries himself, and neither did Hill nor Sherwood complain about an officer using profanity.

¶ 22 Lastly, petitioner testified that he has received numerous service awards, has never been disciplined, and has never had a "CR finding" sustained against him. On the morning of the day in question, he testified in court at 26th Street and California Avenue, and though he could not remember exactly what he was wearing, he noted that the custom is to wear a shirt, tie, and dress pants to court. He left at 11 a.m., called his sergeant to check-in, and, without changing clothes, joined the team for a narcotics operation during which he conducted surveillance from his vehicle. That day, he never broke surveillance, never left his surveillance vehicle to enter Bold Prints and remove an employee at gunpoint, never double-parked in front of Bold Prints, and never had a verbal altercation with another motorist or used profanity with a citizen. After Riley was detained, petitioner left the area and drove back to headquarters.

¶ 23 Petitioner further testified that his service weapon, the only weapon he has ever owned, is a 9 millimeter Sig Sauer p227, which he described as 75% black and 25% metal. He is left-handed and holsters that weapon on his left side, and he also noted that he wears a vest with a "jean cover," has never had a black tactical vest, and does not wear a duty belt when working as a surveillance officer. Petitioner testified that at the time in question, he had a goatee and "maybe a five o'clock shadow," which he referred to as "grubbiness, you know, to look like I've been out on the street."

¶ 24 The hearing officer ultimately found petitioner guilty on all counts, and that cause existed for his discharge. The Board adopted those findings and ordered him to be discharged. On June 29, 2009, petitioner filed a petition for administrative review of the Board's decision, and on April 2, 2010, the circuit court remanded the matter to the Board for issuance of specific findings of fact. The Board complied with this order and issued specific findings noting, *inter alia*, that it

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found that petitioner was "not credible" in testifying that he did not abuse Hill, that Hill's testimony regarding the assault by petitioner was corroborated by four eyewitnesses whose testimony was "very compelling," and that Sherwood's testimony regarding petitioner's threat, which was corroborated by Barron, was "more credible" than that of petitioner. On December 7, 2010, the circuit court affirmed the decision of the Board, noting that it was not against the manifest weight of the evidence. Defendant now appeals.

¶ 25 We initially note that a reviewing court reviews the decision of the Board, not that of the circuit court. *Daniels v. Police Board of City of Chicago*, 338 Ill. App. 3d 851, 858 (2003). That said, our review of an administrative agency's decision regarding a discharge is generally a two-step process. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (2011). First, we determine whether the agency's factual findings are contrary to the manifest weight of the evidence. *Rodriguez*, 408 Ill. App. 3d at 668. Secondly, we determine whether those findings of fact provide a sufficient basis for the agency's determination that cause for discharge exists. *Rodriguez*, 408 Ill. App. 3d at 668.

¶ 26 In this case, petitioner solely challenges the Board's findings as contrary to the manifest weight of the evidence. We observe that an administrative agency's findings of fact are deemed *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Rhoads v. Board of Trustees of City of Calumet City Policemen's Pension Fund*, 348 Ill. App. 3d 835, 841 (2004). An agency's decision will only be found contrary to the manifest weight of the evidence where, after viewing the evidence in the light most favorable to the agency, the reviewing court concludes that no rational trier of fact could have agreed with the decision and an opposite conclusion is clearly evident. *Daniels*, 338 Ill. App. 3d at 858.

¶ 27 Viewing the evidence in the light most favorable to the Board, the record shows that on February 16, 2006, petitioner entered Bold Prints at 2519 West 63rd Street, placed Javan Hill in a headlock, put a gun to the side of his head, cursed at him, and brought him outside the store.

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Petitioner then walked Hill to the corner of 63rd Street and Campbell Avenue while accusing him of killing his friend, and ultimately pushed him into the gate of a store before returning to his car outside of Bold Prints, where he further cursed at and threatened to detain Sherwood who stood nearby. Thereafter, IPRA investigated this incident, and petitioner denied any wrongdoing.

¶ 28 This evidence establishes that petitioner maltreated Hill by forcibly detaining him at gunpoint and pushing him into a gate; he engaged in unjustified physical and verbal altercations with Hill and Sherwood by so detaining Hill and by cursing at them both, and this conduct ultimately brought discredit upon the Department. The evidence further establishes that petitioner detained Hill in contravention of Departmental orders which required, *inter alia*, that he have probable cause for any detention, and that petitioner ultimately denied the incident to investigators and thereby made a false report. In light of this evidence and our limited power of review, we cannot say that the Board's factual findings that petitioner violated the aforesaid departmental rules was against the manifest weight of the evidence. *Rodriguez*, 408 Ill. App. 3d at 670; *Daniels*, 338 Ill. App. 3d at 858.

¶ 29 Petitioner, nonetheless, takes issue with this conclusion, claiming that the Department did not establish petitioner's identity as the offender by a preponderance of the evidence where investigators never asked any occurrence witnesses to identify the male Hispanic offender in a lineup or photo array. He also cites various discrepancies and inconsistencies between the eyewitnesses' testimony, and points out that their descriptions of the weapon used by the gunman and the hand he used to brandish it with were inconsistent with his weapon and strong-hand. However, it is not the function of the reviewing court to resolve factual inconsistencies or to weigh the evidence and determine where the preponderance of the evidence lies (*Holden v. Police Board of City of Chicago*, 324 Ill. App. 3d 862, 868 (2001), citing *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 427-28 (1992)), and we will not disturb the findings of the Board which were based on its independent evaluation of the credibility of the witnesses (*Rodriguez*, 408 Ill. App. 3d at 670).

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¶ 30 Here, the eyewitnesses testified to virtually the same sequence of events and essential details about the incident, and the weight to be given their testimony, and the minor inconsistencies therein, were matters within the province of the Board. *Rodriguez*, 408 Ill. App. 3d at 670. The testimony provided by petitioner's fellow officers, who were conducting a narcotics operation in the area of Bold Prints that day, did not rebut or significantly negate the eyewitnesses' stories, as none of the officers had seen petitioner on the scene during the mission. Under these circumstances, we find no basis for interfering with the Board's ultimate findings which were clearly based on its evaluation of the eyewitnesses' credibility. *Rodriguez*, 408 Ill. App. 3d at 670. Moreover, we find petitioner's reliance on *Basketfield v. Police Board of City of Chicago*, 56 Ill. 2d 351, 359 (1974) misplaced because, unlike that case, the testimony of the multiple eyewitnesses to petitioner's misconduct was not "totally discredited."

¶ 31 For the reasons stated, we affirm the order of the circuit court of Cook County.

¶ 32 Affirmed.