FOURTH DIVISION
December 17, 2015

No. 1-14-1241

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LUIS CONTRERAS and SUSANA LACASA CALIZ, Plaintiffs-Appellants, v. GARRY McCARTHY, Superintendent of the Chicago Police Department, and POLICE BOARD OF THE CITY OF CHICAGO, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County No. 13 CH 14320 Honorable Mary L. Mikva, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Board findings affirmed in part and reversed in part; sanction of discharge affirmed. Board's findings that plaintiffs violated certain police department rules by transporting individual for improper purpose with intent to intimidate him, failing to properly secure individual in squad car, and exposing individual to dangerous situation were not against manifest weight of evidence. Board's finding that plaintiffs made false statements to internal affairs investigators is reversed as against manifest weight of evidence. Board's decision to discharge plaintiffs was not arbitrary, unreasonable, or unrelated to requirements of service.

¶ 2 A divided police board found two police officers guilty of various departmental rules after the officers drove a young man to an area known to be gang territory, whereupon a number of individuals of that gang converged around the squad car and taunted the young man while he

sat inside the squad car. A portion of the incident was captured on video and uploaded onto YouTube, an internet website. The Board found the officers guilty of failing to exhibit officer safety, endangering and mistreating the young man, and failing to notify dispatch of their transport of the young man. The Board also found the officers guilty of other charges, the gist of which were that the officers intentionally drove the youth to an area that they knew was not his home, for the express purpose of exposing him to taunts and threats from rival gang members. The question before us is whether the Board's findings of guilt were supported by the manifest weight of the evidence.

¶ 3 We affirm the Board's findings that the transport of this youth, and the events that followed, were part of an attempt by the officers to intimidate the young man. While the evidence on this point was not overwhelming, we cannot say that the opposite conclusion—that plaintiffs were transporting the young man to an address they believed to be his home—was clearly evident. We also affirm the Board's findings that the officers failed to exhibit officer safety, endangered and mistreated the young man, and failed to notify dispatch of their transport. These findings were largely supported by the evidence captured on the video put into evidence, and the Board's application of department rules to these facts had a reasonable basis in the law. The only finding of the Board that we reverse is the charge regarding Rule 14, that the officers made false statements to the internal affairs investigators, as the parties agree that no evidence was presented to support that charge. Finally, we hold that the Board's decision to discharge plaintiffs was not arbitrary, unreasonable, or unrelated to the requirements of service, and thus we affirm the sanction of dismissal as well.

¶ 4 I. BACKGROUND

¶ 5 Plaintiffs Luis Contreras and Susana LaCasa Caliz (who goes by the last name LaCasa) are former Chicago police officers. On September 13, 2013, defendant, Garry McCarthy, Superintendent of the Chicago Police Department (the Superintendent), filed charges against plaintiffs, alleging the violation of various department rules when, on March 19, 2011, plaintiffs drove Miguel Castillo, a known gang member, to an area known to be the territory of a rival gang so that he would be confronted, taunted, and threatened by the rival gang members (an event that was partially captured on a video posted to an Internet website, YouTube, and picked up by the media). The Superintendent also alleged that plaintiffs later lied to internal affairs investigators when they claimed that they drove Castillo to that location because another police officer, Michael Edens, had asked them to take Castillo home to that address.

¶ 6 Specifically, the Superintendent alleged the violation of six police department rules prohibiting the following types of misconduct:

> "Rule 1: Violation of any law or ordinance.
>
> Rule 2: Any action or conduct which impedes the department's efforts to achieve its policy and goals or brings discredit upon the department.
>
> Rule 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 10: Inattention to duty.
>
> Rule 14: Making a false report, written or oral."

¶ 7 A hearing on these charges was held on February 6 and 13, 2013, before a hearing officer of the Board, who conducted the hearing but did not issue findings of fact. The Superintendent presented four witnesses: Merlyn Vega; Chicago police officer Michael Edens; and both plaintiffs (as adverse witnesses). Plaintiffs also testified on their own behalf and presented six

character witnesses—Eric Hudson, Madeline Rodriguez, Janette Gilmartin, Lieutenant Heraty, Ray Young, and Officer Malave. A summary of the relevant testimony presented during the hearing, both undisputed and disputed, follows.

¶ 8 On March 19, 2011, Contreras and LaCasa were working as partners in the 14th District, the district where they had been assigned for eight years and twelve years, respectively. Officer Michael Edens was also on patrol that day in the 14th District, where he had been assigned since 2003.

¶ 9 Edens and his partner responded to a gang disturbance call in the 3500 block of West McLean Avenue in Chicago, known to be the territory of the Imperial Gangsters street gang. When Edens arrived, he saw four individuals, including Miguel Castillo. Edens knew from his experience that they were gang members. He knew Castillo to be a member of the Imperial Gangsters. Edens and his partner got out of the police car and handcuffed all four youths, one individual to another, with two pairs of handcuffs. Edens did a protective pat-down, asked for identification, and started filling out contact cards.[1]

¶ 10 Plaintiffs LaCasa and Contreras also responded to the gang disturbance call as assisting officers. Edens testified that when plaintiffs arrived, Castillo and the others were still handcuffed, and Edens was in the process of completing the contact cards. It was undisputed that plaintiffs did not participate in completing the contact cards, nor did Edens discuss the contact cards with plaintiffs. After running the names of the four youths through the system, Edens learned there were no outstanding warrants. They were not arrested, and Edens removed the handcuffs. Edens testified that, at that point, all four were free to go, and they started to disperse.

[1] These contact cards, which are used to document police interactions with civilians and contain general information, would have included the address of each of the four youths. Later, Edens dropped the cards off at the station. At some point, the contact card for Castillo disappeared.

¶ 11 There is no dispute that, after the four youths were released, plaintiffs transported Castillo to 1649 North Spaulding Avenue, which is part of the Latin Kings gang territory. It was also undisputed that the Latin Kings are a rival of the Imperial Gangsters.

¶ 12 As to the crucial point of plaintiffs' *reason* for transporting Castillo, the testimony was disputed regarding the events that immediately preceded the transport, particularly the interaction between Edens and plaintiffs. Both plaintiffs testified that Edens asked them to take Castillo to his home at 1649 North Spaulding. Both plaintiffs admitted that they knew that this address was in Latin Kings territory, but they also said they did not know whether Castillo was a gang member, much less the particular gang with which he might have been affiliated. They testified that they had never met Castillo or had any previous contact with him. Contreras testified that Castillo looked like he was 14 years old, was not wearing any clothing that would indicate he was an Imperial Gangster, and had no visible tattoos.

¶ 13 Plaintiffs, in other words, maintained that they sincerely believed that Castillo resided at 1649 North Spaulding.

¶ 14 Edens had a different version of his exchange with plaintiffs. He confirmed that he never gave plaintiffs Castillo's name. Nor did he give them Castillo's actual address, which was not 1649 North Spaulding (though the record does not tell us Castillo's true address). Edens testified that he and Contreras engaged in the following exchange at the 3500 block of West McLean:

> A: "And then—I don't know where Miguel Castillo was at the time, but as we were getting ready to leave, Officer Contreras made a reference that, oh, we're going to take him home. He responded to me, where do you live, Spaulding and LeMoyne? I jokingly responded back at 1629, I believe I said, Spaulding.
>
> ***

Q: And based on your experience in the 14th district, what is the intersection of Spaulding and LeMoyne? What type of [intersection] is that in reference to gang territory?

A: Latin Kings.

Q: And did you believe that Officer Contreras was serious when he told you this?

A: No.

Q: And how did you respond?

A: I chuckled a little bit, you know, because he said, oh, is that where you live? I'm like I think that's where he said he lived. That's all I said."

¶ 15 Though Edens said that he recalled giving 1629 North Spaulding as the address, he acknowledged that it was possible that he had said 1649 North Spaulding. Edens emphasized that he had only been joking, and he assumed Contreras was in on the joke, but he conceded that he never specifically said he was joking.

¶ 16 Edens then saw plaintiffs' squad car leave the 3500 block of West McLean. That was the last thing Edens saw regarding this incident, until he saw the video showing the subsequent events that occurred after plaintiffs arrived at 1649 North Spaulding.

¶ 17 Contreras denied that he first broached the topic—jokingly or otherwise—of transporting Castillo to Latin King territory, namely Spaulding and LeMoyne. Both plaintiffs emphatically testified they did not think Edens was joking when he told them to take Castillo home to 1649 North Spaulding and emphasized that Edens, who had filled out the contact card on Castillo, was the only person who would have known Castillo's home address.

¶ 18 Plaintiffs did not notify dispatch that they were transporting Castillo, but they claimed that it was not unusual to conduct a short transport without calling dispatch. Edens similarly testified that when an officer transports someone a short distance, it was not unusual for the officer not to get on the police radio to notify dispatch. According to plaintiffs, as they drove the five blocks to 1649 North Spaulding, they did not speak to Castillo, nor did he speak to them.

¶ 19 Both plaintiffs testified that when they arrived at 1649 North Spaulding, LaCasa got out of the vehicle and opened the back door, but Castillo refused to get out of the vehicle. LaCasa testified that she turned around to verify that they were at 1649 North Spaulding and noticed a woman on the front porch. She asked the woman if Castillo lived there. The woman looked inside the car—the rear driver's-side door was open—and told LaCasa that he did not live there.

¶ 20 Merlyn Vega, who was the woman's daughter and one of the Board's witnesses, corroborated LaCasa's testimony that LaCasa asked Vega's mother whether Castillo lived at their home. Vega, who was looking out the window, testified that the conversation between her mother and LaCasa lasted about a minute. Vega could not hear the conversation because her windows were closed, but her mother later told her that LaCasa wanted to know whether Castillo lived there.

¶ 21 According to Vega, after her mother told LaCasa that Castillo did not live there, approximately 15 to 20 youths, who she believed to be members of the Latin Kings street gang, approached and surrounded the police car, shouting. Vega described the scene as follows:

> "It just looked like, when – you know, like roaches when you turn on the light, everything just comes out of the woodwork, like all the gang bangers were

running from every which way coming, and everyone was having their cell phones out and videoing and shouting."[2]

¶ 22 Vega, whose windows were closed, could not hear what they were saying. She claimed, however, that she knew they wanted Castillo to come out of the car because she heard her next-door neighbor, a Latin King, shouting from his second floor to let him out.

¶ 23 Early on in the video, the video zoomed into the back seat of the squad car, as the rear driver's-side door remained open. (It is unclear whether the unidentified maker of the video physically approached the car or used a zoom function on his camera.) Plaintiff LaCasa, at all times, remained standing by the open door. As the video zoomed in toward the interior of the car, LaCasa appeared to react to it with a smile.

¶ 24 The video, as it zoomed in, showed at least one cell phone being held by another individual, aimed into the car's interior such that it might be taking a video or a photograph of the inside of the rear of the squad car, and close enough that the person holding that cell phone was standing very close to the interior of the squad car (and thus very close to LaCasa).

¶ 25 As shown on the video, Castillo was cowering in the back seat, covering his face with his hands. At the 14-18 second mark, LaCasa was heard telling Castillo to "put [his] fucking hands down." LaCasa admitted she said this but claimed she did so out of frustration, because the officers were trying to determine if Castillo lived there and Castillo would not answer, so she wanted the youths to be able to identify him.

¶ 26 At the 27-33 second mark of the video, there was an exchange between the officers and the crowd. Contreras testified that he recognized his voice and that he was "asking if this guy

[2] Although Vega estimated that 15 to 20 youths were present, the Superintendent's counsel referred to the "10 to 12" males shown in the video during his questioning of plaintiffs, and our review of the video confirms that the number was closer to a dozen.

lived there." On the video, Officer Contreras indicated to the surrounding youths that Castillo "says he lives right here," to which someone from the crowd responds:"He's lying." Someone seemed to joke with the officers that "[i]f it was me, I'd a hopped out and ran on y'all."

¶ 27 The video contained numerous references to the Latin Kings by the gathering crowd. For example, an individual can be heard saying: "All day, every day, King love." The video captured individuals saying "King nigga" and "we all here" and "gang-bang."

¶ 28 Near the end of the video, plaintiff Contreras walked around the back of the squad car and opened the rear door on the passenger's side. He leaned in, presumably to speak with Castillo, with a few of the youths trailing him. There is no evidence as to what, if anything, Contreras said to Castillo.

¶ 29 There was some dispute over how long plaintiffs had been at 1649 North Spaulding before the 90-second video started. LaCasa stated that they had been there for 15 seconds, during which time she had asked Vega's mother whether Castillo lived there. But Vega—whose testimony the Board credited emphatically—testified that the conversation between LaCasa and her mother lasted about a minute, and also testified that plaintiffs had been there a total of three or four minutes before the events depicted in the video started. Thus, as the Board noted, Vega estimated the officers were at the scene for up to five and one-half minutes, although Vega later testified that the entire "ordeal" that took place on the street lasted about 10 minutes.[3]

¶ 30 Both plaintiffs were questioned extensively during the hearing as to what was happening, or what was being said, on the video as it played. At times, both plaintiffs indicated that they could not see, or could not hear, certain things on the video. Contreras noted there was a lot of

[3] Vega was not asked to further explain her testimony that the entire incident took approximately ten minutes, or whether the additional five minutes occurred after the video stopped.

noise on the video and also had trouble recognizing gang signs on the video. He was asked if he knew "what gang signs are, generally" and responded: "Not really." Yet in a deposition a year earlier in the civil rights lawsuit filed by Castillo, Contreras was asked if he knew what gang signs were, and he responded: "Yes, I know." LaCasa claimed she had trouble understanding what was said on the video because English was not her first language.

¶ 31 Both plaintiffs claimed that, at the time of the incident, they had not known the youths on the street were videotaping the event. LaCasa testified that it was not unusual for youths to gather around police vehicles when they arrive at a scene. Both plaintiffs claimed that the youths did not pose any sort of threat, nor were plaintiffs or Castillo in danger.

¶ 32 LaCasa stated that once plaintiffs determined that Castillo did not live on that block, they took him back to 3500 West McLean and dropped him off. LaCasa testified that, as they drove back, she spoke to Castillo but he did not speak to her, nor did he tell her where he lived.

¶ 33 A few days after the incident, while she was at the 14th District station, LaCasa was told that she had been stripped of her police powers as a result of the events of March 19, 2011. As she was leaving the station, LaCasa saw Edens in the parking lot and confronted him, asking him why he had told her that Castillo lived at 1649 North Spaulding. Edens responded that he had been joking. Edens, in his testimony, admitted that this exchange occurred in the parking lot as described by LaCasa.

¶ 34 Edens was interviewed by CPD's Internal Affairs Division (IAD) and gave two statements. Edens denied to IAD that he "ordered" plaintiffs to take Castillo to 1649 North Spaulding. His written statement contained no indication that Edens ever even mentioned a specific address on 1649 North Spaulding to plaintiffs—which was different than his testimony at the hearing, where he admitted giving a specific address on North Spaulding. But Edens said

he was never asked that specific question by IAD; he was only asked if he "ordered" plaintiffs to transport Castillo, and as an officer of the same rank as plaintiffs, he could not "order" them to do anything. Edens claimed that, with his lawyer present, he did tell IAD investigators that he had jokingly mentioned a specific address on the 1600 block of North Spaulding, but he chose not to add that to his statement because, as he said to his lawyer at the time: "I'm not going to put anything else in there saying that I made a joke to make it easier for them since they pretty much told IAD that I told them to do this, which I did not." Edens also did not tell IAD that LaCasa had confronted him four days later about giving plaintiffs the Spaulding address.[4]

¶ 35 The Board also took into consideration the testimony of plaintiffs' character witnesses, which included Eric Hudson and Madeline Rodriguez (two community activists), Janette Gilmartin (a community psychiatric occupational therapist who worked with LaCasa, a licensed clinical therapist), Lieutenant Heraty (a Chicago police officer under whom both plaintiffs worked), Sergeant Ray Young (a Chicago police officer under whom plaintiffs worked in the alternate response section after being stripped of their police powers), and Officer Malave (a Chicago police officer who was Contreras's former partner).

¶ 36 As plaintiffs note, the evidence also included various awards plaintiffs had received such as the "Presidential Election Deployment Awards" and "Crime Reduction Awards" that both had received. Contreras is the recipient of 47 honorable mentions; LaCasa is the recipient of 38 honorable mentions. LaCasa is also the recipient of two department commendation awards. In 2009, two individuals wrote letters to the Superintendent praising LaCasa for her work in her troubled buildings detail and as a CAPS Officer. She also received a certificate of appreciation from the "Alliance of Logan Square Organizations/Youthnet."

[4] The record does not contain copies of Edens's statements to IAD.

¶ 37 On April 18, 2013, the Board issued its split decision. As the majority stated:

> "The crux of the dispute in this case is whether, as Officers Contreras and LaCasa contend, they merely took Mr. Castillo to 1649 North Spaulding because Officer Edens told them Castillo lived there, and they complied with their fellow officer's request, or whether Officers Contreras and LaCasa took Mr. Castillo to the Spaulding address, not for a police purpose, but rather so that he would be confronted by the Latin Kings."

The majority concluded that plaintiffs were not serving any valid police purpose in taking Castillo to 1649 North Spaulding. The Board found that the young men, who were flashing Latin King gang signs and shouting, were "taunt[ing] and threaten[ing]" Castillo. The majority was "convinced" that plaintiffs "were not innocently transporting Mr. Castillo to a location they thought was his home." In support of its decision the majority listed several reasons, but one of these appears to be somewhat dispositive of most of the charges: "[T]he Board finds both Officers Contreras and LaCasa to have been evasive and untruthful in their testimony to the Board, so that the Board refuses to credit *any* part of their testimony, and certainly does not believe them over Officer Edens on the *key question* of whether or not Edens told Contreras and [LaCasa] to take Castillo home." (Emphasis added.) The Board also opined that "[i]n a city like Chicago, plagued with gang violence and shootings, many of which are gang-retaliation killings, the officers' conduct could only serve to inflame gang rivalries and, as such, was reprehensible."

¶ 38 A majority of the Board found plaintiffs guilty of violating:

> Rule 1: "Violation of any law or ordinance," in that they committed the offense of unlawful restraint, in violation of section 10-3 of the Criminal Code of

1961 (720 ILCS 5/10-3(a)) (West 2010) when they held (count I) and transported (count II) Castillo, against his will and without valid legal authority;

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 they knowingly detained Castillo and transported him without a valid police purpose (count I); knowingly and intentionally remained in the 1600 block of North Spaulding with the police vehicle's doors open which allowed suspected gang members to threaten Castillo (count II); allowed suspected gang members to digitally record a video of Castillo (count III); and failed to exhibit officer safety by allowing themselves to be encircled by a group of suspected gang members (count IV);

Rule 6: "Disobedience of an order or directive, whether written or oral," by failing to inform dispatch of a change in their location;

Rule 8: "Disrespect to or maltreatment of any person, while on or off duty," by transporting Castillo and allowing suspected gang members to threaten him; and (second count as to LaCasa only) by saying "put your fucking hands down" to Castillo as he tried to cover his face;

Rule 10: "Inattention to duty," by taking no action after suspected gang members threatened Castillo with bodily harm; and

Rule 14: "Making a false report, written or oral," by telling IAD that Edens had told them to take Castillo home to the 1600 block of North Spaulding."

Based on these findings, the Board terminated plaintiffs' employment. The decision was not unanimous as to any of the findings of guilt, nor the decision to discharge plaintiffs. Four of nine Board members dissented in whole or in part, three of whom authored written dissents.[5]

¶ 39 Member Carney dissented from the Board's decision regarding LaCasa and concluded as follows:

> "Based on Officer LaCasa's conversation with Ms. Vega's mother as to whether Mr. Castillo lived at the Spaulding address, which is evidence that Officer LaCasa relied in good faith on information she received from Officers Edens and Contreras, and based on Officer Edens's questionable and self-serving testimony, and the lack of testimony from Mr. Castillo, the Superintendent did not carry the burden of proving Officer LaCasa guilty of the most serious charges."

¶ 40 Vice-president Scott J. Davis, in his dissent, noted that the crux of the Superintendent's case against plaintiffs was that plaintiffs *knew* that Castillo did not live at the North Spalding address when they took him there. As Davis reasoned:

> "[I]f [plaintiffs] were concerned that they would need an excuse when Officer LaCasa encountered Ms. Vega's mother, the easiest way to have avoided the problem would have been to immediately drive away, which they did not do. The Board's finding depends on the conclusion that [plaintiffs] were concerned enough to try to create an excuse but not concerned enough to immediately drive away. In my judgment there is insufficient evidence to reach a conclusion of that precision, and I therefore do not think that the [Superintendent] adequately proved

[5] Since the Board did not serve the decision on plaintiffs until May 9, 2013, their complaint in the circuit court was timely filed on June 7, 2013 which was within the 35-day statutory period. 735 ILCS 5/3-103 (West 2012).

> that Officer LaCasa's question was a contrivance. For that reason and because of what I perceive to be other weaknesses in the evidence, the [Superintendent] did not *** sustain its burden of proving any of the charges that depend wholly or in part on the claim that [plaintiffs] knew that Mr. Castillo did not live on the 1600 block of North Spaulding when they took him there."

¶ 41 Dissenting Board member William F. Conlon noted that "[s]peculation is not evidence." Conlon argued that the Board gave much weight to Edens's testimony, which Conlon found "self-serving, insufficient to form a part of a finding of guilt and, in many instances, contrary to a finding of guilt." As Conlon noted:

> "The North Spaulding address is not an address [plaintiffs] made up; it is clearly an address given to them by Officer Edens.
>
> So, the *facts* are when Officer Contreras says he and [LaCasa] are going to take Mr. Castillo home, Officer Edens gives [plaintiffs] the address on North Spaulding. [Plaintiffs] had a reasonable basis to believe from Officer Edens' comments that was the address Mr. Castillo had given to Officer Edens when he was filling out the contact card. And, it is uncontroverted that it is not unusual for the assisting officer to transport someone home as was intended here.
>
> I come to the same conclusion **** when looking at the record concerning Officer LaCasa's confrontation with Officer Edens a few days after LaCasa was stripped of her police responsibilities. The act of confronting Officer Edens speaks volumes—credible, at-the-time actions of one who was asked to take Castillo to an address given [plaintiffs] by Officer Edens. Again, Edens' very tardy, highly questionable and self-serving explanation that he was 'joking' falls

> far short of credible evidence sufficient to support a finding of guilty against [plaintiffs].
>
> The record is blank—no evidence whatsoever—that Castillo ever told [plaintiffs] that he didn't live on the 1600 block of North Spaulding or that, as they approached that location, Mr. Castillo voiced any objection to being taken there.
>
> While the majority is dismissive and accusatory of Officer LaCasa's action in leaving the police vehicle and asking individuals in front of 1629 North Spaulding if Mr. Castillo lived there, I find that conduct very instructive and persuasive on [plaintiffs'] good faith belief that they were taking Mr. Castillo to what they believed was his residence. Why else would Officer LaCasa have approached Ms. Vega's mother shortly after [plaintiffs] arrived on the scene, and asked if Mr. Castillo lived there? The idea that it was subterfuge is, I believe, without any evidentiary support. *** In viewing the video, I conclude that [plaintiffs], after making an appropriate, good faith inquiry of the individuals at a residence on North Spaulding where Officer Edens indicated Mr. Castillo lived, managed a possibly volatile situation very well and in a manner that I choose not to second guess." (Emphasis added.)

¶ 42 Plaintiffs appealed the Board's decision. The circuit court of Cook County affirmed the Board's decision. The circuit court found that "Officer Edens' testimony was contradictory and self-serving" but found that plaintiffs were not credible, either, when they denied that they knew they were driving Castillo into rival gang territory. The circuit court also pointed to the fact that

the officers left the cruiser door open "for over a minute while the officers stood by and watched, yelling only at Castillo when he was obviously frightened." Plaintiffs filed this appeal.

¶ 43 II. ANALYSIS

¶ 44 Plaintiffs argue that the Board's factual findings were against the manifest weight of the evidence. They alternatively argue that the Board's decision to terminate their employment was too harsh a discipline.

¶ 45 A. Standard of Review

¶ 46 In an appeal from the judgment of an administrative review proceeding, we review the decision of the administrative agency, not the decision of the circuit court. *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶ 20. A reviewing court's scope of review of an agency's decision to discharge a public employee requires a two-step process. *Department of Mental Health and Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d 547, 550 (1981); accord *Walsh v. Board of Fire & Police Comm'rs of Village of Orland Park*, 96 Ill. 2d 101, 105 (1983); *Chisem*, 2014 IL App (1st) 132389, ¶ 20. We first determine if the agency's findings of fact are contrary to the manifest weight of the evidence. *Department of Mental Health*, 85 Ill. 2d at 550. Second, we determine if the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge exists. *Id*. at 551.

¶ 47 Section 3-110 of the Administrative Review Law states: "The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). As the complainant in the hearing, the Superintendent bore the burden of proving his allegations against plaintiffs. See *Martin v. Thompson*, 195 Ill. App. 3d 43, 48 (1990). We will affirm a board's findings unless they are against the manifest weight of the evidence. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006). An

administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id*. The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently does not justify reversal of an administrative agency's findings. *Id*. It is not the reviewing court's function to resolve factual inconsistencies, make credibility determinations, weigh the evidence, determine where the preponderance of the evidence lies, or substitute its judgment for that of the administrative agency. *Launius v. Board of Fire & Police Comm'rs of City of Des Plaines*, 151 Ill. 2d 419, 427-28 (1992); *Chisem*, 2014 IL App (1st) 132389, ¶ 21; *Marconi*, 225 Ill. 2d at 534. It is the function of the board to judge the credibility of witnesses, resolve conflicts in the evidence, and draw reasonable inferences and conclusions from the facts. *Suburban Downs, Inc. v. Illinois Racing Board*, 316 Ill. App. 3d 404, 415 (2000). When the record contains evidence supporting the administrative agency's decision, we should affirm that decision. *Marconi*, 225 Ill. 2d at 534.

¶ 48 B. Board's Findings

¶ 49 We now consider the Board's findings individually. Some of the charges are based solely on plaintiffs' conduct after they arrived at 1649 North Spaulding or, in one instance, based on undisputed facts. We will start with those charges and then will consider the charges relating to plaintiffs' allegedly improper purpose for transporting Castillo to that location in the first place.

¶ 50 1. Rule 2 Violation (Counts II, III, and IV)

¶ 51 We first address most of the Board's findings as to Rule 2, which prohibits "[a]ny action or conduct which impedes the department's efforts to achieve its policy and goals or brings discredit upon the department." The Board found plaintiffs guilty on four counts. We will address three of those four counts here—Counts II, III, and IV.

¶ 52 Count II charged that plaintiffs "knowingly and intentionally remained in the 1600 block of North Spaulding Avenue with Department vehicle #8942's doors open, which allowed suspected Latin King gang members to threaten Miguel Castillo." Regardless of whether plaintiffs' transport of Castillo to 1649 North Spaulding was part of some pre-conceived plot to terrorize him by exposing him to rival gang members—an issue we will take up next—the evidence supported the charge contained in Rule 2, Count II. As to the factual predicate of this charge, the officers clearly left the door of the squad car open, and doing so allowed the individuals who surrounded the vehicle to shout out comments that could be perceived as threatening. The video evidence confirms that the youths were congregated very close to the open door in such a manner that Castillo could have perceived as threatening, or at least clearly unwelcome.

¶ 53 As to the application of Rule 2 to the facts of Count II, we generally defer to an administrative agency's interpretation of its own rules, because they arise from the agency's expertise. *Daniels v. Police Board of City of Chicago*, 338 Ill. App. 3d 851, 859 (2003). We need only determine whether the Board's interpretation of its own rule had a "reasonable basis in law." *Id*. Here, the Board concluded that the officers should not have left the rear driver's-side door (and for a lesser time, the rear passenger door) open, thereby exposing Castillo to taunts and threats and bringing discredit on the department. We do not find this interpretation unreasonable. The Board's finding on Count II of the Rule 2 violation is not against the manifest weight of the evidence, and we affirm it.

¶ 54 Count III of the Rule 2 violation charged that plaintiffs "knowingly and intentionally remained in the 1600 block of North Spaulding Avenue with Department vehicle #8942's doors open, which allowed suspected Latin King gang members to digitally record video of Miguel

Castillo." For the same reasons we have just given above, we hold that these findings were not against the manifest weight of the evidence. There is no question that videotaping took place, and that the video captured another phone, held in such a position as if to record or photograph Castillo, that was so close to open door that the holder of that phone was at least as close to Castillo, if not closer, than LaCasa. We affirm the Board's finding on Rule 2, Count III.

¶ 55 Count IV of the Rule 2 violation charged that plaintiffs "failed to exhibit officer safety" when they permitted themselves "to be encircled by a group of suspected members of the Latin Kings street gang." The Board could have reasonably concluded that the officers allowed the situation to become dangerous. Plaintiffs testified that they did not feel that either they or Castillo were in danger, and we acknowledge that, from the video, the officers showed no indication of being in fear or out of control. Plaintiffs also testified that it is not uncommon for youths, even gang members, to crowd around a police vehicle when it rolls into an area. But the Board found that the officers allowed the situation to reach a level that could have resulted in danger, and we do not believe that this finding is against the manifest weight of the evidence. We affirm the Board's finding on the Rule 2, Count IV violation.

¶ 56 2. Rule 6 Violation

¶ 57 Plaintiffs also challenge the Board's decision that they violated Rule 6, which prohibits disobedience of orders and directives. The Board found that plaintiffs disobeyed General Order 03-01-01, Section II(H) entitled "Radio Communications" by failing to inform dispatch of a change in their location. Section II-H states: "When a member requests a change in his availability status for any reason not covered by an assignment, he will: 1) notify the dispatcher of his change in status via voice radio only; and 2) include the reason for (or nature of) the change and the member's specific street location."

¶ 58 Although the facts surrounding this charge are not captured in the video, the single fact supporting this charge—that plaintiffs did not inform dispatch of a change in their location—is undisputed, thus leaving only the question of whether the Board properly interpreted the departmental rule's application to these facts.

¶ 59 Plaintiffs argue (and dissenting Board member Davis noted) that this order applies only when a member "requests a change in his availability status." Although plaintiffs contend that section II(H) applies only when a member *requests* a change in his availability status, defendants argue that "such a reading would render the order nonsensical by allowing officers to skirt the requirements by simply neglecting to request permission to change their availability status in the first place."

¶ 60 In construing General Order 03-01-01, section II(H), the Board referenced section II(G), which requires all members of the department who receive assignments by voice radio to "maintain contact with the dispatcher" and "report any changes in availability status to the dispatcher via voice radio only." Section II(G) further states: "Changes in availability status are subject to the approval of the dispatcher and/or filed supervisor." The Board found that taking Castillo to the 1600 block of North Spalding was not part of the original assignment given to plaintiffs—to assist with the street stop in the 3500 block of West McLean. The Board found that plaintiffs were required under the General Order to notify the dispatcher by requesting a change in status and to obtain approval to relocate to the 1600 block of North Spaulding Avenue. Again, it is undisputed that plaintiffs did not notify dispatch or tell their sergeant that they were taking Castillo to the Spaulding address. We conclude that the Board's interpretation of its own rule had a "reasonable basis in law." *Daniels*, 338 Ill. App. 3d at 859. We hold that the Board's finding

that plaintiffs violated Rule 6 when they disobeyed General Order 03-01-01, Section II(H) was not against the manifest weight of the evidence, and we affirm it.

¶ 61 3. Rule 8 and Rule 10 Violations

¶ 62 We also conclude that the Board's findings that plaintiffs violated Rule 8, prohibiting "[d]isrespect to or maltreatment of any person while on or off duty," and Rule 10, prohibiting "[i]nattention to duty," which incorporate the Board's findings regarding the events portrayed on the video itself, were not against the manifest weight of the evidence for the same reasons we discussed regarding counts II, III and IV of the Rule 2 violation. The Board found that plaintiffs should not have allowed the youths to crowd around and get so close to the police vehicle while the door was open and an individual was inside the car—an individual who clearly did not want to be viewed by the spectators. After viewing the video, we cannot say that these findings were against the manifest weight of the evidence, and we affirm them as to each plaintiff.

¶ 63 4. Rule 1 and Rule 2 (Count 1) Violations

¶ 64 We now reach what defendants characterize as "the core factual finding" in this case—that plaintiffs transported Castillo to 1649 North Spaulding not because they thought he lived there, but in order to expose him to a rival gang and thereby "terrorize" him. The trial court below aptly noted during oral argument that other than the video, the rest of the evidence “was pretty confusing.” We agree with that characterization. From our review of the evidence, we are relatively confident that we do not know the complete and accurate story of what transpired that day. But the record is all we have, and we can only rule on the record before us, after each side was given a full and fair opportunity to present its case.

¶ 65 Although the Superintendent’s case on this issue was less compelling than on the other charges we have thus far reviewed, we cannot reject the Board’s finding that plaintiffs

transported Castillo to 1649 North Spaulding for the purpose of intimidating or terrorizing him. We cannot say that the opposite conclusion—that plaintiffs thought they were merely driving Castillo home—was clearly evident from this record.

¶ 66 Although each plaintiff denied knowing that Castillo was a member of the Imperial Gangsters, and Edens—who did know—never testified that he told plaintiffs this information, there was sufficient circumstantial evidence from which the Board could have inferred this knowledge. It was undisputed that the 3500 block of West McLean was Imperial Gangster territory, and that plaintiffs first arrived on the scene to assist on a gang-disturbance call. More significantly, Edens testified that it was Contreras, not Edens, who first jokingly broached the topic of transporting Castillo to Latin King territory, specifically the intersection of LeMoyne and Spaulding. The Board could have reasonably concluded that Contreras jokingly raised this topic because he knew that Castillo would not want to be taken to Latin King territory. And when placed in context, Edens's reference to an address on the 1600 block of North Spaulding—only a few blocks from the intersection Contreras mentioned, and also Latin King territory—could clearly have been viewed as a continuation of a joke, a response to Contreras's sarcasm.

¶ 67 Plaintiffs make the valid point that Edens was less than a perfect witness, especially given his evasiveness about the incident to IAD (and his perceived hostility toward plaintiffs). But the Board credited his testimony, and we are typically reluctant to disturb a Board's findings on a credibility question. *Marconi*, 225 Ill. 2d at 534; *Chisem*, 2014 IL App (1st) 132389, ¶ 21.

¶ 68 That is doubly true where, as here, the Board found plaintiffs to be so lacking in credibility that it disregarded their testimony in its entirety. The Board had reason to question plaintiffs' credibility. Both plaintiffs were evasive and defensive in their testimony, at times refusing to acknowledge things on the video that were obvious to anyone watching and listening.

Contreras claimed not to be knowledgeable about gang signs but was impeached with sworn testimony that he was. LaCasa claimed that, at the time of the incident, she was unaware of video being taken, yet she seemed to acknowledge the camera as it zoomed into the interior of the squad car, and another individual was poising a phone such that it was aimed into the interior of the car, as if taking a photo or video, while the individual was very close to LaCasa. Under these circumstances, we must defer to the Board's finding that each plaintiff's testimony was not credible. Plaintiffs' lack of credibility does not automatically doom their position, but it makes an already high hurdle taller still. When determining which witness was telling the truth about the exchange at the 3500 block of West McLean, the Board believed Edens, and we have no basis to second-guess that finding.

¶ 69 And the evidence went beyond Edens's testimony. The Board could have rationally found that the amount of time the officers spent at 1649 North Spaulding—with a clearly terrified young man in the back seat, exposed to a hostile crowd—was of such a duration that exceeded any reasonable amount of time needed to determine whether Castillo resided at that address. The Board likewise could have concluded, from the video, that the officers were not as interested in getting information on Castillo's home address as they were in allowing neighborhood youths to get extremely close to the squad car, peer in, and shout threats toward Castillo. The Board drew inferences from this video that were reasonable.

¶ 70 Finally, the fact that plaintiffs did not tell dispatch where they were going, or what they were doing, could be viewed by the Board as further evidence that plaintiffs were transporting Castillo for an improper purpose. It is true that plaintiffs and other officers testified that it is not unusual for officers to make short trips like the one to 1649 North Spaulding without notifying dispatch. There is, in other words, a plausible, innocent explanation for the failure to report. But

the Board chose to view the failure to report the transport, along with the other evidence we have outlined, as evidence that plaintiffs knew they had no valid purpose for the transport and thus did not want to formally document their movement of Castillo to North Spaulding. We cannot say that the Board's inference was unreasonable.

¶ 71 Plaintiffs challenge the evidence in several ways, including Officer Edens's questionable credibility and his arguable motive to testify falsely. Again, plaintiffs' position is not without merit. Edens left material information out of his IAD report and admitted feeling angry towards plaintiffs for telling IAD that he "ordered" them to take Castillo to 1649 North Spaulding. But the Board heard the evidence and the arguments and still accepted Edens's take on the exchange at 3500 West McLean over that of Contreras. The Board was in the better position to resolve that disagreement in the testimony.

¶ 72 Plaintiffs also point to their actions that day and following the incident. They cite LaCasa's act of asking Vega's mother whether Castillo lived at 1649 North Spaulding and Contreras's statement to the crowd of youths, captured on the video, that Castillo "says he lives here." These facts clearly could have supported plaintiffs' position, and they persuaded some of the dissenting Board members, but the majority did not find this evidence sufficiently convincing to change its position. In fact, the majority found that LaCasa's act was a ruse. We are again presented with two views of the evidence, each of which is plausible. It is certainly possible that LaCasa made the inquiry of Vega's mother sincerely, but it is likewise possible that it was a ruse to justify the stop, when the true goal was not to take Castillo home but to expose him to hostile gang members. In the context of all the evidence presented, the Board chose the latter interpretation, and we cannot say that this finding was arbitrary or clearly unreasonable.

¶ 73 Perhaps the strongest evidence supporting plaintiffs'—or at least LaCasa's—position was the evidence of LaCasa's confrontation with Edens in the parking lot, days after the incident, where LaCasa asked Edens why he gave them that address. That testimony was corroborated by Edens. But the existence of exculpatory evidence, even uncontested, does not require the Board to ignore the remainder of Edens's testimony and the evidence captured on the video. And it does not allow us to overturn a Board finding that had sufficient support in the record.

¶ 74 We agree with plaintiffs that the absence of Castillo as a witness was conspicuous. Castillo obviously could have shed significant light on what happened before, during, and after his transport to 1649 North Spaulding. It is possible that his testimony would have decimated the Superintendent's case. But it also might have undermined plaintiffs' case, and plaintiffs could have subpoenaed him just as easily as the Superintendent. Plaintiffs have called nothing to our attention in the record, nor have we found any, that shows that plaintiffs attempted to bring in Castillo as a witness but were unable to do so. Ultimately, our question is not whether the Superintendent put on the best case possible, but whether the findings the Board made were supported by the evidence that *was* presented.

¶ 75 We again emphasize our deferential standard of review, which requires us to affirm if the record contains evidence supporting the Board's finding—which it does—unless the opposite conclusion is clearly evident—which it is not. See *Marconi*, 225 Ill. 2d at 534. We cannot reject the Board's finding that plaintiffs intended to harass and terrorize Castillo when they drove him to 1649 North Spaulding.

¶ 76 We now turn to the individual charges that were based on this factual premise.

¶ 77 *a. Rule 1 Violations*

¶ 78 As noted, the Board found each plaintiff guilty of violating Rule 1, which prohibits: "[v]iolation of any law or ordinance," in that they committed the offense of unlawful restraint, in violation of section 10-3 of the Criminal Code of 1961 (720 ILCS 5/10-3(a)) (West 2010)) (the unlawful-restraint statute). As to each plaintiff, the charges under Rule 1 were brought in two counts: (1) unlawfully restraining Castillo in the 3500 block of West McLean Avenue; and (2) unlawfully restraining Castillo in the police car on the drive from the 3500 block of West McLean Avenue to 1649 North Spaulding.

¶ 79 "A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another." *Id*. Thus, among other things, the detention must be willful and against the victim's consent. *People v. Bowen*, 241 Ill. App. 3d 608, 627 (1993); *People v. Satterthwaite*, 72 Ill. App. 3d 483, 485 (1979). With this is mind, we turn to each of the charges relating to unlawful restraint.

¶ 80 Count I of the Rule 1 violation charged plaintiffs with "holding" Castillo, against his will and without valid legal authority, in the 3500 block of West McLean. As to this count, the Board incorporated its other findings with respect to Edens's testimony, Vega's testimony, plaintiffs' evasiveness in testifying, the fact that plaintiffs did not notify dispatch that they were transporting Castillo, and the video itself. The Board found that plaintiffs did not have a proper purpose for placing Castillo into the back of their squad car, a finding we have already determined was reasonable in light of the evidence. It also reasoned that “no Imperial Gangster, particularly one this young, would voluntarily be driven to Latin Kings territory.” That finding was also reasonable. The manifest weight of the evidence supported the Board’s finding that plaintiffs willfully detained Castillo without valid authority and without Castillo’s consent. We affirm the Board’s finding as to each plaintiff on Rule 1, Count 1.

¶ 81 Count II of the Rule 1 violation charged plaintiffs with transporting Castillo, against his will and without valid legal authority, from the 3500 block of West McLean Avenue to the 1600 block of North Spaulding. The Board incorporated its findings from Count I of the Rule 1 violation in determining that plaintiffs were guilty on Count II of Rule 1, as well. For all of the reasons we have given above as to Count I of Rule 1, we hold that the Board's findings as to Count II of Rule 1, as to each plaintiff, was not against the manifest weight of the evidence, and we affirm them.

¶ 82 b. Rule 2 Violation (Count I)

¶ 83 We next address the Board's finding as to Rule 2, Count I, the only portion of the Rule 2 violations we have yet to consider. Again, Rule 2 prohibits "[a]ny action or conduct which impedes the department's efforts to achieve its policy and goals or brings discredit upon the department." The Board found plaintiffs guilty on Count I.

¶ 84 Count I charged that plaintiffs violated Rule 2 in that they "knowingly detained Miguel Castillo in the 3500 block of West McLean Avenue and transported him to the 1600 block of North Spaulding Avenue without a valid police purpose." This charge is similar to the charges in the two counts regarding the alleged Rule 1 violation. We have determined that the Board's factual findings as to these charges were not against the manifest weight of the evidence. We likewise find that Board had a reasonable basis in the law to conclude that plaintiffs' conduct brought discredit on the department and impeded the department's goals by potentially exacerbating gang tensions in the community and needlessly placing a young man in fear for his safety. We thus conclude that the Board's finding on Count I of the Rule 2 violation was not against the manifest weight of the evidence, and it is affirmed as to each plaintiff.

¶ 85 4. Rule 14 Violation

¶ 86 Regarding Rule 14, there is no dispute. The Superintendent concedes that the Board's finding that plaintiffs made false statements to IAD, in violation of Rule 14, is against the manifest weight of the evidence, because the statements were not placed into evidence before the Board. We agree with the parties that the Board's finding that plaintiffs violated Rule 14 was against the manifest weight of the evidence. We reverse that finding as to each plaintiff.

¶ 87 C. Cause for Discharge

¶ 88 In the case before us, the Board's decision to discharge plaintiffs was based on all of its findings. We have affirmed all of the Board's findings except its finding that plaintiffs made false statements to IAD.

¶ 89 Having decided that the vast majority of the board's factual findings were not against the manifest weight of the evidence, we next consider plaintiff's alternative argument that the board's decision to terminate their employment was too harsh a discipline. Although we have set aside the board's finding that plaintiffs made false statements to IAD, defendants argue that there is no basis for concluding that the board would have imposed lesser discipline had it not found that violation. We agree.

¶ 90 We are aware that in *Basketfield v. Police Board of the City of Chicago*, 56 Ill. 2d 351 (1974), after setting aside some of the police board's charges and affirming others, the court remanded the case to the police board to reconsider the discipline to be imposed. But *Basketfield* is distinguishable. There, the court overturned most of the charges, including the most serious charges. *Id*. at 360. Here, we have affirmed all but one charge, and it is clear from the board's decision that the sanction of discharge was based primarily on the charges we have upheld. In such instances, we have concluded that remand is unnecessary. Of particular note is our decision in *Tate v. Police Board of City of Chicago*, 241 Ill. App. 3d 927, 936 (1993), where we vacated

the board's finding of guilt on the Rule 14 violation but otherwise affirmed the board's findings that the officer violated a number of department rules when, while off-duty, she drove her car under the influence of alcohol, engaged in an altercation with a private citizen, and refused to cooperate with a police investigation into the matter. Despite our vacatur of the Rule 14 violation, we reasoned that "remandment of the entire cause to the Board is unnecessary in light of our affirmance of what we consider to be the more serious charges." *Id.*; see also *Douglas v. Daniels*, 64 Ill. App. 3d 1022, 1029 (1978) ("We will not remand as we cannot say that the charges sustained by the evidence were of a lesser stature than those not sustained."); *Mobley v. Conlisk*, 59 Ill. App. 3d 1031, 1041 (1978) (no remandment where more serious extortion and bribery charges were upheld against officer, though charges regarding inventorying of evidence were reversed).

¶ 91 Because a remand is not necessary in this case, we are left only to determine whether the charges which plaintiffs were properly found to have violated supported the board's decision to terminate. *Department of Mental Health*, 85 Ill. 2d at 551.

¶ 92 A police officer may not be discharged absent "cause." *Thomas v. Police Bd. of City of Chicago*, 90 Ill. App. 3d 1101, 1105 (1980). "Cause" means "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position." *Kreiser v. Police Board of the City of Chicago*, 40 Ill. App. 3d 436, 441 (1976), *aff'd* 69 Ill. 2d 27 (1977). A board's decision that "cause" exists will not be reversed as long as it is related to the requirements of the service and is not so trivial as to be unreasonable. *Id*. We have recognized that the board is in the best position to determine the

effect of an officer's conduct on the operations of the department. *Robbins v. Department of State Police Merit Board*, 2014 IL App (4th) 130041, ¶ 39; *Chisem*, 2014 IL App (1st) 132389, ¶ 20.

¶ 93 Accordingly, we give considerable deference to the board's determination of cause. *Robbins*, 2014 IL App (4th) 130041, ¶ 39. As a reviewing court, we do not consider whether we would have imposed a more lenient sentence than discharge, had we determined initially what discipline would be appropriate. *Launius*, 151 Ill. 2d at 436; *Chisem*, 2014 IL App (1st) 132389, ¶ 20; *Krocka v. Police Board of City of Chicago*, 327 Ill. App. 3d 36, 48 (2001). Rather, the question before us is whether, in deciding to discharge the officers, the Board acted unreasonably or arbitrarily by selecting a type of discipline that was inappropriate or unrelated to the requirements of service. *Launius*, 151 Ill. 2d at 436; *Chisem*, 2014 IL App (1st) 132389, ¶ 20; *Krocka*, 327 Ill. App. 3d at 46.

¶ 94 We agree with the trial court's observation that "it is sad that many years of what appears to be outstanding service to the Department is apparently outweighed by [plaintiffs'] unfortunate decisions on March 19, 2011." But we also agree with the trial court when it noted the seriousness of the violations and "the public nature of the offenses that undermined the public's trust in the police force." The Board's decision to discharge plaintiffs was based on its findings of violations of the numerous charges brought against plaintiffs. The decision to discharge plaintiffs was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 95 III. CONCLUSION

¶ 96 As to each plaintiff, we affirm the Board's findings that plaintiffs violated Rule 1 (counts I and II), Rule 2 (counts I, II, III, and IV), Rule 6, Rule 8, and Rule 10 of the police department rules. As to each plaintiff, we reverse the Board's findings that plaintiffs violated Rule 14. We affirm the Board's disciplinary sanction of discharge as to each plaintiff.

¶ 97 We thus affirm the judgment of the circuit court, as modified to reflect the reversal of the Rule 14 violation as to each plaintiff.

¶ 98 Affirmed as modified.