

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1885
Walter J Malacina)	
Deputy Sheriff)	
Star # 10455)	

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on June 29, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Walter J. Malacina, hereinafter Respondent, was appointed a Deputy Sheriff for the Cook County Sheriff's Office (CCSO) on June 7, 1994. Respondent's position as a Deputy Sheriff involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On June 7, 1994, the Respondent was appointed a Deputy Sheriff and on December 3, 2003, the Respondent was assigned to Civil Process, Bridgeview Courthouse, 10220 S. 76th Street, Bridgeview, IL. On October 14, 2014, the Respondent was assigned to Civil Process at the Richard J. Daley Center, 50 W. Washington, Chicago, IL

On October 12, 2014, the Respondent failed to adequately secure his duty weapon (Smith & Wesson, .357 caliber revolver, serial number [REDACTED]) by leaving his duty weapon inside the armrest of his vehicle.

On October 12, 2014, while at the Dakota Inn, an establishment whose primary business is the serving of alcoholic beverages, the Respondent consumed several beers and carried his duty weapon after having consumed several alcoholic beverages.

On October 12, 2014, while driving, the Respondent encountered three females at or near [REDACTED]. The Respondent exited his vehicle with his duty weapon in his hand and pointed the weapon at the head of two of the three females.

On October 12, 2014, the Respondent used, displayed, or handled his weapon in a careless or negligent manner when he pointed his duty weapon at the head of two of the three females.

On October 12, 2014, Alsip Police Officer [REDACTED] (PO [REDACTED]) responded to [REDACTED] for a call of an aggravated assault. PO [REDACTED] went to the Respondent's residence in an attempt to locate the Respondent. While outside of Respondent's residence, PO [REDACTED] observed the Respondent seated in a chair near his vehicle and PO [REDACTED] observed the Respondent to be highly intoxicated. PO [REDACTED] observed the Respondent had slurred his speech consistently, smelled strongly of alcohol and had red, bloodshot, glassy eyes.

On October 12, 2014, when asked about the incident with the three females, the Respondent stated to PO [REDACTED] that he "was defending himself and (he) brandished (his) weapon."

On October 12, 2014, the Respondent stated to PO [REDACTED] that he was returning home from the Dakota Inn after drinking approximately four beers. The Respondent stated to PO [REDACTED] that he removed his duty weapon from his holster and exited his vehicle while holding the weapon in his right hand, pointed at the ground and against his right hip.

On October 12, 2014, the three females identified the Respondent as the individual they encountered with a weapon at or near [REDACTED]. The Respondent was arrested by the Alsip Police Department and charged with two counts of Aggravated Assault pursuant to 720 ILCS 5/12-2 (c)(1).

On October 20, 2015, the Respondent was interviewed and provided an audio-recorded statement to investigators from the Cook County Sheriff's Office of Professional Review (OPR). The Respondent admitted to investigators from OPR that on October 12, 2014, he was driving home from the Dakota Inn after drinking six beers. The Respondent further admitted to investigators from OPR that on October 12, 2014, he drank his last beer at least five to ten minutes prior to the incident occurring.

During the October 20, 2015 interview, the Respondent admitted to investigators from OPR that on October 12, 2014, his duty weapon was inside the armrest of his vehicle while he was inside the Dakota Inn. Additionally, the Respondent stated to investigators from OPR that the weapon was not in a case nor was it locked.

On October 20, 2015, the Respondent admitted to investigators from OPR that on October 12, 2014, he exited his vehicle with his firearm in hand and pointed towards the ground. The Respondent admitted to investigators from OPR that on October 12, 2014, he approached three females and asked them what was going on. The Respondent stated to investigators from OPR that on October 12, 2014, he drew his duty weapon because he was in a "bad neighborhood" and was defending himself.

On October 20, 2015, the Respondent stated to investigators from OPR that on October 12, 2014, he was not aware he could not have his firearm if it was likely he would be consuming alcoholic beverages but was aware of it as of October 20, 2015 (the date of the OPR interview). The Respondent stated to investigators from OPR that on October 12, 2014, he was not aware he could not leave his weapon inside of his vehicle but was aware of it as of October 20, 2015.

During the October 20, 2015, interview with OPR the Respondent stated to investigators from OPR that he did not know the three females involved in the incident on October 12, 2014, but his wife was friends with their families.

On October 12, 2014, the Respondent failed to conduct himself in such a manner to reflect favorably on the CCSO. The Respondent's conduct related to the incident resulted in the Respondent committing an aggravated assault on October 12, 2014, that was unbecoming of an officer of the CCSO.

On July 28, 2014, the Respondent signed the Firearms Home and Range Safety Acknowledgement Form, acknowledging that he "understands that (his) duty weapon/alternate weapon must be stored and secured at home when weapon(s) is not on (his) person."

By complaint dated March 18, 2016, upon a finding of guilt, the Petitioner sought the removal of the Respondent from the Cook County Sheriff's Department.

Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Sheriff's Department, specifically:

Sheriff's Order 11.2.20.0 – Rules of Conduct, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

III. APPLICABILITY

This order is applicable to all employees of the CCSO and is for strict compliance. Any violations of this Sheriff's Order may result in disciplinary action up to and including termination. Any conflicts with existing directives shall be resolved in favor of this order.

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

A. Compliance with Laws, Ordinances, and Regulations.

1. Employees shall uphold the Constitutions of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the employee is present, and comply with court decisions and orders of courts having jurisdiction.
2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issued by the proper authorities.

B. Conduct on and off duty.

CCSO employees shall:

1. Maintain a professional demeanor while on duty and will not engage in off-duty behavior that would reflect negatively on the CCSO.
2. Conduct themselves on and off-duty in such a manner to reflect favorably on the CCSO. Employees, whether on or off-duty, will not engage in conduct which discredits the integrity of the CCSO, its employees, the employee him/herself, or which impairs the operations of the CCSO. Such actions shall constitute conduct unbecoming of an officer or employee of the CCSO.
4. Maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Employees will not participate in any incident that:
 - b. Causes the CCSO to be brought into disrepute.

D. Prohibited associations, establishments, and activities.

CCSO employees shall not:

17. If sworn, carry firearms when there is a likelihood that they will be consuming alcoholic beverages or taking medications which may impair their physical and/or mental capabilities.
18. Use, display, or handle any weapon in a careless, negligent or unlawful manner.

E. Duty functions.

CCSO employees shall:

1. Maintain sufficient competence to properly perform the duties and responsibilities of their positions. Unsatisfactory performance shall not be allowed.
 - b. Unsatisfactory performance may be demonstrated by:
 - ii. A lack of knowledge of the rules and regulations of the CCSO;

Sheriff's Order 09-1 – Securing Department Authorized Firearms, in its entirety, including but not limited to, the following subparts:

II. POLICY

It is the policy of the Cook County Sheriff's Office that all sworn employees authorized to carry a duty weapon will ensure that the weapon will be secured. No unauthorized person is afforded access to the member's duty weapon at any time. Furthermore, a duty weapon in any state either assembled or dismantled will not be considered "secure" in a vehicle or in a locked box concealed within a vehicle.

IV. RESPONSIBILITIES

Duty Weapons and Department Issued Weapons are NOT to be left in vehicles:

- A. At any time
- B. In any condition (including dismantled or unloaded firearms)
- C. Under any circumstance (including lock boxes)

VI. APPLICABILITY

This order applies to all Sheriff's Office sworn employees and is for strict compliance. Any conflicts should be resolved in the favor of this order.

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer, Police Sergeant, Police Lieutenant of the Cook County Sheriff's Police Department, Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Correctional Captain of the Cook County Department of Corrections or Deputy Sheriff, Deputy Sergeant, Deputy Lieutenant of the Cook County Sheriff's Court Services Department will:

1. Violate any Law or Statute of any State or of the United States of America.
3. Violate any of the Sheriff's Executive Orders, General Orders, Special Orders, Directives or Rules and Regulations of the Cook County Sheriff's Department or Cook County Sheriff's Merit Board Rules and Regulations.

Findings of Fact

This matter was called for trial on June 29, 2016, after the case was continued on several occasions based upon the needs of the Petitioner (Sheriff) and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial documents were introduced by the Sheriff and the Respondent that were received into evidence. Additionally, there were certain documents that were admitted as exhibits through agreed upon stipulations by both parties. The Sheriff and Respondent made closing arguments addressing issues in the trial.

After a brief opening statement by the Sheriff and the Respondent, the Sheriff called [REDACTED] ([REDACTED]). [REDACTED] testified that she currently resides in [REDACTED], but before that she lived in [REDACTED] for all of her life. She stated that on October 12, 2014, sometime after midnight, she was sitting in her car in a driveway across the street of her residence located at [REDACTED] in [REDACTED]. She was there with her roommate [REDACTED] ([REDACTED]) and her sister [REDACTED] ([REDACTED]). [REDACTED] testified the three of them crossed the street and a car turned and screeched around the corner from Pulaski Street onto 117th Street. The car swerved and almost hit them and was so close that Michelle's hand hit the driver's window of the car. She testified the car slammed on its brakes and the Respondent "jumped out of his car." She testified the Respondent walked up to [REDACTED] with "his gun in his right hand, and he had put it up to Michelle's forehead." [REDACTED] testified that she was standing next to [REDACTED] when this occurred. She testified the Respondent stated, while he had his gun to Michelle's forehead, that he could "kill us and get away with it, because he was a cop." She said that [REDACTED] stepped in front of the Respondent and told the Respondent to go home.

[REDACTED] said the Respondent was "waving his gun around." She said they could see the gun initially in the car when he stopped as it was on the passenger's seat of his car. She said the Respondent left the door open when he exited his car and it illuminated the inside of the car. They were standing next to the Respondent's car and could see in. [REDACTED] said they knew the identity of the Respondent as he lived down the street and they knew the Respondent's wife as she was best friends with the sister's mother. [REDACTED] said the Respondent got back in his car and drove home, which was down the street. The women called the Alsip Police Department (APD).

[REDACTED] testified that an officer from the APD arrived and they described the events that had occurred with the Respondent. They were each individually driven by the Respondent's home by the APD and identified the Respondent and then they were taken to the APD to make a statement.

On cross-examination, [REDACTED] testified that she did give a statement to the APD. She said she could not recall if she told the APD that the Respondent pointed his gun at [REDACTED]. She also did not tell the APD that the Respondent said, "I could kill you and get away with it." She testified that she had not testified previously in any court proceedings regarding this incident. She did not provide a statement to the CCSO Office of Professional Review (OPR) regarding this statement. [REDACTED] testified that she was appearing at the trial of the Respondent voluntarily and was not under subpoena.

[REDACTED] (Officer [REDACTED]), Police Officer, APD, was called and testified that he had been a police officer with APD for approximately three years. Officer [REDACTED] testified that he attended the Chicago Police Department Academy and had an in-depth course on DUI

training (driving under the influence of alcohol). He testified the course was substantial and included different DUI or impairment indicators, what to look for when investigating a DUI, and administrative procedures. He said the indicators were, for example: speech being impaired such as slurred speech, stuttered, mumbled, confused; thick-tongued; glassy and/or blood shot eyes; which a combination of those two suggested high impairment; loss of fine or major motor skills; balance; and the odor on a person's breath was also an indicator of impairment. Officer [REDACTED] testified during the course of his career he had the opportunity to conduct DUI arrests and as of October 2014, he estimated he had made approximately a dozen DUI arrests. He estimated that including DUI arrests he had observed individuals that had been intoxicated "thousands of times."

Officer [REDACTED] testified that on October 12, 2014, he received a call from APD dispatch to respond to a call that a man had pointed a gun at one of the callers. He responded to a location where there were three females that described an individual who made a corner at a high rate of speed and almost hit them. He said one of the females said the driver stopped his vehicle, got out and pulled a handgun which he pointed at her head. Officer [REDACTED] said all three of the females were consistent in their stories and they said they knew the man who got out of the car with the weapon. They pointed him to the address of the man and he drove to the residence. Officer [REDACTED] said when he arrived he noted there was a man sitting in a chair in front of the residence. The man asked if he were there in response to what happened down the street. Officer [REDACTED] identified the Respondent as the individual who was at the residence.

Officer [REDACTED] said the Respondent told him that he had already notified his superiors with the CCSO about the incident. Officer [REDACTED] asked him what occurred and after many questions the Respondent said he was turning off of Pulaski on 117th Street, somebody struck his car, physically or with an object, so he stopped his car and interacted with the people. The Respondent told him it was a bad neighborhood which was why he stopped his car. Officer [REDACTED] said he did not consider this a bad neighborhood and had only responded to one domestic battery on that block since he was employed with APD.

Officer [REDACTED] said he was within a foot of the Respondent during his conversation with him and he observed the Respondent was displaying signs of intoxication. The Respondent's eyes were bloodshot and glassy, he was slurring his speech and his breath had the odor of an intoxicating beverage on it. Officer [REDACTED] said he believed the Respondent was intoxicated. Officer [REDACTED] said that Officer [REDACTED], APD, was present with him during this interaction with the Respondent. Officer [REDACTED] testified that the initial dispatch he received was a man with a gun and not a DUI. He said that he did not conduct a DUI investigation as the aggravated assault with a firearm was more significant which was the investigation he conducted. Officer [REDACTED] said that when he interviewed the Respondent it took some prying and asking the questions several times before he received his version of the events that was basically similar to that of the three females. The Respondent did admit to him that he may have gotten out of his car with his weapon out but did not admit that he pointed it at any of the females. Officer [REDACTED] said that based on the Respondent's statements and other statements, he placed the Respondent in custody and transported him to the APD.

On cross-examination, Officer [REDACTED] testified that he interviewed the three females for about 10-15 minutes and then went to the home of the Respondent. He said that he did not conduct any field sobriety tests of the Respondent. Officer [REDACTED] said that he did pat the Respondent down for a weapon and he did not have one. He did not inventory the service revolver of the Respondent. He said the case against the Respondent was ultimately SOL'd (stricken with leave to reinstate) as the witnesses did not appear at the court case.

On redirect examination, Officer ██████ testified that he is not required to conduct a field sobriety test in order to determine if an individual has blood shot eyes, has glassy eyes or has the odor of alcohol on his breath. Officer ██████ said the Respondent told him that he had approximately four beers at the Dakota Inn before the incident.

██████ Investigator, OPR (Investigator ██████ testified that she had been employed with OPR since 2004. She testified she had been with the Cook County Department of Corrections (CCDOC) for approximately 9 ½ years before transferring to OPR. Investigator ██████ testified that she was the investigator whom was assigned the case against the Respondent. Investigator ██████ testified that her investigation was initiated off of an APD arrest report that. She said in preparing for the investigation she reviewed the APD report, the Sheriff's orders, the rules and regulations of the Merit Board, a printout and a document from the Firearms Training Academy.

Investigator ██████ testified she interviewed the Respondent and this interview was recorded (Exhibit 4). She said the interview was preceded by the Respondent executing a series of documents which included, a Notification of Allegations that stated, "You were arrested by the Alsip Police Department on October 12, 2014, for aggravated assault with the use of a deadly weapon;" a Cook County Sheriff's Office, Office of Professional Review, Administrative Proceedings Rights; and a Waiver of Legal Counsel/Union Representation or Request to Secure Legal Counsel/Union Representation, all were signed by the Respondent and witnessed by Investigator ██████ (Exhibit 5). The Respondent was represented by counsel during the interview.

The interview of the Respondent was played (Exhibit 4) in which the Respondent said in summary, in response to questions from OPR:

The Respondent said he was arrested by the APD for aggravated battery on October 12, 2014. He said there were three females involved in the incident besides himself. He had a weapon on his person at the time of the incident which was a Smith and Wesson, .357 revolver, his duty weapon. He had qualified with that specific weapon. The Respondent said he was coming from a night club, the Dakota Inn, at the time of the incident. He had consumed beer at the Dakota Inn. He said that he had about six beers. The Respondent said he left the Dakota Inn at approximately 1:45 am. He drove down Pulaski and he turned on 117th street when he heard something hit his vehicle, he was unsure what it was. He said he stopped his vehicle and his weapon in his hand and he said there were three females standing next to his car. He confronted the three females and asked them why they hit his car, they denied hitting his car and he said fine and left. He said when he was at the Dakota Inn his weapon was inside his car in the arm rest. He said there was no lock on the weapon nor was it in a case. He exited his vehicle to see what hit his car. He said he had his weapon in his hand for self-defense as this was a bad part of the neighborhood. He said he held his weapon in his right hand, hanging at his side, and pointed down. He did not point his weapon at any of the females. He said that he did not know any of the females. He gave the APD a statement. He denied being friends with the female's family but acknowledged that his wife was. He said one of the females said I know you, you are a deputy sheriff. Which was when he left. He said no one was in the vehicle with him. He said he was defending himself he meant because it was in a bad neighborhood. He said he did not call the police because it was a "spur of the moment thing." He said after returning to his vehicle he drove home. When he arrived at home, he went inside, he secured his

weapon, went outside and had a cigarette. He said shortly thereafter an APD squad arrived at his home and asked him if he had just had an incident with the "girls." He described what happen and then he was placed under arrest. He was not charged with DUI. He said the case was dismissed because the complainants did not show up for court. He had no contact with the complainants or their parents. He was asked if he was familiar with the Sheriff's general order regarding carry a firearm when consuming alcohol, he said, "now I am." He was asked if he was familiar with the general order regarding the securing of his weapon, he said "now I am." He was asked how long after finishing his last beer was it before he encountered the three females. He said approximately five or ten minutes. He was asked if it was five or ten minutes from the time he consumed his sixth beer that he encountered the females. He said, "yeah." He was asked if the consuming of alcohol clouded his decision regarding not calling the police when this incident happen. He said "it may have." He was asked if the consuming of alcohol clouded his decision in getting out of his car with his weapon. He said, "no." He got out of his car with his weapon because his vehicle was struck. He said there was no one in the vicinity with a weapon but he felt threatened. He said that he felt his life was being threatened because of the neighborhood he was in. He was asked if his alcohol consumption clouded his decision on why he did not keep driving. He said, "it might have." He declined to add anything after responding to the questions he was asked.

After the interview was played, Investigator [REDACTED] identified copies of Sheriff's General Order 11.2.20.0, Rules of Conduct; Article X of the Cook County Sheriff's Merit Board; and Sheriff's Order 09-1, Securing Department Authorized Firearms (all marked as Exhibit 1). Investigator [REDACTED] said the Respondent had his duty weapon with him on October 12, 2014, the night of the incident, and he violated the provisions of Sheriff's Order 09-1, in that he left his duty weapon unsecured in the armrest of his vehicle. She testified that the Respondent was in violation of Sheriff's General Order 11.2.20.0, by his behavior on October 12, 2014. This was based on the Respondent consuming alcoholic beverages while having his duty weapon with him. He was also in violation of this order in that, "CCSO employees shall not use, display, or handle any weapon in a careless, negligent or unlawful manner, which she concluded, based on her investigation, the Respondent was.

On cross-examination, Investigator [REDACTED] testified that she was not on the scene of the incident on October 12, 2014, she was not at the home of the Respondent, she was not as APD, nor did she interview Officer [REDACTED]. She did not attend the court hearings involving the Respondent but was aware the case had been SOL. She did not interview [REDACTED], [REDACTED] or [REDACTED] as part of the investigation. She did interview the Respondent (Exhibit 4).

Investigator [REDACTED] was excused as a witness and the Respondent was permitted to call a witness before the Sheriff rested as the witness had a conflict that required him to leave early.

The Respondent called [REDACTED] Deputy Sheriff, CCSO (Deputy [REDACTED]). Deputy [REDACTED] testified that he had been with the CCSO for approximately 21 years and had known the Respondent for 20 years. He said the Respondent was a friend. Deputy [REDACTED] said the Respondent was his FTO, while in Central Warrants, and they rode in a car together for a year. He believed the Respondent was exceptional, a good employee and had a good reputation. Deputy [REDACTED] had no knowledge of the incident that brought him to testify in the hearing. His opinion was that if the Respondent were reinstated he could work with him and believed the other deputies would accept the Respondent too.

On cross-examination, Deputy ██████ said that he was not present for the incident nor had he spoke to the Respondent about it. He said that he was called by the Respondent to testify at this hearing and this was the only time he had ever been called as a character witness for the Respondent.

The Sheriff continued its case and rested. The Respondent requested that mention of the Respondent's arrest for aggravated assault and his use of his weapon be excluded from the record based on the case being SOL and his record being ultimately expunged. The Board denied this motion as the Respondent's conduct with his duty weapon was the underlying basis for this matter as to the rules and regulations of the Board and his possible violations of the requisite Sheriff's orders and was not based on the criminal action attached to it.

The Respondent opened its case by calling the Respondent. He testified that he had been with the CCSO for 22 years and was currently suspended from duty without pay. The Respondent testified that early in the evening of October 11, 2014, he was off duty and bowling. He said that he did not have his duty weapon with him at this time. The Respondent said that he was driving home from bowling when he received a call from the bartender of the Sportsman's Club who said there were some suspicious people on the premises of the club. The Respondent said he was a member of the club and he decided to conduct a premises check. He went home first to retrieve his weapon. He said when he arrived at the Sportsman's Club it was already closed and locked up. The Respondent decided to stop at the Dakota Inn. He secured his weapon in the armrest of the vehicle before entering the Dakota Inn. The Respondent testified that he had six beers at the Dakota Inn and departed about 1:45 am. He said he was not intoxicated or impaired in any way. The Respondent testified the Dakota Inn was close to his house and he could have walked home. He drove home.

The Respondent testified that he turned on his street and something struck his car. He stopped his vehicle and got out with his weapon in his hand. The Respondent said he had his weapon in his hand because that part of his neighborhood was "not really safe and just in case." He said his weapon was in his right hand, at his side, pointing downward. He denied pointing his weapon at anyone. He did not wave his gun at anyone. The Respondent said he held his weapon in that manner, "In case something did happen I would be ready."

The Respondent said when he got out of his car he saw three females. He testified that he had a small conversation with them and asked them why they hit his car. He said one of the females said you almost hit us. The Respondent said that he did not and walked back to his car. He did not notice any damage to his vehicle. The Respondent testified that he did not threaten the females. He said he got in his car, drove home, secured his weapon and then went outside and sat in his carport to smoke a cigarette.

The Respondent testified that while outside he was approached by an APD officer. The officer asked him if was involved in an incident. The Respondent said he responded to the APD officer, "Are you talking about the three women down the street?" The police officer confirmed to him he was. The Respondent said he gave a brief statement to the APD officer as to what happened and he was arrested and transported to the APD. The Respondent testified he was at the APD for about five hours and someone from the CCSO came to APD and relieved him of his credentials. He said that he posted bond and was released.

The Respondent testified that he made notification to the Department right after the incident happened. He later appeared in court on the matter and it was placed on SOL as the victims did not show up to court. He testified his record was expunged on April 7, 2016 (R-

Exhibit 1). He received a letter from APD, dated June 9, 2016, addressed to his wife, for him, stating the APD record had been expunged (R-Exhibit 2). He testified the statement he gave to OPR was consistent with the statement he provided to APD.

The Respondent testified that he was not totally aware that he was violating Sheriff's orders by leaving his weapon his vehicle when he went in the Dakota Inn. He said that he had a "couple of drinks" on October 12, 2014, but he was not intoxicated or impaired. He said that he wears dentures and sometimes they slip which causes his words to slur.

On cross-examination, the Respondent said he had been a Deputy Sheriff for approximately 22 years, which was 20 years on the date of the incident. He did attend the training academy and learned about properly securing his duty weapon. He testified that he did not learn from the training academy that he was not allowed to maintain his weapon in his vehicle when he was not with it. He said that he was not aware the Sheriff's general orders prohibited from leaving his weapon in his vehicle on the date of the incident.

The Respondent said that he last qualified with his service weapon on July 28, 2014, and as part of that qualification he had a firearms inspection and received training related to firearms. The Respondent identified a Firearms Qualification Form, dated July 28, 2014, as being the form he signed and representing his qualification (Exhibit 6). The Respondent testified that he signed the form and understood it, to include understanding the statement, "I understand that my duty weapon/alternate weapon must be stored and secured at home when it is not on my person." He testified that he understood this statement at the time he signed it on July 28, 2014, but when asked if he forgot it between that date and the date of the incident, the Respondent said, "Can't remember everything."

The Respondent testified that when he was bowling that he did not consume any alcohol. He was in a league and had bowled for about three hours. He received the call from the bartender of the Sportsman's Club while driving home from the bowling alley. He did not notify his supervisor or the watch commander that he was going to the Sportsman's Club to check for suspicious activity. He had no radio with him. He said his intention was if he discovered any suspicious activity he was going to call APD. He did not report to his supervisors that he conducted the suspicious activity check nor did he prepare a to/from memorandum.

The Respondent said he stopped at the Dakota Inn which was about seven blocks from his house. He said there was nothing to prohibit him from driving home and securing his weapon at home before he went to the Dakota Inn. The Respondent said he parked his car in front of the Dakota Inn and could see it from where he was sitting. He said that he was at the Dakota Inn around "12ish" (midnight) but did not look at his watch. He said that he had approximately six beers, when asked if it could have been more he said no. He said it could have been less. He said he was not intoxicated. He testified that he left at about 1:45 am.

The Respondent testified that he made a turn on his street from Pulaski and he heard something hit his car. He stopped immediately and got out of his car. He said that part of his neighborhood was not really safe. He said that he did not live in a bad neighborhood but that part of his street he had witnessed drug dealing going on before. He said that he called the police a couple of time regarding witnessing the drug dealing. He said that he had lived in the neighborhood 11 years. He testified that when he got out of his car he brought his gun "just in case." He said that he stopped three to five feet from the three females.

The Respondent testified that he was "freaked out" when he heard something hit his car. He said that he did not call the police as "I just acted on the spur of the moment kind of thing." The Respondent was asked if he agreed with the statement that he made on the audio recording (Exhibit 4) when he was asked by OPR if his alcohol consumption clouded his judgement not to call the police and he responded, "It may have." He remembered making the statement and said the "*pump of adrenaline, just, you know, just clouds your thinking sometimes.*" He was asked, setting aside the adrenaline did he believe the alcohol clouded his judgment. The Respondent said, "*It might have.*" He was asked if remembered responding to the OPR investigator's question, "*Do you think the alcohol, again, would have clouded your decision not to keep driving?*" To which he answered, "*It might have.*" The Respondent testified, "*It might have.*"

The Respondent testified that he did not recognize any of the three females the night of the incident. He maintained that he kept his gun at his side and did not point it at anyone's face. He was surprised when one of the females said he was a deputy sheriff as he did not recognize any of them. He was surprised they knew his name was Walter.

The Respondent said when he arrived home, he secured his weapon in a lock box, in his bedroom closet. The Respondent said he has a one-story home. He said when he got home he texted his watch commander and reported that he was involved in an incident where he had his weapon out. The Respondent testified that he could not remember if he received a response from his watch commander.

On redirect examination, the Respondent testified that he had been a police officer for 22 years and it was not unusual for people he knew to contact him when they have an issue. He testified that he did not count how many beers he had while at the Dakota Inn but he would have known if he were intoxicated. He said he would not knowingly get in a car and drive were he intoxicated.

The Respondent introduced a stipulated affidavit from [REDACTED], Director, Financial Control, Civil Process Unit, CCSO (R-Exhibit 3). Director [REDACTED] said that the Respondent was a model employee and an asset to the unit. Director [REDACTED] said he had no knowledge regarding the incident involving the Respondent.

The Respondent rested and both parties delivered their closings.

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the audio tape recording of the Respondent's October 20, 2015, interview with OPR (Exhibit 4); and the supporting evidence that the Respondent left his service weapon unattended in his vehicle, while he was in a bar consuming at least six beers, that he drove his vehicle immediately after consuming the six beers; had an encounter with three females in which he pointed his weapon at the females; and was less than credible in his testimony. The Respondent was a 20-year plus veteran of law enforcement who claimed to have a lack of knowledge regarding the Sheriff's orders regarding the consumption of alcohol with his weapon present; leaving the weapon unattended in his vehicle while consuming alcohol; and then driving a motor vehicle in addition to having a weapon present after the consumption of alcohol. The Respondent's claim of a lack of knowledge is unreasonable when considering the Respondent had 20 plus years of law enforcement training from the CCSO and attended consistent re-qualifications with his service weapon.

The Respondent's version of the events, which lacks credibility, regarding his encounter with the three females, in which he said that he exited his vehicle with his weapon in his right hand, by his side, pointed at the ground - and not in a holster or secured in some other fashion on his person - after consuming any alcohol is troubling, if it were believable. It begs the question as to why was his weapon out in the first place. The Board could only imagine what would have happened had he discharged his weapon during this event after his prior consumption of alcohol. The Respondent could have avoided the entire event had he just continued on home or if he had secured his weapon at home before going to the Dakota Inn and consuming alcohol.

The same could be said in the alternative, as testified to by witness [REDACTED] and also told to Officer [REDACTED], APD, by all three women, which the Board believes is an accurate accounting of what actually happened, where the Respondent pointed his weapon directly at the females, after he consumed at least six beers. This action by the Respondent is improper and not something any reasonable law enforcement officer should ever do. The Respondent admitted both to OPR and during cross-examination in the trial that his decision-making ability may have been impaired by his consumption of alcohol on the night of October 12, 2014. Again, had the Respondent either secured his weapon beforehand at home or continued driving home when the incident occurred, much of this situation could have been avoided.

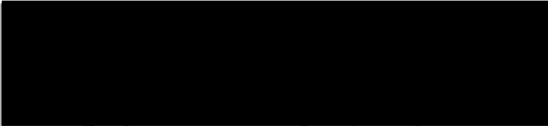
Conclusions of Law

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, the Board finds that Respondent Walter J. Malacina, Star Number 10455, Deputy Sheriff, CCSO, did violate Sheriffs Order 11.2.20.0, Sections II, III and VI, A1-2, B1-2 and 4, 6, D 17-18, and E1bii; Sheriff's Order 09-1, Sections II, IV, A-C, and VI; and Article X, Paragraph B1 and 3, of the Rules of the Cook County Sheriff's Merit Board.

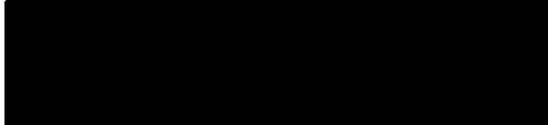
Wherefore, based on the foregoing, it is hereby ordered that the Respondent Walter J. Malacina, be and is separated from employment with the Cook County Sheriff's Office effective March 18, 2016.



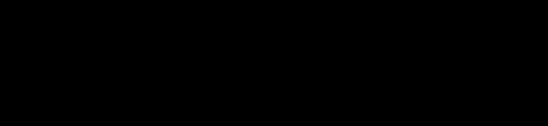
James P. Nally, Chairman



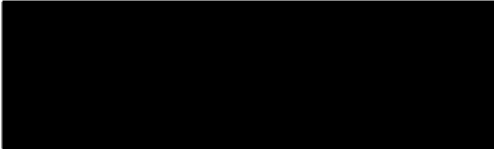
Byron Brazier, Vice Chairman



Gray Mateo Harris, Board Member



John J. Dalicandro, Secretary



Jennifer E. Sae, Board Member



Kim R. Widup, Board Member



Patrick Brady, Board Member



Vincent T. Winters, Board Member

Dated: October 20, 2016