

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

<b>IN THE MATTER OF CHARGES FILED AGAINST )</b>		
<b>POLICE OFFICER VERNAL TURNER, )</b>		<b>No. 11 PB 2760</b>
<b>STAR No. 14916, DEPARTMENT OF POLICE, )</b>		
<b>CITY OF CHICAGO, )</b>		
<b>RESPONDENT. )</b>		<b>(CR No. 1005286)</b>

**FINDINGS AND DECISION**

On August 30, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Vernal Turner, Star No. 14916 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 5: Failure to perform any duty.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 14: Making a false report, written or oral.
- Rule 21: Failure to report promptly to the Department any information concerning any crime or other unlawful action.

The Police Board caused a hearing on these charges against Police Officer Vernal Turner to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on January 30 and March 1, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision.

## POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent's Motion to Strike and Dismiss is **denied** for the reasons set forth below. The Respondent seeks to have the charges filed against him stricken and the case dismissed because of a failure by the Superintendent to bring the charges in a timely manner. The incident at issue came to light on April 28, 2007, when Austin Clark was arrested in the company of the Respondent. Charges were not filed until August 30, 2011. The Respondent argues that the delay in bringing the charges violates the Respondent's due process rights, is contrary to the doctrine of laches, and violates the Police Department's General Order 93-03.

a. Due Process. Citing *Morgan v Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1<sup>st</sup> Dist 2007), and *Lyon v Department of Children and Family Services*, 209 Ill.2d 264, 807 NE2d 423 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the

*investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. The difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, and then have them sit for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the Respondent was working and was being paid during the entire period of the investigation and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until September 2, 2011, three days after the charges against him were filed, and therefore the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v The Department of Children and Family Services*, 239 Ill.App.3d 325 (5<sup>th</sup> Dist. 1992). *Stull* involved a teacher

accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’ investigation of the case. The court held that due process was violated by the more than one year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see 239 Ill.App.3d at 335*, thus triggering the kind of deprivation that is not present in Officer Turner’s case. *Cavaretta v Department of Children and Family Services*, 277 Ill.App.3d 16 (2<sup>nd</sup> Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the ability to work.<sup>1</sup>

b. Laches. Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. The Respondent cites *People v McClure*, 218 Ill.2d 375, 843 NE2d 308 (2006), where the Illinois Supreme Court declined to apply laches

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<sup>1</sup> The Circuit Court also cited *Cleveland Board of Education v Loudermill*, 470 U.S. 532 (1985) but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

against a DUI defendant who waited a year to challenge the statutory summary suspension of his driving privileges. The court found no evidence of prejudice stemming from the delay in filing his petition.

Here, the Respondent argues that the delay in bringing the charges resulted in prejudice to him in losing his employment and in hampering his ability to locate counter evidence years after the fact to defend against the charges. His only specific allegations of prejudice are that the on-duty officers called to the scene of Mr. Clark's arrest were not interviewed until a year after the arrest and the Respondent was not interviewed by IAD until February of 2010. Respondent, however, does not offer any explanation as to how the delay in these interviews prejudiced him at the hearing.

Private parties and public agencies are not on an equal footing when it comes to application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under "compelling" or "extraordinary" circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1<sup>st</sup> Dist. 1992).

The Respondent here has failed to establish that the delay in bringing charges prejudiced him, and has failed to articulate any compelling or extraordinary circumstances to justify dismissing this case on the grounds of laches.

c. General Order 93-03. The Respondent argues that the Police Department's own General Order requires a prompt and thorough investigation, and that the Department failed to fully comply with the provisions of this General Order.

In fact, the General Order does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Here, the investigator regularly did seek, and was granted, extensions of time, in compliance with the General Order. In addition, once the investigator has completed the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

There was no substantial violation of the General Order in this case, and there are no grounds to dismiss the charges based on a failure to follow the General Order.

5. The Superintendent's motion to withdraw the charges that the Respondent violated Rule 2 (Count IV) and Rule 6 (Count I) by failing to secure his firearm in a Department-approved holster is **granted**.

6. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: On or about April 28, 2007, he knowingly participated in a debit card theft scheme by driving an individual to various stores where stolen debit cards were used to purchase merchandise and/or obtain cash, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Respondent maintains that he was unaware of the criminal scheme being conducted by Michael Cargile and Austin Clark, including Clark's actions on April 28, 2007, the day of his

arrest. The Board, however, finds that Officer Turner was fully aware of the criminal scheme and participated in it on April 28, 2007, as well as on earlier occasions, by driving Clark to various stores so that Clark could use the stolen debit cards to unlawfully secure funds. The Board relies upon the credible testimony of both Cargile and Clark, who clearly described Officer Turner's knowledge and involvement. In addition, the Board notes that Officer Turner's phone records show numerous conversations between Officer Turner and Messrs. Cargile and Clark, from January 1, 2007 through April 28, 2007, including during the early morning hours of April 28, 2007. These records belie Officer Turner's testimony that he did not know what Messrs. Cargile and Clark were doing. Further, the Board finds Officer Turner's testimony that he ran into Mr. Clark unexpectedly at the Margate Park field house to be entirely incredible. The debit card receipts show that Mr. Clark was at 7510 North Western Avenue, using stolen debit cards, at 6:57 a.m., and at the 5625 North Ridge Avenue Walgreen's, using the cards, at 7:11 a.m. (where the evidence shows he was with Officer Turner). It is unreasonable to conclude that Mr. Clark, without a car of his own, was able to travel from the northern limits of the City to Margate Park, run into Turner (unexpectedly), and then arrive at the Walgreen's (with Turner) in such a short period of time.

7. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about April 28, 2007, at approximately 1430 hours in the 023<sup>rd</sup> District station, he made one or more false statements to detectives investigating the criminal

activities of Austin Clark and/or Michael Cargile, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The credible testimony of Detective Katherine Simpson shows that Officer Turner told Detective Simpson that he took Mr. Clark only to the Jewel store on Broadway and to one other store that morning, that he did not know if Mr. Clark had a phone, and that Clark never called him. Based on the credible testimony of Messrs. Cargile and Clark, as well as Officer Turner's telephone records, the Board finds that these statements, as well as others Turner made to Simpson, were intentionally false.

8. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: On or about May 20, 2006, he queried the name of Michael Cargile in the LEADS system for no official law enforcement purpose, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The evidence shows that on May 20, 2006, someone using Officer Turner's ID queried Mr. Cargile's name on the Department's LEADS system. Officer Turner testified that he did not recall making this query, and that perhaps one of his partners did so using his ID. Based on the record as a whole, the false statements Officer Turner made to the detectives, and the false testimony Officer Turner provided in this case, the Board does not credit Officer Turner's suggestion, and finds, based on the LEADS records, that there is sufficient evidence to prove that Officer Turner improperly queried Mr. Cargile's name and records.



9. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count V: On or about April 28, 2007, he had a duty to prevent and/or report the use of stolen debit cards by Austin Clark and/or Michael Cargile, and he failed to do so, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

10. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 5: Failure to perform any duty,

in that:

On or about April 28, 2007, he had a duty to prevent the improper use of stolen debit cards by Austin Clark and/or Michael Cargile, and he failed to do so.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

11. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

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Count II: On or about May 20, 2006, he queried the name of Michael Cargile in the LEADS system in violation of General Order 98-07-04A, Section VII-A-2.

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

12. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

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

in that:

Count I: On or about April 28, 2007, at approximately 1430 hours in the 023<sup>rd</sup> District station, he made a false statement to Detectives Katherine Simpson and/or Thomas Flood when Turner stated that he may have stopped at one other store, other than the Jewel store where Austin Clark was arrested, when Turner actually drove and/or accompanied Clark to several stores that day.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

13. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

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

in that:

Count II: On or about April 28, 2007, at approximately 1430 hours in the 023<sup>rd</sup> District station, he made a false statement to Detectives Katherine Simpson and/or Thomas Flood when Turner stated that he didn't know if Austin Clark had a phone, when Turner actually was in telephone contact with Clark numerous times between January and April of 2007.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

14. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

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

in that:

Count III: On or about April 28, 2007, at approximately 1430 hours in the 023<sup>rd</sup> District station, he made a false statement to Detectives Katherine Simpson and/or Thomas Flood when Turner stated that Austin Clark had never called him, when in fact Clark contacted Turner numerous times, including that day.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

15. The Respondent, Police Officer Vernal Turner, Star No. 14916, charged herein, is **guilty** of violating, to wit:

Rule 21: Failure to report promptly to the Department any information concerning any crime or other unlawful action,

in that:

On or about April 28, 2007, he failed to report promptly to the Department any information concerning any criminal activities and/or unlawful actions of Austin Clark and/or Michael Cargile.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

16. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation. The Police Board determines that the Respondent must be discharged from his position due to the serious nature of the conduct of which it has found him guilty. The Respondent knowingly participated in a debit-card theft

scheme, and then he lied to detectives in an effort to cover up his actions. The Respondent exhibited a significant lack of integrity, honesty, and trustworthiness, and his conduct is incompatible with continued service as a police officer.

The Board finds that the Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for him to no longer occupy his office.

**BY REASON OF THE FINDINGS** set forth herein, cause exists for the discharge of the Respondent, Police Officer Vernal Turner, Star No. 14916, from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

**POLICE BOARD DECISION**

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

**IT IS HEREBY ORDERED** that the Respondent, Police Officer Vernal Turner, Star No. 14916, as a result of having been found **guilty** of charges in Police Board Case No. 11 PB 2760, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19<sup>th</sup> DAY OF APRIL, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni  
Executive Director  
Police Board

**DISSENT**

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

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THE FOREGOING COMMUNICATION

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
SUPERINTENDENT OF POLICE

Report Date: 29 Aug 2011  
Report Time: 1253 Hrs

Information Services Division  
Data Warehouse  
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# Chicago Police Department

## Personnel Division

*\*Only for active personnel*



### Complimentary History

Name	Title	Star	Unit	Detail Unit	Emp Number
TURNER, VERNAL	9161	14916	018	376	

### Achievements

### Total No.

HONORABLE MENTION
2004 CRIME REDUCTION RIBBON
PRESIDENTIAL ELECTION DEPLOYMENT AWARD 2008
2009 CRIME REDUCTION AWARD
OTHER AWARDS
COMPLIMENTARY LETTER
TOTAL AWARDS

16  
1  
1  
1  
1  
2  
22

CR# 1005286



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Police Board Case No. 11 PB 2760  
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 Findings and Decision

30-AUG-2011 08:39:59 AM

CHICAGO POLICE DEPARTMENT  
 Sustained Complaints History Report

IADR118

<u>Social Sec. #</u>	<u>Name</u>	<u>Star #</u>	<u>Emp. #</u>	<u>Rank</u>	<u>Description</u>	<u>Unit</u>
[REDACTED]	TURNER VERNAL	14916	[REDACTED]	9161	POLICE OFFICER	376
<u>Sex</u>	<u>Race</u>	<u>Birth Date</u>	<u>Appointed Date</u>	<u>No. Of CR's</u>	<u>No. Of SPAR's</u>	
M	BLACK	[REDACTED]	02-AUG-1989	0	0	

FOR USE WITH POLICE BOARD #11-2760