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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BRENT McCOY et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B288165 (c/w B288166, B288167) (Los Angeles County Super. Ct. Nos. BS166003, BS166004, BS166005)

APPEALS from judgments of the Superior Court of Los Angeles County. Amy D. Hogue, Judge. Affirmed.

Rains Lucia Stern St. Phalle & Silver and Christopher D. Nissen for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Paul L. Winnemore, Deputy City Attorney, for Defendants and Respondents.

Appellants Brent McCoy (McCoy), Julio Cortez (Cortez), and Joshua Tornek (Tornek) (collectively appellants) are former officers of the Los Angeles Police Department (LAPD). They appeal from the denial of their petitions for administrative writ of mandate, under Code of Civil Procedure section 1094.5, in which they sought to overturn the termination of their employment. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Underlying Incident

On October 16, 2014, appellants and Cortez's partner, Officer Richard Garcia (Garcia), were at a community outreach event when they heard and responded to a request from Detective Steve Razo for assistance stopping an individual on a bicycle fitting the description of a robbery suspect. When partners McCoy and Tornek saw the suspect, McCoy pulled over their marked police vehicle and Tornek exited. The suspect failed to heed Tornek's order to stop, dismounted the bicycle, threw it at Tornek, and started running. A foot pursuit ensued.

At various times during the pursuit, the suspect was seen reaching toward his waistband and sock/shoe area. Eventually the suspect stopped between two parked cars and discarded contraband. He emerged and ran into the middle of the street. While avoiding a baton strike from Cortez, the suspect lost his balance and fell to the ground.

Cortez and McCoy applied their body weight on top of the suspect, but they struggled to gain control of his arms. Garcia arrived at the scene and kicked the suspect's left shoulder or clavicle area. Garcia placed his knee on the suspect's back, punched his head once, and administered three elbow strikes to

his head. Garcia also administered several knee strikes after the suspect was handcuffed.[1]

The suspect was eventually placed in a police vehicle and, after complaining of shortness of breath, transported by ambulance to the hospital.

II. Use of Force Investigation

LAPD's Force Investigation Division (FID) assumed responsibility from Internal Affairs for the administrative investigation into the use of force incident approximately one week after it occurred. After another week, FID took over the entire investigation, including the criminal component. Detective Gregory McKnight oversaw the FID investigation and interviewed appellants nearly three weeks after the incident.[2]

A. *McCoy's interview*

Detective McKnight interviewed McCoy on November 4, 2014.

According to McCoy, at around Noon on October 16, 2014, he heard the broadcast requesting a stop of a possible robbery suspect. Because McCoy, Tornek, Cortez, and Garcia were very close to the suspect's reported location, they responded to the request. McCoy drove, with Tornek in the passenger seat.

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[1] Garcia was later criminally charged with assault by a public officer based on this incident.

[2] Detective McKnight agreed that nearly three weeks was "an unusually long period of time[.]" Typically, Detective McKnight would interview involved officers as soon as possible after the incident being investigated, "usually try[ing] to get to them that evening[,]" in order to obtain "the best of their recollection."

When they saw the suspect, McCoy bypassed him, pulled over, and activated his lights. Tornek exited the car and made contact with the suspect. As the suspect attempted to pedal away, Tornek grabbed the rack on the rear of the bicycle. The suspect then got off and threw the bicycle at Tornek. McCoy thought that the suspect might be armed. McCoy and Tornek began to pursue the suspect on foot. McCoy saw the suspect dip behind a car and reach for something in his shoe area.

Cortez appeared in the street and yelled for the suspect to get on the ground. McCoy saw Cortez with his baton and the suspect on the ground. Cortez jumped on the suspect's left side, while McCoy jumped on his right side. To handcuff the suspect, McCoy attempted to get the suspect's right arm behind his back. Cortez attempted to control the suspect's left arm. McCoy was "not particularly watching that side [be]cause [he was] fighting [his] own fight."

McCoy and Cortez eventually gained control of the suspect's hands. They were unable to put his hands together, however, because the suspect was in a "rigid plank" position. At that point, Garcia began to "deliver[] force." McCoy was "not sure if [Garcia] used a palm strike, a punch, [or] an elbow. He used some kind of force." Each time Garcia used force, the suspect's arms moved closer together until McCoy and Cortez were able to handcuff him.

Although the suspect had been handcuffed, he had not yet been searched and "might still have a gun possibly." The suspect began to reach for the back of his pants. McCoy did not "remember if it was a knee or an elbow, but [Garcia] delivered some kind of force and the [suspect] stopped reaching in the waistband."

Garcia "contain[ed]" the suspect as Tornek and Cortez recovered evidence. Garcia asked McCoy for help to lift the suspect. Because the suspect was uncooperative, Garcia and McCoy "kind of drag[ged] him to the back of the car." They put the suspect in a police car, where he was interviewed by a detective. The officers came to a consensus to call an ambulance even though the suspect did not request one and did not appear to be in pain.

McCoy surmised that surveillance cameras must have captured the incident. He told Garcia to record a video of the footage on his phone to assist them when they wrote their report. McCoy later viewed that video briefly and saw Garcia kick the suspect. He did not, however, have an independent recollection of Garcia administering the kick.

McCoy stated that he did not see Garcia deliver any force but could feel his blows. McCoy was focused on his own "fight" and "not watching to see."

B. *Cortez's interview*

Cortez was interviewed on November 4, 2014.

According to Cortez, he and his partner, Garcia, along with Tornek and McCoy, responded to Detective Razo's request to detain a possible robbery suspect. Garcia drove and, from the vehicle, Cortez saw McCoy and Tornek chasing the suspect on foot. Cortez observed the suspect run between cars several times and reach into his waistband and shoe area.

Cortez started chasing the suspect on foot along with Tornek and McCoy. He saw the suspect duck between two cars and discard something that he believed to be narcotics. He ordered the suspect, "[L]et me see your hands. Stop running." He tried to strike the suspect's thigh with his baton but missed.

In attempting to avoid the baton strike, the suspect fell to the ground.

McCoy placed his body weight on the suspect's shoulder and upper back area, gaining control of his right hand. Cortez placed his knee on the suspect's lower back and ordered the suspect to give him his left arm. After Cortez and McCoy put their body weight on him, the suspect "start[ed] yelling, pigs, and F-U guys[.]" Cortez repeatedly told the suspect to stop resisting.

Cortez saw Garcia running toward them and "from the corner of [his] eye" saw Garcia kick the suspect in the clavicle or left shoulder. Cortez was able to grab the suspect's left arm, which had been loosened by the kick. McCoy had gained control of the suspect's right arm, allowing Cortez to handcuff his right wrist. Cortez bent the suspect's left elbow and handcuffed that wrist as well. Cortez was "just looking at the [suspect's] arms" and could not see "anything above . . . the suspect's shoulders."

Detective McKnight asked Cortez whether, while he was attempting to handcuff the suspect, he saw "Garcia[] administering any type of elbow strikes or punching the suspect or anything of that nature[.]" Cortez answered, "No, not from the angle I was in. I couldn't—I didn't see any of that."

Cortez got up and retrieved the narcotics. He also went to a nearby business to obtain surveillance footage. He viewed the footage, which Garcia recorded on his phone. By the time Cortez exited the business, the suspect was already in the back of a police car. The suspect's "only complaint was . . . that he had asthma." Cortez observed "a little bit of blood" on the suspect's earlobe.

C. *Tornek's interview*

Tornek's interview took place on November 5, 2014.

According to Tornek, appellants were at a community outreach event when they heard a radio broadcast requesting a pedestrian stop of a possible robbery suspect. Tornek answered, stating that he and his partner, McCoy, would respond along with Cortez and his partner, Garcia.

When Tornek and McCoy saw the suspect, McCoy pulled over and Tornek exited the police car. Tornek ordered the suspect to stop and put his hands behind his head. The suspect looked directly at Tornek and said a few unintelligible words. Concluding that the suspect did not intend to stop, Tornek reached out to grab the bicycle to prevent him from fleeing. The suspect dismounted, threw the bicycle at Tornek, and ran away.

Tornek and McCoy began to pursue the suspect on foot. At one point, Tornek observed the suspect make a motion toward the pockets on his shorts. At another time, Tornek saw the suspect crouch between two parked cars and extend his hand toward his shoes. Tornek thought that the suspect might be reaching for a weapon or narcotics.

From his peripheral vision, Tornek saw McCoy and Cortez also pursuing the suspect on foot. Tornek again saw the suspect crouch down and make a motion toward his shoe area. As the suspect emerged from between two cars, Tornek observed that he, McCoy, and Cortez had "triangulated" the suspect. Tornek was "extremely concerned" because he had previously seen the suspect reach toward his pockets and feet and "did not know if he was intending to arm himself." Tornek unholstered his gun and pointed it at the suspect.

At the same time, Cortez ordered the suspect to get down and swung his baton at him. In moving to avoid the baton strike, the suspect stumbled and fell to the ground. Recognizing "the

potential for a cross-fire situation[,]" Tornek reholstered his weapon.

Cortez applied his body weight to the suspect's left side, while McCoy applied his weight to the right. As Tornek was looking at the suspect's back and legs, Tornek "realized that a struggle was beginning . . . ." From his "peripheral vision[,]" Tornek saw "Garcia come and immediately get down into some kind of body weight position towards the front of the suspect . . . ." Tornek did not know if Garcia had gotten out of his car or came running, as he "was entirely focused on the" actions of the suspect, McCoy, and Cortez. Tornek denied seeing Garcia kick the suspect or "a specific strike from any one of the officers."

Because he saw that the suspect "was contained" by the three other officers, Tornek returned to the area from which the suspect had previously emerged to look for evidence. After Cortez recovered what appeared to be rock cocaine, Tornek "became aware" that Garcia had his body weight on the handcuffed suspect and appeared to be searching his waistband area. Tornek went over to assist and used his foot, in a sweeping motion, to separate the suspect's feet. To prevent his escape, Tornek applied his "body weight on top of the suspect's ankles." Tornek eventually repositioned himself so that he was "holding a very minimal amount of [his] body weight against the bottom of [the suspect's] shoe without being on top of it." Tornek resumed looking for contraband once Cortez returned.

Once the suspect was seated in the police car, he told Tornek that he had asthma. Tornek requested an ambulance and accompanied the suspect to the hospital. Tornek later saw the video of the incident at the police station.

III. Misconduct Charges

The findings of the investigation were presented to the LAPD's Use of Force Review Board, which recommended, in relevant part, that Cortez receive a tactical debrief for his tactics and that his use of force be classified as within policy; that McCoy receive an administrative disapproval for his tactics and that his use of force be classified as within policy; and that Tornek receive a tactical debrief for his tactics, that the drawing and exhibiting of his firearm be classified as within policy, and that his use of force be classified as out of policy with an administrative disapproval.

Chief of Police Charles Beck (Chief Beck) conducted his own review and, except for an amendment that Tornek's tactics receive administrative disapproval, adopted the Use of Force Review Board's recommendations regarding appellants. He submitted his findings and analysis of the use of force incident to the Board of Police Commissioners, which adopted all of his findings.

As a result of the administrative disapproval findings against Tornek and McCoy, Chief Beck concluded that personnel complaints should be initiated to address their performance. The record before us is silent regarding the decision to initiate a personnel complaint against Cortez, but formal written complaints, verified by Chief Beck, eventually issued against him as well as Tornek and McCoy.[3]

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[3] The record on appeal is missing several documents that would have been helpful to understand the administrative procedural history, such as the formal written complaints. The counts brought against appellants were read on the record at the

Appellants were each charged with "fail[ing] to take appropriate action when [they] became aware that . . . Garcia inappropriately used force" and "ma[king] false statements to Detective McKnight during a use of force investigation." McCoy was also charged with "utiliz[ing] tactics that substantially deviated from approved department tactical training" and "lift[ing] [the suspect] in a manner that was inconsistent with department training." Tornek was additionally charged with "utiliz[ing] tactics that substantially deviated from approved department tactical training" and being involved in a use of force outside of policy.

IV. Board of Rights Hearing

A Board of Rights convened to adjudicate the charges, to which appellants pled not guilty.[4]

A. *Surveillance video*

During the hearing, immediately after opening statements, a surveillance video capturing the use of force incident was played. Appellants stipulated to its admission, without demanding that any further foundation be established.

Board of Rights hearing, which we summarize and rely upon here.

[4] "[A] 'Board of Rights' is an administrative tribunal charged under the Los Angeles City Charter . . . with the adjudication of charges of police officer misconduct. [Citation.] At the conclusion of a Board of Rights hearing, the board is required to make a finding of 'guilty' or 'not guilty' on each charge and to prescribe, for any positive finding of misconduct, a penalty from a specified range of disciplinary options including reprimand, suspension, demotion, and dismissal. [Citation.]" (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 317 (*Mays*).)

The video shows the suspect prone on the ground with Cortez and McCoy applying their body weight on top of him. Garcia runs up and immediately kicks the suspect in the clavicle area in view of Tornek, McCoy, and Cortez. Garcia proceeds to repeatedly elbow and knee the suspect in close proximity to and in view of McCoy and Cortez. The video does not show the suspect using any force against appellants or Garcia.

B. *Witnesses*

Following the video, the Board of Rights heard testimony from appellants; Detective McKnight; Detective Donald Walthers, the administrative detective for the use of force investigation; Sergeant Harry Markel, the officer in charge of the tactics training unit; and Sergeant Arthur Tom, the assistant officer in charge of the tactics training unit.

Relevant to this appeal, appellants each denied making false statements during the use of force investigation. Tornek denied seeing Garcia kick the suspect, testifying that he saw Garcia approach and "very quickly get down into a body weight position." McCoy also denied seeing Garcia kick the suspect and explained that he felt but did not see Garcia use force. Cortez stated that, from "the corner of [his] eye," he saw Garcia kick the suspect's left clavicle or shoulder area. Cortez did not believe that the kick was inappropriate or constituted excessive force.

Sergeant Tom testified about tunnel vision, where officers under stress will frequently focus on "what possibly could hurt them or hurt others[,]" thus limiting their actual field of view. According to Sergeant Tom, it is common for people to recollect events out of order or "differently than . . . what factually happened." Regarding responding to another officer's misconduct, Sergeant Tom explained that LAPD officers are

taught "that if they see things that are morally or ethically or department-wise incorrect, whether it be unauthorized use of force, that they're obligated to intervene as soon as they perceive it and understand what the situation is."

Sergeant Markel testified that "tunnel vision is common" and that, if an officer observes excessive force, "immediate intervention" is required.

Detective McKnight testified that he believed that appellants were truthful and cooperative during the interviews and that each tried to answer questions to the best of his ability. Detective McKnight stated, "I believe that these three officers were being honest with me. I sat across from them. I looked at their body language. I looked at how they answered questions. I looked at their responses." Detective McKnight "was shocked" and "surprised" when he learned that appellants were accused of making false statements to him. He explained, "that's not what I took from this, not at all."

Detective Walthers was present when appellants were interviewed by Detective McKnight. He testified that he believed that appellants told the truth to the best of their recollections during their interviews. According to Detective Walthers, appellants "were very open and candid" and did not hesitate to discuss "everything that they could remember, everything that they did."

C. *Findings*

The Board of Rights arrived at a unanimous decision, finding appellants guilty on all counts.

As to the charge that they failed to take appropriate action in response to Garcia's inappropriate use of force, the Board of Rights expressed its understanding "that there is no way an

individual officer can predict what another officer will do in any given instance. However, each officer must be cognizant of what is occurring around them." The Board of Rights relied on the surveillance video capturing the incident, which showed Tornek having "a clear and unobstructed view" of Garcia kicking the suspect. The video showed that McCoy was only "inches away" from Garcia and "had a clear view of" his actions. McCoy should have known that Garcia's use of force was inappropriate and intervened. Although Cortez admitted seeing Garcia kick the suspect, he stated that he did not see the other numerous strikes. The Board of Rights found that, being "within arm's length of" Garcia and having "a clear view of" his actions as shown on the video, Cortez had "a responsibility to stop" him.

As to making false statements during the use of force investigation, the Board of Rights concluded that appellants each had clear views of force utilized by Garcia that they falsely claimed not to have seen.

D. *Penalty*

The Board of Rights announced that it would recommend to the chief of police that appellants be removed from their positions as LAPD officers. It explained, "A basic requirement and expectation of a police officer is to testify truthfully under oath in court and to complete police reports attesting to their truthfulness. . . . [T]he mere fact that [appellants] were found guilty . . . would prevent [them] from carrying out the basic functions of a police officer."

Chief Beck concurred and terminated appellants' employment effective July 28, 2016.[5]

V. Mandate Proceedings

Appellants filed verified petitions for peremptory writ of mandate, pursuant to Code of Civil Procedure section 1094.5, naming as respondents the City of Los Angeles and Chief Beck (collectively respondents), asking the trial court to set aside the decisions to terminate their employment. The petitions only challenged the findings of guilt on the counts pertaining to failing to respond appropriately to Garcia's use of force and making false statements during the use of force investigation.[6]

The trial court held a joint hearing and, after oral argument, adopted its tentative order to deny the petitions.

Exercising its independent judgment, the trial court concluded that the weight of the evidence supported finding that appellants failed to take appropriate action in response to Garcia's use of force and made false statements during the investigation. The court found that the surveillance video "clearly" showed that Garcia used excessive force by kicking, slapping, elbowing, and kneeing the suspect, who did not appear to be "resist[ing] in a manner that inflicted harm on the officers or otherwise warranted such physical abuse." Appellants "took no steps to intervene or prevent Garcia from beating" the suspect.

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[5] Chief Beck had "the discretion to accept or reduce, but not to increase, any punishment recommended by the Board of Rights. [Citation.]" (*Mays*, *supra*, 43 Cal.4th at p. 317.)

[6] Although McCoy and Tornek were each found guilty of two additional counts, their writ petitions did not challenge those findings.

The court was "not persuaded" by appellants' claim not to have seen Garcia's actions, as all three "had a clear view of" Garcia's kick and "Cortez and McCoy remained right next to Garcia as he repeatedly hit and elbowed" the suspect. The court found that appellants' statements that they did not see particular acts of force were not credible.

The trial court noted the testimony of Detective McKnight and Detective Walthers regarding their belief that appellants did not make false statements during the investigation. The court discounted this evidence as failing to establish that appellants "were in fact truthful and fail[ing] to overcome the video evidence establishing [that appellants] each were in close proximity and had a clear view of Garcia's conduct."

VI. Consolidated Appeals

Appellants filed timely notices of appeal from the entries of judgment denying their petitions for writ of mandate. We granted the parties' joint motion to consolidate the appeals for all purposes.

DISCUSSION

Appellants argue, inter alia, that the misconduct findings against them are flawed because substantial evidence in their favor was disregarded while the Board of Rights overrelied on the poor-quality surveillance video. They also allege the violation of their right under the Public Safety Officers Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et seq.) to an administrative appeal from the final disciplinary act of termination. Finally, appellants contend that termination was an excessive penalty and constituted an abuse of discretion. Finding that these arguments lack merit or were forfeited, we affirm.

I. Substantial Evidence Supports the Trial Court's Findings of Misconduct.

"Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often over-looked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.]" (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660 (*Jessup Farms*).)

Here, substantial evidence supports the findings that appellants (1) failed to take appropriate action in response to Garcia's unreasonable use of force, and (2) made false statements during the use of force investigation.

A. *Standard of review*

Because a public employee has a fundamental vested interest in his employment, a trial court reviewing an administrative decision affecting that right must exercise its independent judgment. (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 902.) Although a trial court may ultimately "substitute its own findings" for those of the agency (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 818 (*Fukuda*)), "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Id.* at p. 817.)[7]

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[7] Without any citation to the record or legal authority, appellants contend that the trial court failed to exercise its independent judgment, instead serving as a "rubber-stamp[]" of

We review the trial court's decision for substantial evidence (*Fukuda*, *supra*, 20 Cal.4th at p. 824), which is "evidence that a rational trier of fact could find to be reasonable, credible, and of solid value. We view the evidence in the light most favorable to the judgment and accept as true all evidence tending to support the judgment, including all facts that reasonably can be deduced from the evidence." (*Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.) Inferences that are "the product of logic and reason" may constitute substantial evidence. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651 (*Roddenberry*).)

B. *Substantial evidence against Tornek*

The surveillance video shows that Tornek had an unobstructed and clear view when Garcia kicked the suspect, who was then in a prone position. A reasonable inference can be drawn from this evidence that Tornek saw the kick, perceived it to be an inappropriate use of force, and failed to intervene. It also reasonably follows that Tornek made false statements during his interview when he denied seeing Garcia kick the suspect. This constitutes substantial evidence supporting the findings of misconduct.

C. *Substantial evidence against McCoy*

The surveillance video shows that McCoy was the closest officer to Garcia—merely "inches away"—when Garcia kicked

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the Board of Rights. Appellants have forfeited this argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*) [assertion in appellant's brief deemed waived if not accompanied by reasoned argument or citations to authority].) Forfeiture aside, our review of the record satisfies us that the trial court understood and properly applied the correct standard of review.

and repeatedly struck the suspect, who was then in a prone position. A reasonable inference can be drawn from this evidence that McCoy saw Garcia's use of force, perceived it to be inappropriate, and failed to intervene. It also reasonably follows that McCoy made false statements during his interview when he stated that he could feel but not see Garcia kick or strike the suspect. This constitutes substantial evidence supporting the findings of misconduct.

D. *Substantial evidence against Cortez*

Cortez admitted that he saw Garcia kick the suspect, and the surveillance video shows that Cortez had an unobstructed and clear view when Garcia applied other force, including three elbow strikes. A reasonable inference can be drawn from this evidence that Cortez saw Garcia's use of force, perceived it to be inappropriate, and failed to intervene. It also reasonably follows that Cortez made false statements during his interview when he stated that, apart from the kick, he did not see Garcia's numerous strikes to the prone suspect. This constitutes substantial evidence supporting the findings of misconduct.

E. *Appellants' arguments*

Throughout their briefs, appellants essentially ask us to reweigh the evidence and second-guess the credibility determinations made by the Board of Rights and the trial court. The standard of review, however, bars us from doing so. We may not "reweigh the evidence in the same fashion that the trial court is required to exercise its independent judgment in reviewing the findings of the administrative agency." (*Guymon v. Board of Accountancy* (1976) 55 Cal.App.3d 1010, 1016.) Rather, credibility determinations are "the sole province of the trier of fact[]" (*As You Sow v. Conbraco Industries* (2005)

135 Cal.App.4th 431, 454), and the court's factual findings bind us "as long as they are supported by substantial evidence." (*Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 40 (*Deegan*).) As discussed above, the surveillance video and the reasonable inferences drawn from it satisfy the substantial evidence standard.

Appellants resist this conclusion by contending that the "grainy, low-quality surveillance footage" is insufficient to counter their sworn testimony regarding their perceptions of Garcia's use of force, as well as the testimony of Detectives McKnight and Walthers that appellants were truthful during the investigation. Having viewed the video, we do not find that it was of such poor quality as to render it inherently unreliable or that the inferences drawn from it by the trial court were unreasonable. To the contrary, the video qualifies as "evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value" and thus constitutes substantial evidence. (*Roddenberry*, *supra*, 44 Cal.App.4th at p. 651.) The court was therefore at liberty to assign more weight to the video than to general testimony about "tunnel vision" or to the opinion testimony regarding appellants' truthfulness. And, the court could properly discount the credibility of appellants. (See *Shields v. Shields* (1962) 200 Cal.App.2d 99, 101 ["The trier of fact is free to disbelieve even the uncontradicted testimony of a witness if there is any rational ground for doing so. [Citation.]"].)

Finally, appellants' argument that substantial evidence in their favor was disregarded is also unavailing. Under the substantial evidence standard, "[w]e do not review the evidence to see if there is substantial evidence to support the losing party's version of events[.]" (*Pope v. Babick* (2014) 229 Cal.App.4th 1238,

1245.) Instead, "we *only* look at the evidence offered in [the prevailing party's] favor and determine if it [was] sufficient." (*Ibid.*) Having found such evidence here, "it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted; see also *Jessup Farms*, *supra*, 33 Cal.3d at p. 660; *Smith v. Bull* (1958) 50 Cal.2d 294, 306.)

Accordingly, we conclude that the trial court's factual findings were supported by substantial evidence.

II. Appellants Forfeited Any Challenge to the Admissibility of the Surveillance Video.

To the extent that appellants challenge the admissibility of the surveillance video based on a lack of foundation or its poor quality, we reject their argument. Appellants not only failed to object to the admissibility of the video below but also expressly stipulated to its admission. Appellants "may not now be heard to complain, because 'when a party enters into a voluntary stipulation, he generally is precluded from taking an appeal claiming defects in the stipulation.' [Citations.]" (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1328 (*Seumanu*).)

We therefore agree with respondents that appellants forfeited any evidentiary challenge to the video. (See Evid. Code, § 353, subd. (a) [no reversal based on erroneous admission of evidence if not challenged below]; *Seumanu*, *supra*, 61 Cal.4th at p. 1328 [evidentiary challenge forfeited where party failed to object at trial and stipulated to some challenged evidence]; *Baskin v. Hughes Realty, Inc.* (2018) 25 Cal.App.5th 184, 197, fn. 6 ["[A]n appellant forfeits the right to attack error by

expressly or impliedly agreeing at trial to the procedure objected to on appeal. [Citation.]"].)

III. Appellants Forfeited Their POBRA Challenge.

Under POBRA, a public agency is prohibited from taking "punitive action" against a nonprobationary public safety officer "without providing . . . an opportunity for administrative appeal." (Gov. Code, § 3304, subd. (b).) Appellants argue, for the first time on appeal, that they were denied an opportunity for an administrative appeal from the final disciplinary act: Chief Beck's termination orders. By failing to raise it below, appellants forfeited this POBRA challenge.

"'As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal . . . . This rule is based on fairness—it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal.' [Citation.]" (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1344; see also *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1432 (*Howard*) [issue not raised before the trial court forfeited].) Although a reviewing court has the discretion to excuse forfeiture, that discretion "should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Appellants' briefs entirely fail to address this procedural bar, which was raised in respondents' brief, and thus fail to provide us with any persuasive reason to overlook it. Accordingly, we decline to excuse appellants' forfeiture of their claim of a POBRA violation.

IV. Termination Was Not an Abuse of Discretion.

Appellants argue that the penalty of termination was excessive and constituted an abuse of discretion. We disagree.

We review the form of discipline imposed by the administrative agency for abuse of discretion. (*Ziegler v. City of South Pasadena* (1999) 73 Cal.App.4th 391, 395–396.) "Judicial interference with the agency's assessment of a penalty 'will only be sanctioned when there is an arbitrary, capricious or patently abusive exercise of discretion by the administrative agency.' [Citation.]" (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 54.) If reasonable minds can dispute the propriety of the penalty, it cannot be said that discretion has been abused. (*Deegan*, *supra*, 72 Cal.App.4th at pp. 46–47.) When reviewing for abuse of discretion in cases involving discipline of a public employee, "the overriding consideration . . . is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service.' [Citations.]" (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 218.)

As we concluded above, substantial evidence supported the findings that appellants failed to respond appropriately to Garcia's use of force and made false statements during the investigation. We find no abuse of discretion in imposing the severe penalty of termination because reasonable minds could conclude that it was warranted.[8]

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[8] The Board of Rights also found McCoy guilty of using tactics that substantially deviated from training and of lifting the suspect in a manner inconsistent with training. Tornek was also found guilty of using tactics that substantially deviated from training and being involved in a use of force outside of policy. Given our decision to affirm the penalty based on the misconduct counts pertaining to appellants' inappropriate response to Garcia's use of force and making false statements, we need not address whether termination for the other counts for which

The failure to intervene or otherwise respond appropriately to Garcia's excessive use of force exposed the suspect to an obvious risk of harm. This conduct alone reasonably justifies termination. (See *Hankla v. Long Beach Civil Service Com.* (1995) 34 Cal.App.4th 1216, 1223 ["The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability"].)

But of all the allegations against appellants, the Board of Rights found "most troubling" the false statements made by appellants during the use of force investigation. It observed, "Every officer has the obligation to be truthful and forthright about their actions, regardless of the ramifications." There can be no dispute that a breach of this obligation harms the public service. (*Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 716, 721; see also *Haney v. City of Los Angeles* (2003) 109 Cal.App.4th 1, 12 ["Police officer integrity is vital to effective law enforcement. Public trust and confidence in the [LAPD] as an institution and in individual officers do not exist otherwise"].) Termination on this basis is justified and neither arbitrary nor capricious. (See *County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1617 ["termination is an acceptable penalty for dishonesty by a public employee"]; *Crawford v. City of Los Angeles* (2009) 175 Cal.App.4th 249, 257 ["Termination based upon a false statement by a peace officer is indisputably within the [City of Los Angeles and the chief of police's] power"].)

McCoy and Tornek were found guilty would have been an abuse of discretion.

Appellants contend that it was an abuse of discretion for Chief Beck to fail to articulate his reasons for departing from his earlier recommendation of lesser penalties and instead to follow the recommendation of the Board of Rights to terminate appellants' employment. Appellants, however, do not cite any authority imposing such a specific requirement on Chief Beck. Rather, they rely generally on the minimum procedural due process to which they were entitled, including "a written statement from the fact finder listing the evidence relied upon and the reasons for the determination made. [Citations.]" (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 577.) They fail to explain or cite authority for the proposition that the detailed "[r]ationale on [f]indings" of the Board of Rights does not satisfy this requirement. Moreover, they failed to raise this argument below. As a result, it is forfeited on appeal.[9] (*Howard*, *supra*, 184 Cal.App.4th at p. 1432; *Benach*, *supra*, 149 Cal.App.4th at p. 852.)

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[9] As respondents observe, the record before us lacks certain documents, including the personnel complaints and discharge orders, that would have been highly relevant to understanding Chief Beck's decisionmaking. Thus, appellants' due process argument appears to involve factual questions that cannot be determined from the record before us. Therefore, this appeal does not fit within the discretionary exception to the forfeiture rule "where the theory presented for the first time on appeal involves only a legal question determinable from facts which not only are uncontroverted in the record, but which could not be altered by the presentation of additional evidence. [Citation.]" (*Redevelopment Agency v. City of Berkeley* (1978) 80 Cal.App.3d 158, 167.)

Accordingly, we affirm the penalty as being well within respondents' discretion.

DISPOSITION

The judgments of the trial court are affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ