



Rahm Emanuel
Mayor

Department of Police · City of Chicago
3510 South Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

March 27, 2017

Sharon R. Fairley
Chief Administrator
Independent Police Review Authority
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

**Re: Non-Concurrence with IPRA sustained allegations, CR #1066371
Police Officer Kevin S. Fry #15329
Police Officer Robert J. Lobianco #16764**

Dear Chief Administrator Fairley,

In reviewing the above mentioned CR:

Pursuant to MCC 2-57-060(b), The Superintendent provides comment on the following when there is a disagreement as to legal sufficiency and the penalty.

The following transgressions the Superintendent is in agreement with and charges should be filed at the Police Board reflecting the same.

Police Officer Kevin S. Fry #15329

Allegation #7

Rule 14 – Making a false report, written or oral. On 25 July 15, the accused falsely reported on the Case Report that he observed [REDACTED] on top of [REDACTED] at the time entry was made into the garage at the above address.

Allegation #20

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that he observed [REDACTED] on top of [REDACTED] at the time entry was made into the garage at the above address.

Allegation #21

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that he and Officer Lobianco had to pull [REDACTED] off of [REDACTED].



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Police Officer Robert J. Lobianco #16764

Allegation #11

Rule 14 – Making a false report, written or oral. On 25 July 15, the accused falsely reported on the Arrest Report that he observed [REDACTED] on top of [REDACTED] at the time entry was made into the garage at the above address.

Allegation #18

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that he did not observe [REDACTED] opening the garage door at the above address.

Allegation #19

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that he observed [REDACTED] on top of [REDACTED] at the time entry was made into the garage at the above address.

As to the below transgressions by Officer Fry and Officer Lobianco, the Department finds that they are not legally sufficient and thus does not concur that the findings should be sustained. While there are allegations contained in the record that are proven by a preponderance of the evidence, the below allegations cannot be sustained and should not be included in the charges presented to the Police Board.

Police Officer Kevin S. Fry #15329

Allegation #1

Rule 6 – Disobedience of an order, whether written or oral. On 25 July 15, the accused failed to follow the provisions of G03-02 when he used excessive force on [REDACTED] when he struck and/or poked [REDACTED] about his body with a baton.

Rule 8 – Disrespect or maltreatment of any person, on or off duty. On 25 July 15, the accused failed to follow the provisions of G03-02 when he used excessive force on [REDACTED] when he struck and/or poked [REDACTED] about his body with a baton.

Allegation #11

Rule 14 – Making a false report, written or oral. On 25 July 15, the accused falsely reported on the Case Report that [REDACTED] had injuries including scratches on both arms and/or pain to the left side of her face.

Allegation #23

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that



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██████████ had injuries including blunt head trauma to the side of her head.

Police Officer Robert J. Lobianco #16764

Allegation #8

Rule 3 – Any failure to promote the Department's efforts to implement its policy or accomplish its goals. On 25 July 15, the accused failed to intervene to protect ██████████ from excessive force used by other officers on the scene.

Rule 6 – Disobedience of an order, whether written or oral. On 25 July 15, the accused violated provisions of G06-01-01 when he failed to intervene to protect ██████████ from excessive force used by other officers on the scene.

Rule 8 – Disrespect or maltreatment of any person, on or off duty. On 25 July 15, the accused failed to intervene to protect ██████████ from excessive force used by other officers on the scene.

Allegation #13

Rule 14 – Making a false report, written or oral. On 25 July 15, the accused falsely reported on the Arrest Report that ██████████ had injuries including scratches on both arms and/or pain to the left side of her face.

Allegation #21

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that ██████████ had injuries including scratches on both arms and/or pain to the left side of her face.

Allegation #22

Rule 14 – Making a false report, written or oral. On 07 Nov 13, the accused falsely testified that he made a request over the radio for an evidence technician.

Police Officer's Fry's Work History

Complimentary History

| | |
|--------------------------|----|
| Attendance Award | 2 |
| Honorable Mention | 95 |
| 2009 Crime Reduction | 1 |
| 2004 Crime Reduction | 1 |
| Presidential Deploy 2008 | 1 |
| Complimentary Letter | 2 |



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| | |
|--------------------------------|---|
| NATO Summit | 1 |
| Department Commendation | 5 |
| Special Commendation | 1 |
| Unit Meritorious | 1 |
| Mireless Special Partner Award | 1 |
| Life Saving | 1 |
| Honorable Mention Ribbon | 1 |

Disciplinary History
None

Police Officer's Lobianco's Work History

Complimentary History

| | |
|-----------------------------|-----|
| Attendance Award | 1 |
| Honorable Mention | 189 |
| 2009 Crime Reduction | 1 |
| 2004 Crime Reduction | 1 |
| Presidential Deploy 2008 | 1 |
| Complimentary Letter | 4 |
| NATO Summit | 1 |
| Department Commendation | 7 |
| Police Officer of the Month | 2 |
| Special Commendation | 1 |
| DOC Award | 2 |
| Physical Fitness | 10 |
| Military Service | 1 |
| Other | 1 |
| Traffic Stop of the Month | 1 |
| Honorable Mention Ribbon | 1 |

Disciplinary History
None

Criminal Charges

| | |
|------------------------------|----------------------------|
| 720 ILCS 5/12-3.2-A-1 | Domestic Battery |
| 720 ILCS 5/31-1-A (2 counts) | Resisting a Police Officer |

Found not guilty on all charges at bench trial.



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Lawsuits

13 CV 8095 Vasquez v City, settled between the parties.

Superintendent's Professional Opinion

Before sustaining allegations of misconduct, the Department will not only consider all of the evidence, but also review the actions of the accused officers' involvement within the totality of the circumstances. Further, failure to follow the rules of the Department will not be tolerated.

The sustained allegations regarding the officers' use of force and the failure of Officer Lobianco to report and prevent misconduct are predicated on the presenting of a preponderance of the evidence that the members violated Department policy.

The Department order on Field Arrest Procedures (G06-01-01) holds that

II-A. Members will be responsible for the safety and security of the arrestee.

Furthermore, the Department order on Force Options (G03-02-02) allows members to use the force necessary to effect an arrest based upon the categorization of the arrestee:

IV-C Assailant: a subject who is using or threatening the imminent use of force against himself/herself or another person. The Use of Force Model categorizes assailants into three categories.

1. Actions are aggressively offensive without weapons. This type of assailant is one who places a member in fear of a battery and includes advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time. In addition to the response options in Items IV-A and IV-B, the following response options are appropriate when dealing with this type of assailant:

a. Direct Mechanical Direct mechanical techniques are hard, concentrating, striking movements such as punching and kicking, or powerful locks and pressures. These techniques can be combined with take-downs or pins against the ground or other objects.

b. Impact Weapons. The baton is the member's primary impact weapon, which is used for striking. Impact weapons are designed to establish control by means of applying



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mechanical impact to a subject in order to disable elements of his or her skeletal structure. Members will avoid the use of flashlights, radios, or any item not specifically designed as a defensive weapon if the baton is reasonably available.

When confronted with an assailant, officers are entitled to use the force necessary to defend themselves from the attack and effect an arrest. During such time and when the arrestee is secured, officers are responsible for the safety and security of the arrestee. An officer has a duty to report and prevent misconduct by other Department members when he or she witnesses it.

Evidentiary Concerns

In regards to Officer Lobianco's duty to intervene (Allegation #8) during Officer Fry's alleged use of excessive force (Allegation #1), the evidence does not support a sustained charge for either allegation. The investigator, in the IPRA Summary Report, acknowledges that both Officers Fry and Lobianco were engaged in their own use of force when they took [REDACTED] into custody (p.30). Officer Lobianco testified that although he was aware that Officer Fry had his impact weapon out, he did not observe Officer Fry use it on [REDACTED] in that he was busy trying to get the subject to the ground with an emergency takedown (Attachment 34). The investigator sustains the allegation in that [REDACTED] was allegedly struck by Officer Fry numerous times and that while the first strike may not have been preventable, Officer Lobianco had a duty to prevent subsequent strikes if he perceived them as excessive Summary Report p.30). However, if Officer Lobianco did not witness any of the strikes, because of his own preoccupation, he cannot be held accountable for intervening in the alleged excessive force being used by Officer Fry. Officer Lobianco testified that he did not witness the strikes and therefore could not be tasked with preventing. Without substantiating the observation, the charge against Officer Lobianco cannot be sustained. Which leads to the question of whether that the force being used by Officer Fry was, in fact, excessive?

Officer Fry, in his testimony, admits to striking [REDACTED] with his impact weapon after [REDACTED] became an assailant against him. The investigator offers no evidence, other than the testimony of the opposing parties, to support the allegation that Officer Fry's use of the impact weapon was excessive. The investigator offers pictures, taken by the opposing party, of bruising to [REDACTED] back that are allegedly the result of impact strikes by Officer Fry. However, the bruising, if actually from Officer Fry's strikes, is not indicative of excessive force, but merely the result of the strike of the impact weapon itself. If [REDACTED] was determined to be an assailant against the officers, the impact weapon strikes are an appropriate response. There is not enough conclusive evidence to sustain the allegations as presented above.

Both officers also had sustained allegations (Officer Fry – Allegation 13 & 21, Officer Lobianco – Allegation 11 & 23) in relation to the injuries of the victim, Ms. Bailey. In the Summary Report, the investigator cites that it is likely that the officers colluded about the injuries to



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substantiate the battery charge against Mr. Bailey (p 34). The investigator relates that it is not likely that both officers were mistaken about the same injuries, so collusion must be the only fair assumption. The alternative is that the injuries did exist and were observed by the officers who had the most contact with the victim, Officer Fry and Officer Lobianco. The investigator cites statements from other officers on the scene that they didn't observe any injuries on [REDACTED], not that the injuries didn't exist, only that they did not observe or note any injury. Most of these officers had limited contact with the victim as they were merely assisting officers. The only officer to have significant contact with the victim, other than Officer Fry and Officer Lobianco, was Sgt. Ben. In her statement, she related that the victim kept holding her head and related to the sergeant that she had hit her head (Attachment #60). Furthermore, the complaint signed by the victim herself documented the injuries consistent with the reports and testimony (Attachment #37). Based on the documentation and testimony provided, there is not enough to sustain the charge that the injuries did not exist.

Furthermore, Officer Lobianco is alleged to have lied about the assertion that he called, via a radio transmission, for an evidence technician to respond (Allegation #22). That he lied cannot be proven by a preponderance of the evidence. Convincing evidence to prove this allegation would be OEMC copies of the radio transmissions of the event, which could not be recovered. It is possible that an ET was requested over the air and the request was never acknowledged by the dispatcher or the request was never made by the dispatcher. It's also possible the assignment may have been backlogged in the unit and the ET never arrived. These explanations were never investigated. There is no evidence that the accused didn't request an ET other than the fact that an ET never responded. At best, the accused is guilty of inattention to duty for failing to follow up on the request. A Rule 14 in this instance cannot be sustained.

Summary

The investigation does not provide a sufficient evidentiary basis to sustain the above charges. As a result, the charges outlined in the above circumstances should not be presented to the Police Board as part of the case against Officer Fry and Officer Lobianco. However, both officers still face additional, serious charges as articulated in the investigation that do warrant a recommendation of discharge. It is recommended that the remaining charges and the penalty of separation be presented to the Police Board for a final determination.

[REDACTED]
Eddie T. Johnson
Superintendent of Police
Chicago Police Department