



Lori E. Lightfoot  
Mayor

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

David O. Brown  
Superintendent of Police

February 8, 2021

Sydney Roberts  
Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4th Floor  
Chicago, IL 60622

RE: Superintendent's Partial Non-Concurrence with COPA's Findings and Proposed Penalties  
Complaint Register Number: #2019-0004852  
Police Officer Jerald Williams, Star #3317  
Police Officer Lawrence Kerr, Star #4871  
Field Training Officer Mark Johnson, Star #8781  
Probationary Police Officer Timothy Mason #15802  
Police Officer Lauren Holt, Star #18899  
Police Officer Pierre Williams, Star #7632  
Sergeant Alma Price, #2257

Dear Chief Administrator:

After a careful review of the recommendation made by the Investigator in this matter the Chicago Police Department (CPD) concurs in part and non-concurs in part. As set forth more fully below, CPD agrees with the sustained finding but disagrees with the recommended penalty for Officer Jerald Williams, Officer Lawrence Kerr, Officer Lauren Holt, and Officer Pierre Williams. CPD disagrees in part on the sustained findings and disagrees on the penalty recommendations for FTO Mark Johnson, PPO Timothy Mason, and Sergeant Alma Price.

### Relevant Facts

On November 28, 2019, at 3:58 p.m., Field Training Officer Mark Johnson (FTO Johnson) and Probationary Police Officer Timothy Mason (PPO Mason) responded to Police Officer Pierre Williams' (PO Williams') and Officer Lawrence Kerr's (PO Kerr's) request for back up. While FTO Johnson and PPO Mason were en route, PO Kerr requested an ambulance to treat and assess Mr. [REDACTED]. Upon arrival, FTO Johnson and PPO Mason observed PO Kerr standing over Kersh, who was prone on the ground and curb. PO Kerr told FTO Johnson and PPO Mason that [REDACTED] who was highly intoxicated, committed an aggravated battery when [REDACTED] licked and spat on PO Williams<sup>1</sup>. PO Kerr further explained that PO Williams performed a

<sup>1</sup> "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a).

takedown on [REDACTED] to overcome further victimization by [REDACTED]. Upon hearing this, FTO Johnson handcuffed [REDACTED] and carried him to his squad car. The body camera footage depicts [REDACTED] prone in the back seat of the squad car while FTO Johnson appears to take his pulse. Minutes after FTO Johnson takes [REDACTED]'s pulse, the footage shows [REDACTED] alert and talking to FTO Johnson. Body Camera Footage further shows the arrival of a Chicago Fire Department paramedic who asks [REDACTED] if he wants to go to the hospital. [REDACTED] tells the paramedic that he does not want to go to the hospital. Regardless of [REDACTED]'s refusal to go to the hospital, FTO Johnson and PPO Mason transport [REDACTED] to the University of Chicago Hospital. In [REDACTED]'s medical records from that day, the triage nurse states that "[REDACTED] arrived alert and oriented via CPD. Hit right side of head on the curb while arrested and had ten seconds of lost consciousness." The triage nurse goes on to say that [REDACTED] was so physically aggressive as well as uncooperative<sup>2</sup> toward hospital staff that [REDACTED] had to be injected with an emergency sedative and placed in four-point restraints to ensure the physical safety of the hospital staff treating him.

Later that same day, a video of PO Williams grabbing [REDACTED] by his trunk, lifting [REDACTED] off the ground, and then dropping [REDACTED] to the pavement went viral on social media and news outlets. COPA proposed a 45-day suspension for Officer Williams' excessive use of force, but recommended termination for FTO Johnson and a 90-day suspension for PPO Mason untruthfulness<sup>3</sup> and for failure to treat [REDACTED] with dignity and respect as well as acting inconsistently with the CPD's policy on the sanctity of human life. In the same vein, COPA recommended a 60-day suspension for Sgt Price for acting inconsistently with Department policy on the sanctity of human life as well as for failure to ensure subordinates sought medical attention for [REDACTED].

## **Analysis and Superintendent Determined Penalties**

### **Officer Jerald Williams and Officer Lawrence Kerr**

CPD concurs with the sustained finding that Officer Jerald Williams (PO Williams) used excessive force against [REDACTED]; however, CPD does not agree with the Civilian Office of Police Accountability's (COPA's) recommended penalty, a 45-day suspension. Given the conduct of the officer, the amount of force used, and the manner in which force was used, CPD believes that the penalty should be more significant than 45 days. The CPD contends that Officer Williams should be suspended for 135 days.

The evidence in this matter supports the Investigator's recommendation that Officer Lawrence Kerr be suspended for directing inappropriate comments and statements to civilians present at the scene of this incident. That said, the recommended penalty of 15 days is too severe given the circumstances. Officer Kerr was on the scene for a significant amount of time and in one instant made a poor decision to engage in commentary with individuals surrounding the scene. This conduct, given the circumstances, warrants a reprimand.

### **FTO Mark Johnson and PPO Timothy Mason**

As a preliminary matter for FTO Mark Johnson, CPD does not concur with the sustained findings that he failed to treat [REDACTED] with dignity and respect when FTO Johnson carried [REDACTED] while unconscious without

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<sup>1</sup> "A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be a peace officer performing his or her official duties; battered to prevent performance of his or her official duties; or battered for performing his or her official duties." 720 ILCS 5/12-3.05(d)(4).

<sup>2</sup> [REDACTED]'s violent behavior at the hospital is depicted in body camera footage.

<sup>3</sup> Rule 14 Violations

justification and engaged in conduct contrary to Department policy on the sanctity of life by failing to show concern for ██████'s condition. FTO Johnson confirmed that medical assistance had been called for ██████ and decided to move him to his transport vehicle after the surrounding crowd became more aggravated and vocal in their response to the officers on scene. While in the back of the transport vehicle FTO Johnson continued to communicate with ██████ to ensure that he was alert and to ask him questions about his condition. It should be noted that the evidence supports that ██████ was highly intoxicated and admittedly had not taken medication for his mental health issues for 3 days prior to this incident. In fact ██████ continued to be non-cooperative to the staff at the hospital who treated him. Additionally, it was FTO Johnson who transported ██████ to the hospital after he refused treatment on scene.

With respect to the Rule 14 violations the Investigator sustained—that both FTO Johns and PPO Mason provided false, misleading incomplete or inaccurate statements in their supplementary report—these sustained findings are against the manifest weight of the evidence.

Judicial review of an administrative decision to discharge an employee requires the court to determine first whether the agency's finding is against the manifest weight of the evidence and, second, whether the findings of fact sufficiently support the agency's conclusion that cause for discharge exists. *Lesner v. The Police Bd. of the City of Chicago*, 2015 WL 12020744, at 2 (Ill.Cir.Ct. Jan. 30, 2015).

- a. COPA's sustained findings for the allegations that FTO Johnson and PPO Mason made false statements in their supplementary report that ██████ was both alert and feigning unconsciousness are not supported by the manifest weight of the evidence.**

COPA's arbitrary determination that ██████ was unconscious when FTO Johnson moved him provides the alleged basis for sustaining these findings, despite the fact that FTO Johnson and PPO Mason, in their supplementary report and during their interviews with COPA, repeatedly say that based on their experience they believed ██████ was extremely intoxicated, under the influence of narcotics, and feigning unconsciousness to avoid arrest. FTO Johnson and PPO Mason were completely unaware of the extent of Officer Williams' use of force until the viral video was brought to their attention much later. FTO Johnson and PPO Mason assumed Officer Williams performed a standard takedown. In their report, FTO Johnson and PPO Mason provide further justification for their belief that ██████ was conscious when they explain that ██████ was tracking them with his eye. FTO Johnson and PPO Mason additionally explain that they handcuffed ██████, who has been arrested 61 times, to avoid becoming additional Aggravated Battery Victims. FTO Johnson and PPO Mason further told COPA investigators that they moved ██████ from his position on the ground to quell an unruly crowd, which can be seen on body worn camera footage coaching ██████ and baiting crowd control officers. In concluding that ██████ was unconscious, COPA ignored the fact that ██████'s medical records indicate that he lost consciousness for no more than ten seconds. It is undisputed that it took FTO Johnson and PPO Mason more than ten seconds to respond. In fact, COPA, FTO Johnson, and PPO Mason entered into a stipulation agreement that it took two minutes to respond once the request for assistance was dispatched.

COPA next determines, once again arbitrarily, that FTO Johnson and PPO Mason are deceitful and lying when they say ██████ was under the influence and feigning unconsciousness despite evidence to the contrary. COPA makes no mention of the body camera footage that depicts ██████ talking with FTO Johnson shortly after FTO Johnson carries him to the squad car. COPA additionally makes no mention of the responding Chicago Fire Department Paramedic (Paramedic), trained in first-aid, who was summoned to the scene by CPD. The Paramedic tersely asks ██████ if he wants to be treated and promptly leaves after ██████ refuses.

Despite [REDACTED]'s refusal, FTO Johnson and PPO Mason drove [REDACTED] to the University of Chicago Hospital anyway. At the hospital [REDACTED] again engages in conduct that characterizes him as an assailant. [REDACTED] is so violent toward hospital staff that hospital staff has to administer emergency sedation and place him in four-point restraints. This evidence cannot be ignored. It stands to reason that, for safety reasons, an offender who repeatedly engages in this type of violent behavior should be handcuffed and secured in a squad car.

The manifest weight of the evidence demonstrates that [REDACTED] was a violent offender who licked and spat at Officer Williams and fought hospital staff. The evidence further demonstrates that [REDACTED] more likely than not feigned unconsciousness to avoid arrest because, once at the hospital, he again became violent and combative. Also, the evidence shows that FTO Johnson and PPO Mason drove [REDACTED] to the hospital despite his refusal to accept medical attention from the Paramedic. In addition, FTO Johnson took [REDACTED]'s pulse. In checking [REDACTED]'s pulse FTO Johnson was upholding his oath to preserve and protect life, even the life of a violent, drunken offender who licked and spat on another Officer and fought the hospital staff that was trying to treat his injury. In taking [REDACTED]'s pulse, FTO Johnson actually provided [REDACTED] with more emergency medical care than the Paramedic.

COPA's findings appear to be based on a belief that there is a legal presumption that Officers are lying. There is no such presumption. The burden is on COPA to prove cause exists for separation. *See* 65 ILCS 5/10-2.1-17. Not the other way around.

There is no legal presumption that FTO Johnson and PPO Mason were lying. Based on the foregoing conclusions it is clear that, in the absence of a legal presumption, the manifest weight of the evidence does not support COPA's findings that FTO Johnson and PPO Mason failed to treat [REDACTED] with dignity and respect when FTO Johnson carried [REDACTED] while unconscious, that FTO Johnson and PPO Mason failed to show concern for [REDACTED] condition, and that FTO Johnson and PPO Mason lied in their supplementary report when they wrote that [REDACTED] was alert and feigning unconsciousness. It follows that cause for discharge in regard to these allegations does not exist.

- b. The Finding that FTO Johnson and PPO Mason lied in their supplementary report when they wrote [REDACTED] refused to respond and/or answer their directives to stand does not sufficiently support COPA's conclusion that cause for discharge exists because the threshold to charge a Rule 14 violation—willfulness and materiality—is not met.**

It is undisputed that FTO Johnson and PPO Mason, in their report, wrote that they gave [REDACTED] a verbal directive to stand even though they did not give a verbal directive to stand. Therefore, the pivotal question in regard to this allegation is whether there is sufficient cause under the evidence to remove FTO Johnson from the Department.<sup>4</sup> 65 ILCS 5/10-2.1-17 provides that no officer of the police department may be removed or discharged, except for cause. A board's finding that there is sufficient cause for discharge is subject to judicial review. *Caliendo v. Goodrich*, 340 N.E.2d 560, 562 (Ill. App. 1<sup>st</sup> Dist. 1975). The threshold to charge an Officer with lying (Rule 14) includes two requirements: 1) willfulness, and 2) that the false statement must be material to the incident under investigation. *See In the Matter of Charges Filed Against Police Officer Raoul Mosqueda, Star No. 13662, Department of Police, City of Chicago (No. 17 PB 2935) page 12.*

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<sup>4</sup> COPA contends PPO Mason should be suspended for 90 days for the same conduct.

**1. In the instant case cause for discharge doesn't exist because the threshold to charge a Rule 14 violation has not been met. The statement is not willful.**

When FTO Johnson and PPO Mason wrote that they gave [REDACTED] a directive to stand, it was not a willful statement. Willful is defined as "of an immoral or illegal act or omission; intentional." In FTO Johnson's and PPO Mason's testimony to COPA they repeatedly say they thought they gave the directive when they wrote the report. It's not unreasonable for them to think they gave the directive. Their lapse in memory is not motivated by their desire to cover anything up; after all, this investigation was not a reality when they drafted the report. They simply thought they gave a directive to stand. The fact that they didn't give the directive doesn't constitute misconduct.

Furthermore, there is no reasonable basis for COPA to assert that FTO Johnson and PPO Mason were untruthful when they said they thought they gave [REDACTED] a directive to stand nor is it possible to prove or disprove that their memory failed them when they authored and signed the supplementary report. The evidence actually points to the fact that FTO Johnson and PPO Mason thought they gave [REDACTED] a directive to stand and that later, after they watched the body camera footage, they admit they were mistaken and that, rather than give the Directive, FTO Johnson placed his hand on [REDACTED]

In a recent case, *City of Country Club Hills v. Charles*, the Illinois Appellate Court overturned the lower Court and held that an Officer's willful, blatant dishonesty warranted discharge; however, the Court cautioned that not every case of dishonesty should result in termination, commanding arbitrators and municipal boards to weigh each case based on its unique facts and to take into account the officer's prior record and the culpability of the Officer. The blatant, willful dishonesty in *City of Country Club Hills* is in sharp contrast to the case at hand. In *City of Country Club Hills*, the Officer failed to show up to his assignment and then lied about his whereabouts, blatantly disregarding his superiors' direction and then intentionally and willfully lying to cover it up. *City of Country Club Hills v. Charles* WL 200546 (Ill. App. 1<sup>st</sup> Dist. 2020).

In the case at hand, FTO Johnson and PPO Mason were simply mistaken when they wrote that the verbal direction to stand was given. It was not the kind of dishonesty that the Court admonishes in *City of Country Club Hills*; in fact it can't even be characterized as dishonesty. To terminate FTO Johnson's employment for an oversight in his supplementary report goes against the holding in *City of Country Club Hills*, because unlike *City of Country Club Hills*, the manifest weight of the evidence points to the fact that FTO Johnson and PPO Mason made a mistake in their report and that there was no ill intent. The requirement of willfulness is not met, and therefore charging a Rule 14 violation is inappropriate as willfulness and materiality must be met to properly charge rule 14. *Id.*

**2. FTO Johnson's and PPO Mason's statement was not material**

Even if FTO Johnson and PPO Mason intentionally misstated that they gave the directive, the misstatement must also be material to the point in contention to constitute sufficient cause. *See e.g., Taylor v. Police Bd. of City of Chicago*, 960 N.E.2d 750, 758 (Ill. App. 1<sup>st</sup> Dist. 2011); *see also*, 720 ILCS 5/32-2(a). Whether or not FTO Johnson and PPO Mason gave [REDACTED] a directive to stand before moving him to their squad car is not relevant to whether FTO Johnson disregarded the sanctity of human life by moving [REDACTED] from the sidewalk to his car. Further, whether or not FTO Johnson and PPO Mason gave [REDACTED] a directive to stand is immaterial to whether or not they disregarded the sanctity of life because giving [REDACTED] a directive to stand does not prove or disprove the state of [REDACTED]'s consciousness at the time. Even if FTO Johnson and PPO Mason gave

the directive. [REDACTED] would have ignored it if he was feigning unconsciousness; likewise [REDACTED] would have ignored it if he was actually unconscious. Therefore, the misstatement is immaterial, notwithstanding the fact that FTO Johnson and PPO Mason maintain that they thought they gave the directive when they authored the report.

Based on the remaining sustained findings that PPO Johnson failed to timely activate his BWC and that both FTO Johnson and PPO Mason failed to secure [REDACTED] during transport the appropriate penalty for each is a 10 day suspension for FTO Johnson and a reprimand for PPO Mason.

#### **Officer Lauren Holt and Officer Pierre Williams**

CPD agrees with the investigator's recommendation of a sustained finding for Officer Holt and Officer Williams; the evidence supports that these officers directed inappropriate statements to civilian bystanders and violated CPD's BWC policy. However, CPD does not concur with the recommended penalty of a 30-day suspension for each of these officers. CPD believes that Officer Holt should receive a reprimand and Officer Williams should be suspended for a period of 5 days.

#### **Sgt. Alma Price**

Correspondingly, CPD does not concur with the sustained findings that Sergeant Alma Price (Sgt. Price) engaged in conduct inconsistent with the Department's policy on the sanctity of life by failing to show concern for [REDACTED] as well as by failing to ensure subordinate Officers sought appropriate medical attention for [REDACTED]. The evidence shows that upon arrival to the scene Sgt. Price confirmed that medical assistance had been called for [REDACTED]; further, she could see his movement in the back of the car he was sitting in. This is far from the "ostrich-like approach" to supervision described by the Investigator. Instead, Sgt. Price directed her attention to a crowd that can be heard directing profanities at the officers. Sgt. Price's decision to ensure crowd control after knowing that [REDACTED] was going to receive medical treatment is appropriate given the circumstances. Sgt. Price did fail to timely activate her BWC, which is a violation of that policy, and as such she should be suspended for 10 days.

#### **Conclusion**

For the foregoing reasons CPD recommends that PO Jerald William be suspended for 135 days, PO Lawrence Kerr be reprimanded, FTO Mark Johnson be suspended for 10 days, PPO Timothy Mason be reprimanded, Sgt. Alma Price be suspended for 10 days, PO Lauren Holt be reprimanded and PO Pierre Williams be suspended for 5 days.

Sincerely,

[REDACTED]  
David O. Brown  
Superintendent  
Chicago Police Department