



April 23, 2021

Max A. Caproni
Executive Director, Chicago Police Board
30 N. LaSalle St., Suite 1220
Chicago, Illinois 60602

Via Email and U.S. Mail

Re: Request for Review, Log #2019-0004852

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (Department) in the above captioned matter.

As set forth in detail in COPA's Summary Report of Investigation dated as of November 9, 2020 (SRI), there is a compelling legal and evidentiary basis to support COPA's findings that Sergeant Alma Price and Officers Pierre Williams, Lauren Holt, Timothy Mason, Mark Johnson, and Lawrence Kerr, engaged in various acts of misconduct while responding to a use of force incident.¹

The Superintendent bears the affirmative burden of proof in overcoming COPA's disciplinary recommendations. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

I. BACKGROUND

A. Factual Background²

On November 28, 2019, at approximately 4:00 pm, Officers Lawrence Kerr and Jerald Williams detained ██████████ near 79th and Cottage Grove for drinking on a public way. As they attempted to determine Mr. ██████████ identity to issue a citation, Mr. ██████████ licked and spit on Officer Williams. Officer Williams then lifted Mr. ██████████ off his feet and slammed his body to the ground. As a result of the takedown, Mr. ██████████ head struck the curb. As Mr. ██████████ lay motionless in the street with his face on the curb, Officer Kerr called for additional police support and medical assistance.

Shortly thereafter, Officers Mark Johnson, a Field Training Officer (FTO), and Timothy Mason, a Probationary Police Officer (PPO) arrived on scene. They handcuffed Mr. ██████████ and pulled him off

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's February 8, 2021, non-concurrence letter, and the certificate of meeting.

² A full summary of facts is set forth in COPA's SRI.

the ground while he continued to appear motionless. Officer Johnson then picked up the handcuffed Mr. [REDACTED] by his arms and the back of his pants and carried him to their squad car. After being placed in the squad car, Mr. [REDACTED] was righted to a seated position, became responsive, and was eventually transported to the University of Chicago Hospital.

As Mr. [REDACTED] was being deposited in the squad car, Officer Loren Holt arrived, followed quickly by Sergeant Alma Price and Officer Pierre Williams. By that time, a crowd had begun to gather and Sergeant Price directed the responding officers to secure the area.

Ultimately, COPA sustained allegations against each of the aforementioned officers for violations regarding their treatment of Mr. [REDACTED] interaction with the crowd, failure to properly use body worn camera, and lack of candor and/or truthfulness in documenting the incident in supplemental reports.

B. Legal Background

Article V of the Department's Rules and Regulations expressly prohibits the following:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

COMMENT: Rules 8 and 9 prohibit the use of any excessive force by any member. These rules prohibit all brutality and the physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind.

Rule 10: Inattention to duty.

Rule 14: Making a False Report, written or oral.³

C. Disputed Findings & Recommendations

As the Superintendent states in the enclosed letter, he does not concur with many of COPA's recommendations concerning the above-referenced Officers. In particular, he disagrees with COPA's sustained Rule 14 findings against Officers Johnson and Mason, as well as findings that the two Officers and Sergeant Price mistreated Mr. [REDACTED] and failed to show concern for his condition. The Superintendent also disagrees with the disciplinary recommendations related to certain other allegations.⁴ In reviewing the totality of the circumstances, COPA made the following findings and/or recommendations that are now at issue in this non-concurrence:

1. Disputed Findings:

- Officer Johnson failed to treat Mr. [REDACTED] with dignity and respect by carrying him unconscious;
- Officer Johnson failed to show concern for Mr. [REDACTED] and,
- Officer Johnson made omissions and false statements in his supplementary report.

³ Rules and Regulations of the Chicago Police Department, Article V (found at: chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf).

⁴ Not at issue in this request is the Superintendent's non-concurrence with COPA's recommended discipline of Officer Williams for using excessive force. The Superintendent wishes to increase the COPA recommended sanction. COPA does not object to such action and believes it to be within the Superintendent's authority.

- Officer Mason made false or inaccurate statements in his supplementary report;
- Sergeant Price failed to show concern for Mr. [REDACTED] and,
- Sergeant Price failed to properly supervise subordinate officers.

2. Disputed Recommendations:

- Officer Kerr's unjustified verbal altercation with a civilian warrants a 15-day suspension.
- Officer Holt's unjustified verbal altercation with a civilian warrants a 30-day suspension.
- Officer P. Williams's unjustified verbal altercation with a civilian warrants a 30-day suspension.

II. ANALYSIS

A. The Department Fails To Apply The Preponderance of The Evidence Standard

This is an administrative proceeding, pertaining only to whether certain officers should be disciplined for misconduct. It is not a criminal proceeding, which is governed by the much more stringent reasonable doubt standard. Contrary to a criminal trial in which the reasonable doubt standard applies, the Officers' liberty is not at stake in this proceeding.

The preponderance of the evidence standard is met when a proposition is more probably true than not.⁵ Thus, the existence of *any* or *some* doubt in this administrative matter does not justify the abandonment of the appropriate standard of review and imposition of an outcome contrary to that reached by COPA. The only question that the reviewing member must address here is whether the Department has met its affirmative burden of demonstrating that COPA was incorrect in its findings and recommendations.

B. Officers Johnson and Mason Committed Rule 14 Violations Through Statements and Omissions in Their Supplementary Reports

Similarly, the Department fails to meet its affirmative burden to demonstrate that COPA's Rule 14 findings as to Officers Johnson and Mason are incorrect.

COPA's Rule 14 findings as to Officers Johnson and Mason are two-fold. Such findings may relate to either or both affirmatively false statements of fact and/or omissions of fact. As a threshold matter, the following three affirmative statements from the Officers' supplemental report about Mr. [REDACTED] while he lay in the street are *demonstrably false* when viewed in the totality of evidence.

1. The Officers falsely stated that Mr. [REDACTED] was alert.
2. The Officers further falsely stated that Mr. [REDACTED] refused to respond to their directives.
3. The Officers further falsely stated that they repeatedly admonished Mr. [REDACTED]

Additionally, Officers Johnson and Mason omit from their supplemental report any mention that Mr. [REDACTED] lost consciousness. In short, the Officers' supplemental report is completely misleading. It creates a narrative that differs greatly from the events as captured objectively on body worn camera.

⁵ *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005)

The Superintendent appears to argue that the false statements are not *patently* false, in that the Officers' interpretation or recollection of events was not *unreasonable*, even if *untrue*. Such prevarication is inadmissible. The Superintendent also contends that where both Officers admit they made false statements, their original false statements resulted from a simple failure of memory, and therefore cannot be either willful or material. This unsupported contention is specious. To reiterate, the totality of evidence COPA reviewed in this matter clearly support the Rule 14 violation findings.

The SRI details exactly how the Officers' assertions that Mr. [REDACTED] was alert and refusing to respond is contradicted by video evidence. First, Mr. [REDACTED] lay motionless after his head was slammed into the curb. Second, Officer Johnson affirmatively indicated that he knew Mr. [REDACTED] was unconscious when he told to Officer Mason that Mr. [REDACTED] may "be knocked out *again*". Third, contrary to the Officers' statements, Mr. [REDACTED] medical records also indicate that he was rendered unconscious.⁶

It is implausible that both Officers simply "misremembered" the incident when they reported that they had *repeatedly* admonished Mr. [REDACTED] when in fact they made not a single attempt whatsoever to communicate with him verbally as he lay motionless on the ground. The disparities between objective, empirically verified fact and statements made by the Officers in their supplemental report cannot be reasonably characterized as failures of memory. Such statements and omissions are false and material, as they are implicated directly in determining whether it was appropriate for the Officers to seize Mr. [REDACTED] limp body by his arms and belt and deposit him into their squad car.

As stated above, the Officers' supplemental report belies the far more damning reality captured on camera. Each Rule 14 finding is well established and stands on its own and in its totality the report is undeniably false and misleading.

C. Officer Johnson and Sergeant Price Failed to Show Concern for Mr. [REDACTED]

Again, COPA stands by the thorough analyses and findings set forth in the SRI. We continue to assert the merit of our findings that both Officer Johnson and Sergeant Price failed to show adequate concern for Mr. [REDACTED] apparent medical condition. The Superintendent's Non-Concurrence in this regard fails to consider the officers' actions *prior to* Mr. [REDACTED] becoming alert in the squad car.

When Officer Johnson arrived on scene, he observed Mr. [REDACTED] lying motionless on the ground and was informed of Officer Williams' forceful takedown. Despite this knowledge, Officer Johnson hauled Mr. [REDACTED] up and into the vehicle without determining whether he was injured or making any attempt to communicate with him. The Superintendent dismisses this conduct, attempting to misdirect focus to claims that a crowd was gathering, that Mr. [REDACTED] was intoxicated, and that Mr. [REDACTED] was eventually transported to the hospital. However, the "surrounding crowd" at the time of the conduct at issue comprised only a few civilians with whom the officers did not interact. Further, there is no indication that Officer Johnson was aware of Mr. [REDACTED] intoxication. In any event, the Superintendent fails to explain how this charge is even relevant to Officer Johnson's conduct. Finally, the evidence demonstrates that Officer Johnson transported Mr. [REDACTED] to the hospital not from concern for Mr. [REDACTED] condition but to have him tested for diseases the officers feared he might have transmitted.

Similarly, Sergeant Price did not check Mr. [REDACTED] herself to determine the extent of his injuries, nor did she ask subordinate officers how Mr. [REDACTED] was injured or why an ambulance was called. As the

⁶ In his Non-Concurrence Letter, the Superintendent misstates and/or mischaracterizes Mr. [REDACTED] length of unconsciousness as "no more than ten seconds" when the medical records state "about ten seconds".

ranking Department member on scene, Sergeant Price had a duty to be more informed and involved than she was.

D. COPA's Recommended Discipline is Appropriate and Commensurate with the Conduct at Issue

The Superintendent also disagrees with COPA's disciplinary recommendations for three officers on various uncontested findings. The findings are primarily based on verbal altercations between the involved Officers and civilians. In each instance, the Officer used profane language and/or failed to properly use his or her body worn camera.

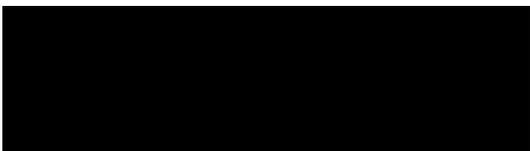
Officer Kerr, while standing over Mr. [REDACTED] motionless body, stated "(h)e ain't dead... Get the fuck out of here and mind your business" at a passing car. COPA recommended that Officer Kerr be suspended for 15 days while the Superintendent believes a Reprimand is appropriate. In support, the Superintendent indicates that Officer Kerr committed no other acts of misconduct in this instance. This position ignores both the vitriol and the pointless and provocative nature of shouting abuse at people in passing cars. COPA stands by its recommendation for a 15-day suspension.

Officer Holt inserted herself into a conversation between Officer P. Williams (not Officer J. Williams, who engaged in the precipitating misconduct) and a civilian bystander by saying "(y)ou stupid clown". Soon thereafter, Officer Holt deactivated her body worn camera and stated "(s)ay it louder, what the fuck is you talking about?" In the same exchange, Officer P. Williams, who had not activated his own body worn camera in time, called the civilian bystander a "coon". COPA suggested 30-day suspensions for Officers Holt and P. Williams. The Superintendent suggested a Reprimand for Officer Holt and a 5-day suspension for Officer P. Williams. The Superintendent again offers no support for these reductions. Consequently, the Superintendent again fails to overcome his burden. COPA stands by its recommendation for 30-day suspensions for both officers.

III. CONCLUSION

For the reasons set forth above, the Superintendent has failed to meet his affirmative burden of showing the findings and disciplinary recommendations he contests were erroneous. COPA correctly found that Officers Johnson and Mason committed Rule 14 violations and that Officer Johnson and Sergeant Price failed to show appropriate concern for Mr. [REDACTED] condition. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Department's non-concurrence in this matter and accept each of COPA's recommendations.

Respectfully,



Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability

