



May 24, 2022

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #2020-0002281

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 Log # 2020-0002281.¹

As set forth in detail in COPA's Summary Report of Investigation dated November 30, 2021 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendations against Sergeant Kasput, Sergeant Rubald, and Sergeant Finley.²

I. BACKGROUND

A. Relevant Factual Background³

On the day of incident, large-scale protests were taking place following the murder of George Floyd. During the civil unrest, Sergeant Kasput observed Sergeant Martin riding his bicycle in pursuit of a person fleeing on foot. When Sergeant Martin could not continue the pursuit, Sergeant Kasput began chasing the individual, now known as [REDACTED]. Sergeant Kasput rode his bicycle towards Mr. [REDACTED]. Without slowing down on the bicycle, Sergeant Kasput slammed his left side into Mr. [REDACTED], causing Mr. [REDACTED] to lose balance and fall down.

During the same protests, Sergeant Finley stood by as subordinate officers struck various civilians with their batons. At one point, Sergeant Finley was seen looking at Officer Foster while within arm's length of Officer Foster, while Officer Foster struck two unknown civilians with his baton.

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

² The Superintendent and Chief Administrator have reached agreement on the following disputed allegations:

- Sergeant Martin (Allegation #1)
- Sergeant Kasput (Allegations #2 & #3)
- Officer Neita-Scott (Allegations #1, 2 & 3)
- Officer Aviles (Allegations #1 & #2)

The sole allegations in dispute are Allegation #1 against Sergeant Kasput and the penalties imposed on Sergeant Finley (Allegations #1, 2, 3) and Sergeant Rubald (Allegations #1, 2, 3).

³ A more detailed factual summary can be found in the SRI.

Similarly, Sergeant Rubald observed Officer Seiser hit [REDACTED] with his baton. Sergeant Rubald was seen on video moving towards Officer Obradovic and Mr. [REDACTED] after they fell. [REDACTED], another civilian, then got in Sergeant Rubald's way, Sergeant Rubald threw him towards the street. Sergeant Rubald then looked at Officer Seiser as the officer swung his baton down on Mr. [REDACTED]. Sergeant Rubald then moved his attention towards Mr. [REDACTED] and approached as Officer Bankus swung his baton at Mr. [REDACTED]. Finally, as Mr. [REDACTED] crawled closer to the intersection and no longer had Officer Obradovic's baton, Officer Foster again struck Mr. [REDACTED] with his baton. Sergeant Rubald then approached the officers detaining Mr. [REDACTED] and the struggle deescalated.

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he disputes COPA's finding that Sergeant Kasput used excessive force to detain [REDACTED]. Additionally, although the Superintendent agrees with the Sustained findings against Sergeant Finley and Sergeant Rubald, he disagrees with COPA's recommended penalty of 180 days' suspension for each sergeant.

C. Applicable Department Policy

1. Use of Force.

Directive G03-02 provided that a Department member's use of force must be objectively reasonable, necessary and proportional to the threat, actions, and level of resistance offered by a person under the totality of the circumstances.⁴ The Directive further indicated that any member who observes another member using excessive force has a duty to intervene.⁵ Supervisors who become aware of a use of force in violation of Department Policy "will report the information to the Civilian Office of Police Accountability (COPA)."⁶

Directive G03-02-01 provided in relevant part the amount and type of force permitted to subdue an active resister. Department policy permits the use of stunning, OC Spray, takedowns, canines and tasers.⁷ A "takedown" is defined as "[t]he act of physically directing a subject to the ground to limit physical resistance, prevent escape, or increase the potential for controlling the subject."⁸

II. ANALYSIS

A. The Evidence Does Not Support the Superintendent's Argument that Sergeant Kasput's Use of Force was Objectively Reasonable.

As set forth more fully in the SRI, Sergeant Kasput's use of a bicycle to knock down Mr. [REDACTED] was not permitted under the Force Options Directive (Directive).⁹ Although the Superintendent correctly states that the Directive permits the use of a takedown to apprehend an active resister, that is not what happened here. Rather, in this case, the Sergeant used his bicycle to subdue Mr. [REDACTED]. His use of force would therefore more appropriately fall under direct mechanical techniques, which are only permitted against an assailant.¹⁰ The Directive defines direct mechanical techniques as "forceful, concentrated striking movements such as punching and kicking, or focused strikes and pressures."¹¹ The Directive further provides that such techniques can be used in combination with takedowns or pins against the ground or other objects against

⁴ G03-02-01.II.C (Eff. Feb. 28, 2020)

⁵ G03-02.V

⁶ G03-02.V.C.2

⁷ G03-02-01

⁸ G03-02-01.IV.B.2

⁹ G03-02-01.IV.B.2

¹⁰ G03-02-01.IV.C.1.a.(1). Neither party argues that Mr. [REDACTED] was an assailant at the time that Sergeant Kasput apprehended him.

¹¹ G03-02-01.IV.C.1.a.(1)

assailants.¹² In the instant case, the surveillance video makes clear that Sergeant Kasput did not merely carry out a takedown. Rather, the evidence shows that Sergeant Kasput's bicycle increased his momentum and speed and focused the pressure applied to Mr. [REDACTED] akin to a focused strike, punch or a kick. Sergeant Kasput's use of force was therefore excessive.

In addition, the Superintendent argues that Sergeant Kasput could have used a taser and a canine against Mr. [REDACTED], both options he characterizes as more "threatening" than the use of force Sergeant Kasput performed. The Superintendent omits that canine and taser use are authorized only when an active resister is armed, the subject has committed a felony, is exhibiting violent or dangerous behavior, or has committed a more serious misdemeanor.¹³ The Superintendent has not argued Mr. [REDACTED] met any of those conditions and Sergeant Kasput could not therefore have used a canine or taser under these circumstances.

The Superintendent further contends that COPA's recommended penalty of 90 days' suspension is too high. In support of his argument, the Superintendent relies on a factually inapposite case.¹⁴ In that case, the accused member, Officer Jerald Williams, used an emergency takedown on an individual who spit on him while being detained, causing the person to lose consciousness.¹⁵ COPA found that although the takedown was permitted under Department policy, the force used in executing that takedown was "disproportionately and massively excessive under the circumstances" and recommended a 45 days' suspension.¹⁶ Here, unlike in Officer Williams' case, not only was the member's use of force not authorized under Department policy, the member who used that excessive force wielded supervisory power. As a supervisor, Sergeant Kasput was charged with ensuring compliance with the Directives by his subordinates. Instead, he disregarded those same Directives that he is required to enforce. As such, his violation of Department Policy warrants a higher penalty than that imposed on a rank-and-file officer.

B. Sergeant Finley and Sergeant Rubald's Failure to Intervene with and Report Subordinates' Use of Excessive Force on Civilians is a Supervisory Failure that Warrants More Serious Penalties than the Superintendent Recommends.

Lastly, although the Superintendent agrees with COPA's sustained findings against Sergeant Rubald and Sergeant Finley, he believes the recommended penalty should be lower than the 180 days' suspension recommended by COPA. The Superintendent contends that Sergeant Finley's and Sergeant Rubald's misconduct "is mitigated by the totality of the circumstances – large-scale protests, looting, destruction of property and attacks on law enforcement personnel."¹⁷ The Superintendent's argument ignores the fact that both accused were in supervisory positions and actively failed to perform their supervisory duties. Both Sergeants failed to operate their BWCs and provided no explanation to justify their failure to do so. The fact that there were attempting to control crowds should have made activation of their BWCs foremost in their minds – to protect themselves and the civilians with whom they were interacting. The Sergeants' failure to protect civilians from excessive force undermines the community's trust in the police and brings discredit upon the Department. The 180 days' suspension recommended by COPA is therefore an appropriate penalty under the circumstances.

¹² G03-02-01.IV.C.1.a.(1)

¹³ See G03-02-04.II.C.1.a and G03-02-06.II.C.1.

¹⁴ Log #2019-0004852

¹⁵ Log #2019-0004852

¹⁶ SRI 2019-0004852 at p. 52.

¹⁷ Superintendent's Letter of Non-concurrence at p. 4.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommendation to Sustain the allegation of excessive force by Sergeant Kasput and impose a 90 days' suspension; and accept COPA's recommended penalty of 180 days' suspension on Sergeant Finley and Sergeant Rubald.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability