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David O. Brown
Superintendent of Police

February 28, 2022

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

RE: Complaint Register Number: #2020-0002281
Superintendent's non-concurrence with some of COPA's proposed penalties
Superintendent's non-concurrence with certain COPA findings
Sergeant Shannon Martin #2583 (Sergeant Martin), Sergeant Matthew Kasput #1539 (Sergeant Kasput), Sergeant Allen Finley #1214 (Sergeant Finley), Sergeant Zachary Rubald #2609 (Sergeant Rubald), Police Officer Bojan Simic #12847 (Officer Simic), Police Officer Brandon Neita-Scott #18908 (Officer Neita-Scott), Police Officer Oviedo Guadalupe #12564 (Officer Guadalupe), Police Officer Ivan Aviles #19579 (Officer Aviles), Police Officer Jose Sandoval #11169 (Officer Sandoval), Police Officer Reginald Foster #5943 (Officer Foster), Evidence Technician Richard Bankus #6769 (ET Bankus) and Field Training Officer Stefan Wojtan #19303 (FTO Wojtan)

Dear Chief Administrator:

After careful review of the recommendations made by the Civilian Office of Police Accountability (COPA) in this matter, as detailed below the Chicago Police Department (CPD) concurs with certain findings and recommended penalties but does not concur with others.

Facts

On May 29, 30 and 31 2020, Chicago's downtown area was overwhelmed by protests that became violent resulting in rampant protesting, looting, arson and extreme property damage. Countless stores and vehicles were broken into, looted, and burned. On May 31, 2020, Sergeants Martin, Kasput, Finley and Rubald along with Officers Simic, Neita-Scott, Oviedo, Aviles, Sandoval and Foster as well as ET Bankus and FTO Wojtan were deployed in downtown Chicago to quell the violence. The Department members worked countless hours of overtime with very little time off in between extended tours and canceled days off beginning May 30, 2020. On May 31, 2020 at 8:05 p.m., Sergeant Martin observed [REDACTED] throw a bottle at a mounted officer near the LaSalle Street bridge.¹ After committing aggravated assault, [REDACTED] fled on foot. Sergeant Kasput, who was on a bike, pursued [REDACTED] and apprehended him at Hubbard and Clark. [REDACTED] resisted arrest. [REDACTED] resistance attracted a large group of hostile protestors to. Therefore, Officer Aviles relocated [REDACTED] to 420 N. Clark where Sergeant Kasput, Officer Aviles and other assisting Officers formed a

¹ Under the Criminal Code of the Illinois Compiled Statutes [REDACTED]'s conduct is an Aggravated Assault. See 720 ILCS 5/12-2.

perimeter around [REDACTED]. Hostile protestors steadily flooded the area and started throwing blunt objects at Sergeant Kasput, Officer Aviles and the assisting Officers. Sergeant Kasput requested back-up.

Sergeant Martin and his teammates arrived at 420 N. Clark to assist. Sergeant Martin tried to access Sergeant Kasput and the Department members that were surrounded by hostile protestors, however [REDACTED] obstructed Sergeant Martin as well as aggressively stepped toward Sergeant Martin who then moved [REDACTED] forward using crowd control tactics. Officers Aid Obradovic (Officer Obradovic)², Officer Oviedo, Sergeant Rubald and other assisting units arrived. Officer Obradovic grabbed [REDACTED] and pushed him away from Sergeant Martin. [REDACTED] did not retreat. [REDACTED] turned toward the Officers and Officer Oviedo continued his efforts to move [REDACTED] forward. [REDACTED] placed his arms around Officer Obradovic and took Officer Obradovic down to the ground. [REDACTED] then disarmed Officer Obradovic of his baton. Officer Obradovic struck [REDACTED] with his fists and Officers Simic, Michael Seiser (Officer Seiser),³ Foster and Neita-Scott⁴ struck [REDACTED] with their batons. [REDACTED] continued fighting with the Officers. [REDACTED] tried to join the scuffle with [REDACTED] against the Officers, however Sergeant Rubald intervened by pushing [REDACTED] away from the embattled Officers. Officer Oviedo then struck [REDACTED] with his baton and [REDACTED] fell to the ground where Officers Simic and Sandoval as well as ET Bankus struck [REDACTED] with their batons. [REDACTED] stood up and successfully absconded.

It took multiple assisting units to subdue [REDACTED]. Eventually Officers Foster and Seiser restrained [REDACTED] and escorted him from 420 N. Clark.

Although [REDACTED] and [REDACTED] could have been charged with other crimes including certain felonies: due to the civil unrest; [REDACTED] and [REDACTED] were arrested for disorderly conduct by way of the Department's mass arrest procedures.

On June 3, 2020, the Civilian Office of Police Accountability (COPA) received a Twitter video of this disturbance and subsequently commenced this investigation.

Sergeant Martin (Allegation 1)

CPD concurs with the sustained finding against Sergeant Martin for failure to operate body worn camera (BWC) in accordance with Special Order S03-14, however CPD does not agree with COPA's penalty recommendation of a 15-day suspension. CPD contends Sergeant Martin should receive a 5-day suspension based on the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. In fact, the lawlessness was so to such a degree that it required an emergency response from the federal government who deployed 96,000 military personnel, nation-wide, to assist in quelling the violence.⁵ During the protests, Department members worked twelve or more hour shifts with quick turn arounds to come back the next day and their body worn camera batteries died. Additionally, many Officers were instructed to report downtown immediately rather than going to their assigned district station or police facility because of the dire need for more boots on the ground. Without reporting to a police facility, there is no way to charge camera batteries and/or buttress gear. In light of these mitigating factors, Sergeant Martin should receive a 5-day suspension rather than a 15-day suspension.

² COPA exonerated Officer Obradovic.

³ Officer Seiser retired.

⁴ Officer Neita-Scott is not charged with striking [REDACTED] with his baton.

⁵ It constituted the largest military operation other than war in United States History. See

<https://www.nationalguard.mil/Resources/Press-Releases/Article/2213005/national-guard-response-to-civil-unrest/>.

Sergeant Kasput (Allegations 1, 2 and 3)
Sergeant Kasput (Allegation 1)

CPD does not concur with COPA's sustained finding against Sergeant Kasput for using excessive force to detain [REDACTED]. [REDACTED] committed an aggravated assault when he threw a bottle at a mounted unit Officer and attempted to abscond. COPA contends that while pursuing [REDACTED] on his bike Sergeant Kasput, intentionally, bumped [REDACTED] with his left shoulder causing [REDACTED] to fall to the ground. COPA argues that Sergeant Kasput's actions constitute a take-down, and yet COPA acknowledges that a take-down in this instance is appropriate force because [REDACTED], at a minimum, constituted an active resister. On the other hand, Sergeant Kasput contends that he was trying to pull his bike in front of [REDACTED] to force [REDACTED] to stop. Sergeant Kasput further maintains that any contact with [REDACTED] was unintentional. [REDACTED] refused to participate in COPA's investigation and therefore could not be interviewed.

In COPA's summary report of investigation, COPA concedes they cannot verify Sergeant Kasput's intentions. See page 29. There is no reason to doubt, Sergeant Kasput's assertion that bumping [REDACTED] with his left shoulder was unintentional. Even more there is no evidence to support that Sergeant Kasput's actions were intentional. Even if it was intentional, Sergeant Kasput was authorized to perform a take-down because of [REDACTED]'s minimum classification as an active resister. In fact, in addition to a take-down Sergeant Kasput was also authorized to use a canine and a Taser against [REDACTED]. Sergeant Kasput's "take-down" was much less threatening than using a canine or a Taser against [REDACTED].

Lastly, in COPA's summary report of investigation for 2019-0004852, COPA recommended a 15-day suspension for Officer Jerald Williams who performed a take-down by body slamming an arrestee. In the instant case, COPA recommended a 90-day suspension for Sergeant Kasput who allegedly bumped [REDACTED] with his left shoulder causing [REDACTED] to fall to the ground. The penalties and the conduct in the latter and former cases are completely disproportionate.

Given the fact that a full-scale protest was taking place as well as the fact that [REDACTED] was an assailant, COPA's finding against Sergeant Kasput for excessive force is not legally sufficient.

Sergeant Kasput (Allegation 2)

CPD concurs with the sustained finding against Sergeant Kasput for failure to operate BWC in accordance with Special Order S03-14, however CPD does not agree with COPA's penalty recommendation of a 90-day suspension, because Sergeant Kasput's conduct is mitigated by the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. Accordingly, Sergeant Kasput should receive a 5-day suspension rather than a 90 day suspension.

Sergeant Kasput (Allegation 3)

CPD does not concur with COPA's sustained finding against Sergeant Kasput for failure to complete a tactical response report (TRR) detailing the use of force against [REDACTED] for the following reasons. It is undisputed that Deputy Chief Michael Pigott (retired) declared a mass arrest incident and instructed Department members that a blanket TRR was in place for force used in relation to the large-scale protests. See COPA Summary Report of Investigation p. 4. Additionally, according to S06-06 *Mass Arrest Procedures* the Mass Arrest Card will be used to record all reportable uses of force concerning resisters unless the use of force

involves an assailant, a weapons discharge incident, a canine use incident, a long range acoustic device or if death or actual injury occurs or is alleged. In the instant case, COPA maintains ██████ was an active resister not an assailant. Therefore, a TRR is only required if ██████ is injured or alleges injury. COPA argues that Sergeant Kasput should have assumed ██████ was injured despite the fact that ██████ gave no indication of actual or alleged injury. COPA makes this argument despite the fact that COPA couldn't ask ██████ whether or not he was injured because ██████ refused to participate in their investigation. Given the circumstances, COPA's argument that Sergeant Kasput should have assumed ██████ was injured is not supported by a preponderance of evidence and does not take into account the fact that large-scale protests were taking place at the time. Since ██████ did not allege injury or indicate that he was actually injured, Sergeant Kasput was not required to complete a TRR per S06-06, therefore allegation 3 against Sergeant Kasput is not legally sufficient.

Sergeant Finley (Allegations 1, 2 and 3)

CPD concurs with the sustained findings against Sergeant Finley for failure to intervene and report the misconduct displayed by Department members as well as for a BWC infraction, however CPD does not agree with COPA's penalty recommendation of a 180-day suspension. CPD contends that Sergeant Finley's conduct is mitigated by the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. Therefore, Sergeant Finley should receive a 30-day suspension rather than a 180-day suspension.

Sergeant Rubald (Allegations 1, 2 and 3)

CPD concurs with the sustained findings against Sergeant Rubald for a BWC infraction as well as for failure to intervene and report the misconduct displayed by Department members, however CPD does not agree with COPA's penalty recommendation of a 180-day suspension. CPD contends that Sergeant Rubald's conduct is mitigated by the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. Therefore, Sergeant Rubald should receive a 30-day suspension rather than a 180-day suspension.

Officer Simic (Allegations 1 and 2)

CPD concurs with the sustained findings against Officer Simic for excessive force. CPD additionally concurs with COPA's proposed penalty of a 90-day suspension.

Officer Neita-Scott (Allegations 1, 2 and 3)

Officer Neita-Scott (Allegation 1)

CPD concurs with the sustained finding against Officer Neita-Scott for failure to operate BWC in accordance with Special Order S03-14, however CPD does not agree with COPA's penalty recommendation of a 30-day suspension, because Officer Neita-Scott's conduct is mitigated by the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. Accordingly, Officer Neita-Scott should receive a 3-day suspension rather than a 30 day suspension.

Officer Neita-Scott (Allegations 2 and 3)

CPD does not concur with COPA's sustained findings against Officer Neita-Scott for shoving and throwing civilians, because Officer Neita-Scott was attempting to get through an unruly, violent crowd to assist other units that were calling for help because bricks were being hurled at them. COPA's analysis failed to take into consideration the circumstances surrounding Officer Neita-Scott's conduct. Officer Neita-Scott's shoving and throwing to access the beleaguered officers was objectively reasonable under the circumstances. COPA's analysis in this instance failed to consider the full-scale protests that were taking place. For these reasons, allegations 2 and 3 against Officer Neita-Scott are not legally sufficient.

Officer Oviedo (Allegations 2 and 3)

CPD concurs with the sustained findings against Officer Oviedo for excessive force. CPD additionally concurs with COPA's proposed penalty of a 90-day suspension.

Officer Aviles (Allegations 1 and 2)

Officer Aviles (Allegation 1)

CPD concurs with the sustained finding against Officer Aviles for failure to operate BWC in accordance with Special Order S03-14, however CPD does not agree with COPA's penalty recommendation of a 7-day suspension, because Officer Aviles' conduct is mitigated by the totality of the circumstances - large-scale protests, looting, destruction of property and attacks on law enforcement personnel. Accordingly, Officer Aviles should receive a 3-day suspension rather than a 7-day suspension.

Officer Aviles (Allegation 2)

CPD does not concur with COPA's sustained finding against Officer Aviles for throwing ██████'s personal items to the ground during ██████'s search incident to arrest. It is undisputed that Officer Aviles dropped ██████'s personal items, however COPA's contention that Officer Aviles demonstrated a lack of respect for ██████ when he dropped ██████'s personal items lacks merit. COPA is considering Officer Aviles' conduct in a vacuum and ignoring the fact that a large-scale violent protest was taking place around them. Officer Aviles was completely terrified and in constant fear for his safety. Given the totality of the circumstances it is likely that Officer Aviles was panicked during his search of ██████ therefore this allegation is not legally sufficient.

Officer Sandoval (Allegations 2 and 3)

CPD concurs with the sustained findings against Officer Sandoval for excessive force and for failure to operate BWC in accordance with S03-14. CPD additionally concurs with COPA's proposed penalty of a 90 - day suspension.

Officer Foster (Allegations 2, 3 and 4)

CPD concurs with COPA's findings against Officer Foster for excessive force. CPD additionally concurs with a penalty within COPA's proposed penalty range of a 180-day suspension.

ET Bankus (Allegations 1, 2 and 3)

CPD concurs with COPA's findings against ET Bankus for excessive force. CPD additionally concurs with a penalty within COPA's proposed penalty range of a 180-day suspension.

FTO Wojtan (Allegation 1)

CPD concurs with COPA's sustained finding against FTO Wojtan for failure to operate BWC in accordance with S03-14. CPD additionally concurs with COPA's penalty recommendation of a 1-day suspension.

CPD concurs with COPA's sustained finding against [REDACTED] pursuant to MCC-2-78-130(a)(iii).

David O. Brown
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Chicago Police Department