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David O. Brown  
Superintendent of Police

September 24, 2021

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

RE: Superintendent's Partial Concurrence with COPA's proposed findings and penalties  
Complaint Register Number: #2020-0003252  
PO Nicholas Jovanovich # 6789, PO Andres Valle # 19935, Sgt. Kevin Gleeson #2098,  
Lt. Godfrey Cronin # 625

Dear Acting Chief Administrator:

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

### **Facts**

On July 17, 2020, a rally occurred in Grant Park calling for "the abolishment of police and the redistribution of funds to the people" according to the organizers of the event. This rally followed several weeks of protests and sometimes violent civil unrest. This particular protest was unprecedented for the current generation of Police Department members. After the rally on this date, approximately 1,000 protestors marched toward the Christopher Columbus statue and vandalized the statue and attempted to knock over the statue. When CPD members responded to the scene, a very large group of protestors staged an organized attack on the responding officers. These individuals hurled rocks and frozen bottles of water at the officers and even going to far as to light fireworks and fire them at the officers. Officers experienced fireworks blowing up in their faces and hitting their bodies. The crowd organized themselves into groups and used black umbrellas to hide their identities as they marched towards the officers assigned to protect the statute. They approached the officers from all angles. These same groups of people utilized PVC pipes that had one end sharpened into points as they marched directly towards these officers. This incident resulted in 12 offenders being arrested as well as 18 officers being injured.

At one point during this ongoing incident at and near the Columbus statue, Officer Jovanovich observed several other officers making an arrest and removing an offender from the scene. As this arrestee began to resist the arresting officers, Officer Jovanovich moved toward this arrest situation to assist the other officers.

As he approached Officer Jovanovich observed an unknown person approach the arresting officers from behind with an unknown object in the right hand and as the individual approached them she extended that object toward the arresting officers. Officer Jovanovich did not know if the subject was going to batter the officers from behind or attempt to defeat the arrest so Officer Jovanovich approached the subject and with an open left hand struck the subject's right hand to knock the object from the subject's hand. This strike caused the object to strike the person in the mouth. The individual immediately turned and ran away from Officer Jovanovich. It was not until that next day that Officer Jovanovich knew this individual to be injured and knew her name. He became aware of her identity and injury because of the Facebook videos which at that point had gone viral.

Further, the Department is unable to review [REDACTED]'s full statement because her interview was conducted via Zoom without recording. All the Department was presented with was a summary of her interview presumably created<sup>1</sup> by the same investigator that drafted the summary report. This unfortunately places the Department in a position where it cannot truly evaluate her statements as it only has a summary with no record of the questions asked or her actual answers given.

Officer Valle was present when this incident occurred. Sgt. Gleeson approved the Tactical Response Report submitted by Jovanovich. Lt. Cronin was the Second Level Reviewer and approved the Tactical Response Report submitted by Jovanovich.

It is important to note before the analysis that given the unprecedented events of July 17, 2020 Officers and supervisors faced extraordinary conditions which had not been contemplated in CPD policy. As has been widely publicized the Independent Monitor Team, The Office of the Inspector General and The Department itself all issued after action reports outlining deficiencies faced by the department during the civil unrest that occurred in the summer of 2020. Included in these reports are the conflicts which existed in the Department's policies. For example, the mass arrest order and TRR order conflicted as to how force was to be recorded in a mass arrest situation. The Mass arrest order stated it was to be recorded on the mass arrest card while the TRR order required the officer to record uses of force in the TRR form. There was no order which spoke to how to record uses of force in a situation where officers faced a large group of individuals and used force to ensure their own safety, such as the situation at the Columbus statue. In response to the policy void Lt. Godfrey advised hi unit that they were to do a "blanket TRR" identifying the force they used and the actions they faced during their tour of duty on July 17, 2020. He instructed them to complete these TRRs when they returned to work on July 18, 2020. Given what the officers had faced on July 17<sup>th</sup> and the fact that their tours had been significantly extended that evening he sent them home and told them to report the next day. As will be discussed below, COPA uses this blanket TRR as the basis for Rule 14 violations for Officer Jovanovich, Sgt. Gleeson and Lt. Cronin.

### **Superintendent's Penalty Analysis**

As a preliminary matter The COPA investigator does not identify which allegations pertain to which Rule violations. The investigator also states in the summary that the interview of the complainant was not audio or digitally recorded but does not give a reason for this. The statement was conducted via Zoom so the entire interview could have been easily recorded. But instead, the investigator opted to give a summary of the complainant's version of events, which prevents any reviewer of the file from observing the complainant's

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<sup>1</sup> The signed statement does not state who drafted it but it is written in the third person. Att. 97.

demeanor as well as hearing what the complainant said verbatim. The COPA also opted to obtain an affidavit override when the obtaining of an affidavit from the complainant should have been a simple task. There is no indication in the case file that COPA made any attempts to obtain a sworn affidavit. The collective bargaining agreement states that "IPRA and IAD will make a good faith effort to obtain an appropriate affidavit from the complainant within a reasonable time." In this case, the investigator appears to have immediately determined that no effort would be made and an override would be sought. Further, the collective bargaining agreement states that an override would only be sought if the appropriate affidavit cannot be obtained. But the COPA cannot say one could not be obtained as they made no effort to obtain one.

### **Officer Jovanovich**

For Officer Jovanovich, the following allegations were determined to be sustained during this investigation:

1. Used unnecessary and excessive force when he struck the complainant without justification;
2. Stopped the complainant from recording a public encounter on her phone without justification;
3. Made one or more false, misleading, inaccurate, incomplete statements when completing his Tactical Response Report;
4. Seized the complainant's phone without justification;
5. Failed to inventory the complainant's phone without justification.

Regarding allegation #1, the Department concurs with COPA's finding that this use of force violated the Use of Force order. The Department does not concur with the recommended penalty and believes that it is disproportionate because the investigator states that "the videos show P.O. Jovanovich appeared extremely agitated and volatile. He stated words to the effect of "we got fucking ambushed" at least eleven times in less than two minutes. The summary report further states that "PO Jovanovich, who was visibly upset and reactive following the events at the statute, failed to appropriately assess the threat posed by [REDACTED] [REDACTED] Given the unprecedented events that Officer Jovanovich had just lived through, the extremely high stress and traumatic incident it is not surprising that he believed his fellow officers to be in danger. In his statement to COPA, he stated:

[A]s we were there by the statue, objects started to get thrown at us. It took a few seconds to kind of sink in as to what was going on, that we were being attacked and ambushed by this crowd of - I think they estimated at a couple thousand people. We were under barrage of attack for quite a while. We had rocks, bricks, frozen cans of soda, frozen water bottles thrown at us. We had explosive devices thrown at us that were exploding by our head, by our feet, all around us. There were PVC pipes that were sharpened at one end as spears and that were being thrust and used as weapons against us."

Later in his statement, he stated he seen the complainant about 30 feet away from him and yelling profanities.

But at that time, I was also in fear of another attack coming so we had people that were lining up on the west side of Columbus Drive behind us. These are protestors, rioters. We had people that were lining up on the west side of Columbus Drive behind us and this was supposed to be what I

like to think of a zone of safety for us.”

Officer Jovanovich continued to explain to COPA during his statement that

But at this entire time, we were still being surrounded, once again, by another group of people so my head was on a swivel the entire time because I was expecting another attack. I was in a hyper-vigilant state where I couldn't relax because of the fear of another attack happening. ... So as these officers are walking towards me, they don't see her from behind, so I believe another attack is going to happen when I see her approaching because she's relentless. She won't stop even though other officers, supervisors gave her verbal commands to back up, to back up, stay away. She continues to approach the officers with an object in her right hand.

And in his statement, the COPA investigator acknowledges this by stating “I recognize that what you mentioned this being, you know, the most traumatic, you know, biggest dramatic think of your career and I just want to let you know that I recognize that...”. The penalty for the use of force should take into consideration what Officer Jovanovich experienced that day and how that impacted his mindset and frankly what a reasonable officer placed in those circumstances would have thought.

It should be noted that the accused returned to duty the following date (18 July) and then was day off for two days. He did not immediately return to duty on 21 July as he was carried Code 48 (Traumatic Incident Stress Management Program) for at least the next seven days. This is the same code used for officers involved in weapons discharge incidents or other highly traumatic incidents. This member was then on the medical roll and did not return to duty until 18 November 2020.

Notwithstanding all of the above-mentioned circumstances the Department does recognize that it is important that officers respond as trained as required under the orders. Officer Jovanovich's actions were in violation of the Department's use of force orders and a significant suspension is appropriate. The Department believes that a suspension of 365 days is the appropriate penalty.

The Department does not concur with the remaining allegations brought against Officer Jovanovich.

Regarding Allegation #2, there is no evidence to support this allegation. The burden is on COPA to prove that the officer intended on stopping the complainant's exercise of her first amendment rights. The investigation did not prove that the accused member knew that the complainant was recording nor did the investigation prove that the accused member even knew it was a phone. Simply because the object turned out to be a phone and that the complainant stopped recording does not prove the officer's conduct was for this purpose.

Regarding Allegation #3, Officer Jovanovich did not use false or misleading information on his Tactical Response Report. The Department directive on Mass Arrest Procedures provides that all reportable use of force concerning resisters will be recorded on a Mass Arrest Card (S06-06) while, as addressed above, the TRR policy requires the completion of a TRR for any use of force which occur during a Mass Arrest incident involving an assailant. The investigator's summary specifically states that the complainant was a passive resister. If Jovanovich had believed this, then a TRR would never have been completed. But his classification of the complainant as an assailant is reasonable as is his use of force because his intention was to knock the unknown object out of the complainant's hand. The fact that the complainant was

inadvertently struck does not change his perception. Further, the video evidence shows that the complainant ran from the scene immediately after the incident, preventing the accused or any other Department member from taking any further appropriate action. The complainant did not go to the nearest police supervisor, of which there were numerous, or to a police facility or hospital but instead went to the Chicago Freedom School. The investigator stresses that Jovanovich stated that he classified the complainant as an assailant. The summary finding completely ignores that the TRR that was completed was a blanket TRR for the entire events of July 17<sup>th</sup>. The TRR was not only for the interaction between Officer Jovanovich and [REDACTED]. At best the TRR is convoluted because it addressed multiple incidents, it is not a false statement as characterized by COPA.

Regarding allegation #4 and #5 concerning the alleged seizure and failure to inventory the phone, this should also be not sustained as the accused never seized the phone. The complainant did not make any attempt to recover the phone or request that it be immediately returned to her. The accused did pick up the phone but the complainant had already ran away from the scene. And due to the extremely violent and dangerous protest that was occurring, there was no possible way for the accused to leave the scene and inventory the telephone. As previously stated, the complainant had fled the scene and the accused could not properly identify her. And as the investigator's report states, all recovered property was left on the scene per the on scene command staff. The facts do not support a sustained finding on allegation #4 or #5.

#### **Officer Valle**

For Officer Valle the following allegation was determined to be sustained during this investigation:

1. Failed to report that Officer Jovanovich used excessive and unnecessary force when he struck the complainant.

The Department agrees with COPA's finding but does not concur with the recommended penalty given the circumstances. Although COPA finds that the audio and video footage of this incident, and the injuries sustained by the complainant, all show that Officer Valle had a duty to report, the audio and video evidence do not show a strike to her face. The audio shows a swing in her direction that knocked the unknown object out of the complainant's hand. The audio does not support this at all either as the speaker on the complainant's Facebook video is not identifiable. Further, it is undisputed that the complainant immediately ran from the scene after dropping her cell phone so there is no way that anybody could determine that she was injured. The video does not show the injury nor is there any blood on the ground to indicate an injury. However, Officer Valle was present and observed Officer Jovanovich's actions and as such should receive a penalty of a 30 day suspension.

#### **Sergeant Gleeson**

COPA sustained the following allegations against Sgt. Gleeson during this investigation:

1. Made one or more false, misleading, inaccurate, incomplete statements when approving the Tactical Response Report submitted by Officer Jovanovich;
2. Failed to comply with the General Order entitled "Incidents Requiring Completion of a Tactical Response Report."

COPA alleges Sgt. Gleeson was guilty of poor supervision, deficient investigation and overall negligence in the manner he approved the TRR submitted by Officer Jovanovich.

The first issue with this conclusion is that COPA is attempted to evaluate these actions as if there was not a violent protest occurring at the time of the incident. Sgt. Gleeson did not have the opportunity to respond to the incident nor did he observe the incident when it occurred. While some information could have been documented better, the report itself is not inconsistent as it is a blanket report of the actions Officer Jovanovich faced on July 17<sup>th</sup> and the actions he took. To the extent that it could or should have been documented better is a training issue and while disciplinary action could be appropriate, separation is not the appropriate penalty. There is no conspiracy to cover up the incident. The accused knew there was a video being circulated on social media. The members were simply following the directives and documenting the incident as best as possible given the issues discussed above with the various policies.

For COPA to allege that the approval of the TRR is a Rule 14 violation is an extension of the Rule that is not correct. Sgt. Gleeson only had the version of events as given to him by PO Jovanovich. Although the cell phone video may have been viewed, this video does not clearly show the events as they occurred. The investigator attempts to compare this situation to the Police Board case involving Sgt. Stephen Franko. However, Sgt. Franko has a full camera view of the incident while Sgt. Gleeson did not have that. Further, Sgt. Franko was reviewing reports related to a single incident not a TRR that documented an entire day's events during unprecedented unrest and violent actions taken against officers. The investigator is applying video that was recovered later from during this investigation from a social media post but was not viewed by Sgt. Gleeson.

Given the events that surround this incident the Department recommends a penalty of a 5 day suspension for a technical violation of the TRR order which required Officer Jovanovich to document the force he used against [REDACTED]

#### Lieutenant Cronin

COPA sustained the following allegations against Lt. Cronin:

1. Made one or more false, misleading, inaccurate, incomplete statements when approving the Tactical Response Report submitted by Officer Jovanovich;
2. Made one or more false, misleading, inaccurate, incomplete statements when completing the Reporting Lieutenant narrative of the Tactical Response Report submitted by Officer Jovanovich;
3. Failed to comply with the General Order entitled "Incidents Requiring Completion of a Tactical Response Report."
4. Failed to comply with the directive entitled "Mass Arrest Procedure."

Like the Sgt. Gleeson review above, Lt. Cronin did not have the opportunity to respond to the incident nor did he observe the incident when it occurred. While some information could have been documented better, the report itself is not inconsistent. To the extent that it could or should have been documented better is a training issue and while disciplinary action could be appropriate, separation is not the appropriate penalty. There is no conspiracy to cover up the incident. The accused knew there was a video being circulated on social media. The members were simply following the directives and documenting the incident as best as possible.

For COPA to allege that the approval of the TRR is a Rule 14 violation is an extension of the Rule that is not correct. Although the cell phone video may have been viewed, this video does not clearly show the events as they occurred. COPA states that had Lt. Cronin conducted the required review, he would have realized the need to separate this incident into a separate TRR. First, this analysis strongly indicates that this is a training issue. Although discipline can be imposed, separation would not be appropriate as these members have never been in this type of situation before. Further, Lt. Cronin stated that he would not rely on social media videos because he cannot authenticate them. The COPA investigator responded that the Department does not prohibit the viewing of social media videos and relies on such videos in proving criminal cases and that the authentication was done by Officer Jovanovich admitting it captured his interaction with the complainant. While the investigator is correct that there is no prohibition to view social media videos, there is also no requirement to do so. And the investigator does not give a basis to the statement that the CPD uses social media to “prove” criminal cases. Further, there was no authentication of the video simply because Officer Jovanovich said it was his interaction with the complainant. Again, this analysis is done in a vacuum without consideration to the events of July 17<sup>th</sup> and unprecedented circumstances Lt. Cronin faced.

Regarding the allegation that Lt. Cronin failed to comply with the directive regarding the completion of TRR’s and the Mass Arrest Procedures, these allegation are technically sustained. But given the circumstances of what had occurred during this protest, this is more a training issue as there was not attempt to coverup the incident. Lt. Cronin is experienced enough to know that there would be a COPA investigation of the incident.

Given the events that surround this incident the Department recommends a penalty of a 10 day suspension for a technical violation of the TRR order which required Officer Jovanovich to document the force he used against [REDACTED]. Further, this technical violation of the Mass Arrest order is understandable given the events of the day.

CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,

[REDACTED]

David O. Brown  
Superintendent of Police  
Chicago Police Department