



August 10, 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 #2019-2550

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 # 2019-2550.¹

As set forth in detail in COPA's Summary Report of Investigation dated January 27, 2022 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of 60-day suspension of Officer Steven Smith based on findings that he kicked/stomped ██████████ in the head/face and failed to properly document this use of force in a Tactical Response Report (TRR).

The Superintendent bears the affirmative burden of proof in overcoming COPA's 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. Relevant Factual Background²

On the date of incident, Officer Smith and his partner responded to a business burglary alarm. Upon arriving on scene, they observed a shattered front door window and Mr. Benjamin ██████████ inside. Mr. ██████████ attempted to flee through the back exit. Officer Smith, with his weapon drawn, intercepted Mr. ██████████ and ordered him to the ground. Mr. ██████████ did not comply with Officer Smith's orders and began to walk away. Officer Smith holstered his weapon and used an emergency takedown to place Mr. ██████████ on his stomach on the ground. Once on the ground, Officer Smith ordered Mr. ██████████ to place his hands behind his back. Then, while holding Mr. ██████████ left arm behind Mr. ██████████ back, Officer Smith delivered one kick, using his right leg, to the right side of Mr. ██████████ head. Mr. ██████████ still did not place his right hand behind his back. Officer Smith then delivered one open hand strike to Mr. ██████████ upper right arm. Mr. ██████████ then placed his hands behind his back and was handcuffed. Mr. ██████████ was transported to Jackson Park Hospital. He was diagnosed with and treated for an indeterminate-age fractures to his right inferior orbital wall and right nasal bone, lacerations to the right side of his forehead and alcohol abuse.

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

B. Disputed Findings and Recommendations

The Superintendent disagrees with COPA's findings and recommended penalties.

C. Applicable Department Policy

1. Use of Force Against an Active Resister.

Directive G03-02-01 identified an active resister as a person who attempts to "create distance between himself [...] and the member's reach with the intent to avoid physical control and/or defeat the arrest."³ The authorized force options for an active resister include police presence, verbal response, holding techniques, compliance techniques, control instruments, OC Spray, stunning, tasers, canines and takedowns.⁴

2. Tactical Response Report

Directive G03-02-02⁵ provided in pertinent part that a TRR was required to be completed for all use of force incidents involving the active resistance of a subject or a subject who is injured or alleges injury from the member's use of force.⁶ Among other uses of force, members were also required to report the use of any "kicks" on their TRRs.⁷

II. ANALYSIS

A. **The Preponderance of the Evidence Shows that Officer Smith Kicked/Stomped Mr. ██████████ in the Head/Face Without Justification and Failed to Properly Document his Use of Force in the TRR.**

For the reasons set forth in its SRI, COPA maintains that Officer Smith kicked Mr. ██████████ in the head/face while attempting to subdue him. The Superintendent's primary argument is that the BWC footage does not clearly capture Officer Smith's kick to Mr. ██████████ head. COPA disagrees. The kick can be seen on both officers' BWCs.⁸ In addition, COPA's findings are corroborated by the injuries Mr. ██████████ sustained to his head and face.⁹

The Superintendent nevertheless contends that although Officer Smith's foot "can be seen near the complainant's head" he questions whether "the complainant's head was struck."¹⁰ Specifically, the Superintendent suggests that Mr. ██████████ lack of a response indicating "that he was struck or was in any type of pain"¹¹ shows that Officer Smith did not kick Mr. ██████████ in the head. The Superintendent's

³ G03-02-01.IV.B.2.

⁴ G03-02-01.IV

⁵ G03-02-01 (eff. Oct. 16, 2017)

⁶ G03-02-02

⁷ G03-02-02.III.A.2.d

⁸ Att. 8 at 02:28; Att. 9 at 02:34.

⁹ Att. 23.

¹⁰ Superintendent's Non-Concurrence with COPA's Findings and Recommended Penalties at p. 1 (June 7, 2022)

¹¹ Superintendent's Non-Concurrence with COPA's Findings and Recommended Penalties at p. 1 (June 7, 2022)

argument is a red herring.¹² The BWC shows that Officer Smith kicked Mr. ██████ in the head/face while he laid face-down on the ground.¹³ COPA stands by its finding that Allegation #1 should be Sustained.

Consequently, per Department Directives, Officer Smith was required to note this use of force on the TRR but failed to do so. As such, COPA maintains that Allegation #2 should also be Sustained.

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 suspend Officer Smith for 60 days.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

¹² There are many reasons a person might not respond to a kick/stomp to the head. They may be unconscious or under the influence of drugs or alcohol. In fact, scientific studies have proven the analgesic properties of alcohol. *See Analgesic Effects of Alcohol: A Systematic Review and Meta-Analysis of Controlled Experimental Studies in Healthy Participants*, Thompson et al., *The Journal of Pain*, Dec. 2, 2016, [https://www.jpain.org/article/S1526-5900\(16\)30334-0/fulltext](https://www.jpain.org/article/S1526-5900(16)30334-0/fulltext) (“[F]indings suggest that alcohol is an effective analgesic that delivers clinically-relevant reductions in ratings of pain intensity.”). Here, Mr. ██████ was diagnosed with alcohol abuse on the night of the incident after he admitted to the medical staff that he was drinking alcohol that night and that he had a history of having about four drinks every day for approximately 15 years. It is possible that Mr. ██████ chronic alcohol abuse reduced his pain sensitivity and contributed to what the Superintendent has characterized as a lack of response.

¹³ Att. 8 at 02:28; Att. 9 at 02:34.