



December 16, 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 #1092523: Officer Cody Maloney and Officer Tito Jimenez

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 # 1092523.¹

As set forth in detail in COPA's Final Summary Report dated September 1, 2022 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendations against Officer Cody Maloney and Officer Tito Jimenez.

I. BACKGROUND

A. Relevant Factual Background²

On January 27, 2019, Officers Maloney and Jimenez observed ██████████ engage in a hand-to-hand transaction. They approached him to investigate further. ██████████ admitted to the officers that he possessed drug paraphernalia. The officers tried to place ██████████ in handcuffs, but he resisted. Officer Jimenez executed an emergency takedown. Once ██████████ was on the ground, Officer Jimenez used his body weight on ██████████ back until Officer Maloney could assist in securing ██████████. ██████████ sustained a small abrasion to his forehead during the incident. ██████████ alleged that the officers forcefully took him to the ground, kicked him, forced his head to strike the ground, and used a leg to choke him. Officer Jimenez completed a TRR, but Officer Maloney did not. Neither officer's BWC was activated to record the initial investigation, detainment, or arrest of ██████████.

B. Disputed Findings and Recommendations

Although the Superintendent agrees with the Sustained findings against Officer Maloney and Officer Jimenez, he disagrees with COPA's recommended penalty of a 10-day suspension for each officer.

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 FSR.

C. Applicable Department Policy

1. Tactical Response Reports (TRRs).

Department policy requires each sworn member who is involved in a reportable use of force incident to complete a TRR.³ If more than one member is involved in a reportable use of force incident, each sworn member or detention aide who uses force will complete a TRR.⁴ A TRR is required to be completed for all use of force incidents involving a subject who is injured or alleges injury resulting from the member's use of a force option, or the active resistance of a subject.⁵

2. Body worn cameras.

To increase transparency and improve the quality and reliability of investigations, CPD policy mandates all law-enforcement-related encounters to be electronically recorded on the officers' body worn camera ("BWC"). The policy requires officers to activate their camera at the beginning of an incident and to record the entire incident for all "law enforcement related activities," including, but not limited to calls for service, investigatory stops, traffic stops, traffic control, foot and vehicle pursuits, arrests, use of force incidents, high risk situations, statements made by individuals during the course of an investigation, searches, requests for consent to search, any encounter with the public that becomes adversarial after the initial contact, and any other instance when enforcing the law.⁶ The recording of law-enforcement-related encounters is mandatory.⁷ If there are circumstances preventing the activation of the BWC at the beginning of the incident, the officer "will activate the BWC as soon as practical."⁸

II. ANALYSIS

A. **Officer Jimenez's and Officer Maloney's Failure to Timely Activate their Body Worn Cameras and Officer Maloney's Failure to Complete a TRR Warrants More Serious Penalties than the Superintendent Recommends.**

Although the Superintendent agrees with COPA's sustained findings against Officer Jimenez and Officer Maloney, he believes the recommended penalty should be lower than the 10-day suspension recommended by COPA. The Superintendent believes that a reprimand for both officers would be sufficient and consistent with other recommendations made by COPA.⁹ COPA disagrees. The penalty recommendation of a 10-day suspension for both officers is appropriate in light of the facts and circumstances of this case. Neither officer captured the incident on their BWC, and no other footage of the incident exists. The officers' failure to capture the incident on their BWC is detrimental to COPA's ability to thoroughly review and evaluate the allegations lodged against them, hinders transparency, and undermines the investigative process.

It is uncontradicted that the officers used force to subdue Mr. ██████████. During their interviews, the officers admitted to using a takedown and Officer Jimenez admitted to placing weight on Mr. ██████████ back to effect handcuffing. Without BWC footage, important information regarding the officers' use of force was

³ G03-02-02.IV.B.1 (Eff. Oct. 16, 2017)

⁴ G03-02-02.IV.B.1.a

⁵ G03-02-02.III.A.1

⁶ Att. 48; S03-14.III.A.2

⁷ S03-14.III.1

⁸ S03.14.III.2

⁹ In support of his argument, the Superintendent references COPA's recommendation in Log # 2019-1626, where COPA recommended a written reprimand for an officer's failure to timely activate his BWC and for failing to author a TRR. While it is true that COPA's recommended penalty in 2019-1626 was lower than that recommended here, the circumstances warranted a lower penalty. The officer's BWC ran out of battery and the BWCs of other officers captured portions of the incident, thus allowing for a more thorough review of the incident than here.

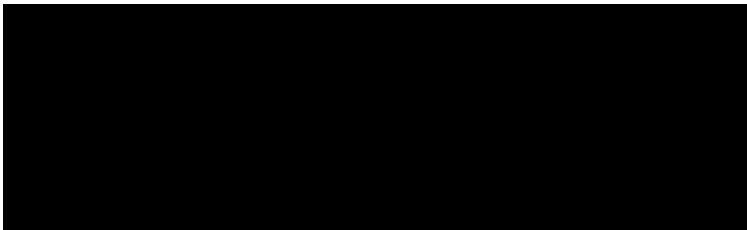
lost. For instance, although the complainant's Arrest Report and Officer Jimenez's TRR indicated that Mr. ██████ resisted and that Officer Jimenez effected a takedown, neither report mentioned Officer Jimenez using his body weight on Mr. ██████ back while handcuffing Mr. ██████. Mr. ██████ specifically alleged that the officers used a leg to choke him, but without the BWC footage, it is impossible to evaluate whether the maneuver used by Officer Jimenez complied with or violated Department policy.

In addition, a 10-day suspension is an appropriate penalty for Officer Jimenez, who has previously violated the requirement to timely activate his BWC.¹⁰ Officer Jimenez's repeat failure to activate his BWC in this case is concerning, considering prior sustained allegations made against him for similar misconduct. As to Officer Maloney, a 10-day suspension is appropriate because he not only failed to activate his BWC, he also failed to complete a TRR, even though he was required to complete one per Department policy. Altogether, the nature of this incident warrants a higher penalty than that suggested by the Superintendent.¹¹ This incident involved multiple law-enforcement-related activities that CPD policy identifies as requiring the activation of BWC.¹² Nevertheless, neither officer activated their BWC during the incident. Both officers failed to operate their BWCs properly and provided no explanation to justify their failure to do so. The 10-day suspension recommended by COPA for each officer is therefore an appropriate penalty under the circumstances.

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 recommended penalty of 10-day suspension for Officer Maloney and Officer Jimenez.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

¹⁰ COPA recommended a 10-day suspension for Officer Jimenez's failure to activate BWC, for seizing a complainant's cell phone, failing to complete an ISR and to provide an ISR receipt to the complainant. Log # 2019-4679, https://www.chicagocopa.org/wp-content/uploads/2022/11/2019-0004679_FSR1.pdf (last accessed Dec. 14, 2022).

¹¹ COPA has imposed higher penalties than reprimand for violations of the BWC activation policy alone. For instance, COPA has recommended a 5-day suspension for an officer who failed to timely activate their BWC. See Log #2019-3858, https://www.chicagocopa.org/wp-content/uploads/2022/10/2019-0003858_FSR.pdf (last accessed Dec. 14, 2022). COPA has previously recommended a 5-day suspension for the failure to timely activate BWC and for failure to complete an ISR where no allegation of excessive force was made. Log # 2020-0283, https://www.chicagocopa.org/wp-content/uploads/2022/11/2020-0000283_FSR.pdf (last accessed Dec. 14, 2022).

¹² Att. 48; S03-14.III.A.2

Copy of Superintendent's Letter



Lori E. Lightfoot
Mayor

Department of Police • City of Chicago
3510 South Michigan Avenue • Chicago, Illinois 60653

David O. Brown
Superintendent of Police

November 3, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Superintendent's Concurrence with Recommended Findings and Non-Concurrence with Recommended Penalties, Complaint Log No. 1092523
Police Officer Cody Maloney, Star No. 13032
Police Officer Tito Jimenez, Star No. 14955

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) concurs with all of the recommended findings but does not concur with the recommended penalties. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a penalty of a ten (10) day suspension for Officer Cody Maloney # 13032 after concluding that he:

1. Failed to activate his body worn camera during law enforcement activity;
2. Failed to submit a Tactical Response Report.

The COPA investigation also recommended a penalty of a ten (10) day suspension for Officer Tito Jimenez # 14955 after concluding that he:

1. Failed to activate his body worn camera during law enforcement activity.

According to the consent decree, discipline is to be consistently applied. "COPA and CPD will ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough and timely fashion, based on the nature of the misconduct. COPA and CPD will also ensure that mitigating and aggravating factors are identified, consistently applied, and documented" (Paragraph 513, Consent Decree, State of Illinois v City of Chicago, (No. 17-CV-6260, N.D. Illinois, January 1, 2019). The Consent Decree further requires the Department to "use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts." (Id. At Paragraph #514).

Emergency: 9-1-1 • **Non-Emergency:** (Within City limits) 3-1-1 • **Non-Emergency and TTY:** (Outside City limits) 312-746-6000

E-mail: clearpath@cityofchicago.org • **Website:** www.chicagopolice.org

In Log Number 2019-0001626, COPA sustained identical allegations of failing to submit a Tactical Response Report and failing to activate the Body Worn Camera. The recommended penalty for that accused member was a Reprimand.

After a review of the complimentary and disciplinary histories of the accused members in both this complaint log and in the comparable complaint log, it is the recommendation of the Department that the appropriate penalty for this complaint log number is a one (1) day suspension for each accused member.

The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(1)(iii).

Sincerely,

A handwritten signature in black ink, appearing to read "D. O. Brown", with a long horizontal flourish extending to the right.

David O. Brown
Superintendent of Police
Chicago Police Department

Copy of FSR

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	January 27, 2019 / 5:30 pm / 3829 W. Augusta Blvd., Chicago, IL 60651.
Date/Time of COPA Notification:	January 29, 2019 / 2:58 pm.
Involved Member #1:	Officer Cody Maloney / Star #13032 / Employee ID# 115874 / DOA: February 23, 2015 / Unit: 011 / Male / White.
Involved Member #2:	Officer Tito Jimenez / Star #14955 / Employee ID# 115300 / DOA: October 27, 2014 / Unit: 011 / Male / Hispanic.
Involved Individual #1:	██████████ / Male / Hispanic.
Case Type:	05A – Excessive Force

I. ALLEGATIONS

Member	Allegation	Finding / Recommendation
Officer Maloney	1. Arrested ██████████ without justification. 2. Kicked ██████████ without justification. 3. Intentionally damaged ██████████ cellphone. 4. Failing to activate BWC during law enforcement activity. 5. Failing to submit TRR.	Exonerated. Not Sustained. Not Sustained. Sustained / 10-day suspension. Sustained / 10-day suspension.
Officer Jimenez	1. Arrested ██████████ without justification. 2. Pushed ██████████ without justification. 3. Kicked ██████████ without justification. 4. Choked ██████████ with your knee, without justification. 5. Failing to activate BWC during law enforcement activity.	Exonerated. Not Sustained. Not Sustained. Not Sustained. Sustained / 10-day suspension.

II. SUMMARY OF EVIDENCE

Officers Cody Maloney and Tito Jimenez (collectively “the Officers”) were on patrol when they observed ██████████ provide currency to two unidentified males and receive small items he concealed on his person.¹ ██████████ then rode his bicycle away from the two unidentified males. The officers, based on their direct observations, determined that ██████████ was likely involved in criminal activity, specifically the purchase of illicit substances and elected to stop him for further investigation.² Upon being stopped, ██████████ admitted to the Officers that he was in possession of drug paraphernalia, specifically a glass pipe to consume cannabis.³ As the Officers were interacting with ██████████ they decided to detain him in handcuffs. After a physical struggle, during which ██████████ resisted attempts to be placed in a prone position on the ground, ██████████ is handcuffed. ██████████ is then transported to the district station, processed, and charged with possession of a controlled substance and possession of drug paraphernalia.

During a statement to COPA, ██████████ alleged that the Officers forcefully took him to the ground, kicked him, forced his head to strike the ground, and used a leg to choke him. Additionally, ██████████ alleged that he should not have been arrested. Finally, ██████████ alleges that his cellular phone was damaged during his arrest.⁵

In statements to COPA, the Officers⁶ asserted that upon detained ██████████ he became uncooperative and refused several requests to turn around so he could be handcuffed.⁷ When Officer Jimenez attempted to physically control ██████████ pulled away prompting Officer Jimenez to execute an emergency takedown.⁸ Once ██████████ was on the ground, he continued to resist by attempting to return to his feet. This prompted Officer Jimenez to use his body weight on ██████████ back until Officer Maloney could assist in securing ██████████⁹

Officer Jimenez denied all of the force allegations he received and denied observing Officer Maloney engage in any of the alleged force.¹⁰ Additionally, Officer Jimenez admitted that he likely did not activate his BWC as soon as policy would require.¹¹ Officer Maloney denied all of the force and property damage allegations he received.¹² Additionally, Officer Maloney denied

¹ Att. 39, pgs. 7 and 8.

² The Officers assert that ██████████ rode his bicycle, they observed him discard “several small items” that were recovered and determined to be packaged suspected crack cocaine. Att. 12, pg. 2; Att. 15, file Maloney – AXON_Body_2_Video_2019-01-27_1833 at 00:15; Att. 40, pgs. 9 and 21.

³ Att. 38, pg. 6.

⁴ Atts. 9 and 38.

⁵ Additionally, ██████████ alleged he was detained without justification; however, COPA’s preliminary investigation revealed there was sufficient reasonable articulable suspicion present for an investigatory stop of ██████████. Therefore, COPA elected to not serve the allegation.

⁶ Atts. 29 and 39 (Jimenez); Atts. 30 and 40 (Maloney).

⁷ Att. 39, pg. 12.

⁸ Att. 39, pg. 12; Att. 40, pgs. 11 and 12.

⁹ During which, ██████████ used his own head to press against the concrete and stand up, causing the injury to his forehead. Att. 39, pg. 15.

¹⁰ Officer ██████████ explained that the alleged “push” could be based on his emergency takedown of ██████████. Att. 39, pgs. 15 to 17, 23, 24, and 29.

¹¹ Att. 39, pg. 30.

¹² Att. 40, pgs. 13, 14, 18,

observing Officer Jimenez engage any of the alleged force.¹³ Finally, Officer Maloney admitted that he did not timely active his BWC nor complete a TRR.¹⁴

III. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined, by a preponderance of the evidence, that the allegation in fact occurred;¹⁵
2. Unfounded - where it is determined, by clear and convincing evidence, that an allegation is not supported by the facts;¹⁶
3. Exonerated - where it is determined, by clear and convincing evidence, that the conduct described in the allegation occurred, but it is lawful and proper; or
4. Not Sustained - where there is insufficient evidence to sustain, unfound or exonerate the allegations.

IV. ANALYSIS AND CONCLUSION

COPA finds that Allegation #1 against the Officers is **exonerated**. A Department member must have probable cause to arrest a subject.¹⁷ “Probable cause to arrest exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject had committed it.”¹⁸ The reasonable basis of any arrest “should be considered from the perspective of a reasonable officer at the time” of the arrest.¹⁹

Here, it is undisputed that [REDACTED] was in possession of narcotics paraphernalia, specifically a glass pipe used to consume cannabis. Upon [REDACTED] informing the Officers that he was in possession of the pipe, probable cause was established for his arrest. Therefore, the officers’ decision to arrest [REDACTED] was reasonable and proper.

COPA finds that Allegations # 2 and 3 against Officer Maloney, that he kicked [REDACTED] and damage his cellular telephone, and Allegations # 2 to 4, against Officer Jimenez, that he

¹³ Att. 40, pgs. 14, 15

¹⁴ Att. 40, pgs. 13, 16, 17 and 20.

¹⁵ **Preponderance of evidence** is described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

¹⁶ **Clear and convincing evidence** is described a more that preponderance of the evidence but lower than beyond-a-reasonable doubt required to convict a person of a criminal offense. Clear and Convincing is described as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable” there was no misconduct. *See People v. Coan*, 2016 IL App (2d) 151036 (2016).

¹⁷ *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)).

¹⁸ S04-13-09 II(D), Investigatory Stop System (effective July 10, 2017 to current).

¹⁹ S04-13-09 II(D).

pushed, kicked, and choked ██████ are **not sustained**. While Department members are permitted to use force to overcome resistance, COPA's investigation did uncover sufficient evidence to determine, if the alleged force occurred, let alone if it was proper. The evidence supporting the allegations was limited to ██████ statement. The evidence refuting allegations was limited to the Officers' statements. Further, there is no evidence that supports or refutes the alleged damaged to ██████ cellular phone.

COPA finds Allegation #4 against Officer Maloney and Allegation #5 against Officer Jimenez, that they failed to activate their respective BWCs, are **sustained**. Department Members are required to activate BWC "at the beginning of" or "as soon as practical" for "all law-enforcement-related activities."²⁰ Here, it is indisputable that when the Officers stopped ██████ they were engaged in law-enforcement-related activities that required the activation of their BWCs and that they failed to do so until after ██████ was in custody. This failure was in violation of Department policy and Rules 2, 3, 6, and 10.

COPA finds that Allegation #5 against Officer Maloney, that he failed to complete a TRR, is **sustained**. Department members are required to complete a TRR detailing force used when the use of force involves a subject who is injured or alleges injury; is an active resister; actively obstructs a member by using a physical act directed at the member; physically attacks a member, to include murder, and aggravated battery or battery.²¹ Here, ██████ arrest report authored by Officer Maloney details that while resisting being handcuffed, ██████ "sustained a small abrasion to his forehead."²² Since Officer Maloney was clearly aware that the force used to handcuffing of ██████ which he assisted with, resulted in a visible injury; he was obligated by policy to complete a TRR. Officer Maloney's failure to complete a TRR violated Department policy and Rules 2, 3, 6, and 10.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Maloney

i. Complimentary and Disciplinary History

Officer Maloney has received 93 various awards and received a Violation Noted in 2022 for an improper detention.²³

²⁰ "Law-enforcement-related activities include but are not limited to:" "calls for service; investigatory stops; traffic stops; traffic control; foot and vehicle pursuits; arrest; use of force incidents; seizure of evidence; interrogations; searches, including searches of people, items, vehicle, buildings, and places; statements made by individuals in the course of an investigation; requests for consent to search; emergency driving situations; emergency vehicle responses where fleeing suspects or vehicle may be captured on video leaving the crime scene; high-risk situations; any encounter with the police that becomes adversarial after the initial contact; arrestee transports; any other instance when enforcing the law." S03-14 III(A)(2)(a-r), Body Worn Cameras (effective April 30, 2018 to current).

²¹ G03-02-02 III (A)(1)(a-e), Incidents Requiring the Completion of a Tactical Response Report.

²² Att. 12, pg. 2.

²³ Att. 41, pg. 1.

ii. Recommended Penalty

Here, it is undisputed that Officer Maloney failed to timely activate his BWC as required by policy. This directly limited COPA's ability to investigate this incident and make a finding related to the alleged force used. Additionally, Officer Maloney failed to complete a TRR as required by policy. Based on this information, combined with his history, COPA recommends that Officer Maloney receive a **10-day suspension**.

a. Officer Jimenez

iii. Complimentary and Disciplinary History

Officer Jimenez has received 98 various awards and has no discipline in the last five years.

iv. Recommended Penalty

Here, it is undisputed that Officer Jimenez failed to timely activate his BWC as required by policy. This failure directly limited COPA's ability to investigate this incident and make a finding related to the alleged force used. Based on this information, combined with his history, COPA recommends that Officer Jimenez receive a **10-day suspension**.

Approved:



9/1/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Certificate of Meeting

CERTIFICATE OF MEETING AND SERVICE

I, Andrea Kersten, Chief Administrator of the Civilian Office of Police Accountability (COPA), hereby certify the following with respect to Log No. 1092523:

1. On September 2, 2022, COPA provided the Superintendent the final disciplinary file related to COPA's recommendation of discipline in the above log number.
2. COPA received the Superintendent's written response on November 4, 2022.
3. On December 9, 2022, COPA designees met with Department designees to conclude their discussion of the non-concurrence related to the above log number.
4. The Request for Review was referred to the Police Board on December 16, 2022. It was delivered as a PDF attached to an email addressed to Executive Director Max Caproni.
5. Pursuant to § 2-78-130, on December 16, 2022, the Superintendent's designees were provided by email notice that the Chief Administrator referred the above log number to the Police Board for a Request for Review. The Superintendent's designees were also provided by email with a copy of the Certificate and all Request for Review material that was sent to the Police Board.



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

December 16, 2022

Date