



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

August 16, 2021

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

RE: Superintendent's Non-Concurrence with COPA's proposed investigative findings, in part, and proposed penalty, Complaint Register #1090662
Police Officers Kristian Nikolic, Star #19041, and Jordan Smith, Star #17346

Dear Interim Chief Administrator:

After a review of the above-referenced Complaint Register (CR) file, the Chicago Police Department (CPD) does not concur with the sustained investigative findings, in part, or with the proposed penalty of a forty-five-day (45-day) suspension for Police Officers Kristian Nikolic, Star #19041, and Jordan Smith, Star #17346. According to the Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides comments on the following when there is a disagreement as to the penalty.

In a letter dated May 25, 2021, CPD requested that COPA conduct an additional investigation to determine whether Lieutenants Lisa Chibe and James Baier advised Officer Nikolic not to complete a Tactical Response Report (TRR). In a correspondence dated July 8, 2021, COPA informed CPD they denied the request to re-open the investigation.

COPA sustained the following allegations:

COPA sustained the following eight (8) allegations against Officer Nikolic:

- Grabbed the complainant's neck,
- Scratched the complainant's neck,
- Improperly searched the vehicle that was being driven by the complainant,
- Removed the car's seat cushions without justification,
- Searched under the car's hood without justification,
- Removed the center console around the stick shift without justification, and
- Removed a portion of the car around the steering wheel column without justification.

COPA sustained the following three (3) allegations against Officer Smith:

- Repeatedly asked the complainant if he was sorry,
- Improperly searched the vehicle that was being driven by the complainant, and
- Removed the center console around the stick shift without justification.

Summary of Facts

The complainant, ██████████ was interviewed by COPA. During that interview, Mr. ██████ stated that, when he arrived at the location in his vehicle, he noticed the officers parked behind ██████████ vehicle. Mr. ██████ described Mr. ██████ as a known "felon," a person "known for his bad decisions" and "a bad apple" of the community. He further told COPA that Mr. ██████ had a pending Armed Habitual Felon case and that Mr. ██████ had told him that the officers in the vehicle were the ones who had arrested him. After the two men conversed for five minutes, Mr. ██████ who had a suspended license, asked Mr. ██████ to move his vehicle about four blocks away. After Mr. ██████ agreed to move the vehicle, he got into it and drove off without signaling while Mr. ██████ stayed behind. Mr. ██████ admitted he pulled out of the parking space into the lane of traffic without signaling.

Mr. ██████ said that the officers pulled him over and told him that they stopped him because he failed to signal when he drove off. The officers asked for his driver's license and proof of insurance. Mr. ██████ retrieved his driver's license from his back pocket. Mr. ██████ said that, because he had his cell phone in his right hand and his driver's license in his left hand, he placed the cell phone down and began to reach toward the glove compartment. When the officer asked him to exit the vehicle, Mr. ██████ replied, "For what?" and refused. Mr. ██████ told COPA that he was reaching toward the glove compartment to grab the insurance card. Body-worn cameras (BWCs) of both Officers Nikolic and Smith also capture the sound of the engine revving at this point; this sound led Officer Nikolic to believe Mr. ██████ may have been attempting to flee.

After Mr. ██████ refused to exit the vehicle, Officer Nikolic attempted to grab him. Mr. ██████ moved his hands and arms away, screaming and yelling and tensing his body. He failed to obey the officers' lawful orders to exit the vehicle. During the COPA interview, Mr. ██████ told COPA that one of the officers attempted to Taser him but missed and that one officer later kicked him as he was placed into the police vehicle. COPA inserted a footnote explaining that, after watching the BWCs, COPA did not bring allegations against Officer Smith for discharging a Taser because no evidence showed that Officer Smith ever discharged or arced his Taser. In addition, COPA noted that the BWCs showed Mr. ██████ refusing to put his legs in the police vehicle, thereby requiring Officer Nikolic to push Mr. ██████ with his hands into the police vehicle. Notably, although Mr. ██████ clearly lied to COPA investigators, COPA failed to take those false statements into account when assessing Mr. ██████ credibility.

Legally Inconsistent Findings

COPA exonerated Allegation #3 that Officer Nikolic failed to complete a TRR and declined to re-investigate that conclusion, yet sustained Allegations #1, grabbing Mr. ██████ and #2, scratching Mr. ██████. According to General Order G03-02-02 (*Effective Date: 16 October 2017, Rescinded on 28 February 2020 by G03-02-02; 28 February 2020*), the completion of a TRR is required for reportable use of force incidents involving, in pertinent part, a subject who is injured or alleges injury resulting from the member's use of a force option, the active resistance of a subject, or an act of obstructing a police officer when the obstruction is a physical act directed at the Department member.

The BWC evidence shows Officer Nikolic trying to grab hold of Mr. ██████ hands. Although Officer Nikolic's hands may have been near Mr. ██████ neck while he was attempting to gain control as Mr. ██████ refused to comply, the BWC is inconclusive as to whether any contact with Mr. ██████ neck occurred. If any such contact occurred, it was incidental, brief, and unintentional. The evidence provided by COPA supports that Mr. ██████ was not injured. On the BWCs, there are no signs of injury, scratches, or swelling on Mr. ██████ including on his neck, and there are no signs of a scratch or swelling to his neck in his mug shots. Further, Mr. ██████ did not mention any injury to the sergeant who interviewed him in the police station or to the person who

processed him in lock-up and explicitly asked him whether he had any injuries. Therefore, Allegations #1 and #2 should be classified as unfounded.

Searching of the Vehicle

COPA then sustained five (5) allegations against Officer Nikolic and two (2) allegations against Officer Smith for improperly searching the vehicle. These allegations of searching the vehicle are redundant in that there is an allegation for each location searched within the same vehicle when the relevant question is whether the search of the vehicle was proper or not. The Department concurs that the search went beyond the scope of the permissible search parameters. The officers explained that, because they had planned to impound the vehicle, they conducted an inventory search of the vehicle. The purpose of an inventory search is to adequately protect the contents of the vehicle, ensure that there will be no disputes over lost or missing property, and protect officers from dangerous weapons that might be located in the vehicle. Ultimately, the officers did not impound the vehicle; after he was released, Mr. [REDACTED] drove off in it. It should be noted that proof of insurance was never produced.

Although the officers did not impound the vehicle, one of the officers drove the vehicle from the scene to the police station as Mr. [REDACTED] was transported in the police vehicle. Therefore, a search of the vehicle to protect the contents and to ensure there would be no disputes is permissible; however, the officers went beyond that scope when they lifted the cushions, searched under the vehicle's hood, and looked under the center console. Therefore, the extent of the search of the vehicle was improper.

As the basis for sustaining Allegations #5, #7, and #8 against Officer Nikolic and Allegation #3 against Officer Smith, COPA noted that the officers stated during their interviews that they looked for hidden compartments. COPA used these statements as the basis for sustaining Allegations #5, #7, and #8 against Officer Nikolic and Allegation #3 against Officer Smith. COPA cited Special Order S07-03-06 in that when officers discover a false or secret compartment they will not open or attempt to open it and are required to request a supervisor. Yet, the officers never found a hidden compartment or trap requiring them to request a supervisor. Using S07-03-06 to sustain these allegations would prevent officers from conducting any lawful search of a vehicle because of the rare chance they might discover a hidden trap or compartment. The special order requires that when officers discover a hidden compartment, they are to pause, refrain from attempting to open it, and call a supervisor. Therefore, these allegations should be classified as unfounded.

Uneven and Excessive Penalties

The Department disagrees with all of the sustained allegations other than the allegation that the officers improperly searched the vehicle, and the Department is further perplexed as to how COPA determined a suspension of forty-five (45) days would be appropriate for both officers under the circumstances. First, the allegations do not rise to the level of a 45-day suspension. Second, COPA noted that neither Officer Nikolic nor Smith had any sustained disciplinary history. Third, COPA concluded the officers should receive the same punishment even as COPA sustained eight (8) allegations against Officer Nikolic and three (3) against Officer Smith, while only two (2) of these sustained allegations related to both officers. Therefore, it appears COPA arbitrarily determined these penalties without relying on any rational or equitable basis.

Although CPD's Summary Punishment, which is an alternative to the Complaint Register process for conduct defined as a less serious transgression, is not used when investigating a citizen's complaint, the SPAR Offense Table is an approved Department reference that supervisors use to ensure the consistent application of penalties (*Chicago Police Department SPAR Offense Table*, as of 10/14/2014). The SPAR Offense Table lists

the Offense categories by the allegation and the Description/Penalty, incorporating mitigating, normal, and aggravating ranges of penalties for the given misconduct. In the *Arrest/Lockup Procedures*, under the transgression of "Search – Person/Property," which includes the failure to conduct a complete search of a person under Department Control and failure to conduct an adequate search of a vehicle subsequent to processing/transporting a prisoner, the penalty range includes a Violation Noted to Reprimand with mitigating circumstances, a 1-to-2-day suspension under normal circumstances, and a 2-to-3-day suspension under Aggravating circumstances. Discipline is considered excessive if it is out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored.

Conclusion

COPA recommended suspensions of forty-five (45) days for both officers. However, because the most serious allegation would have been an injury to Mr. [REDACTED] which the evidence does not support by preponderance, and because the redundant allegations of searching the vehicle seem to merely multiply the number of allegations, the recommendations made by COPA are disproportionate to the misconduct. The degree of discipline administered must be reasonably related to the seriousness of the misconduct.

When one thoroughly reviews the officers' statements provided during the investigation and contrasts them with the Investigator's conclusions, it is apparent that the Investigator did not adequately consider the circumstances that the officers faced at the time of the traffic stop. Further, even as the Investigator ignored evidence that repeatedly contradicted Mr. [REDACTED] statements, the Investigator generated conclusions that endorsed a predetermined outcome against the officers. The Investigator states, "COPA finds this explanation unreasonable," "lends little credit to Officer Nikolic's assertion," and finds the "perception that [REDACTED] was fleeing to be questionable." COPA makes these determinations in spite of the fact that Officer Nikolic's quick grabbing of Mr. [REDACTED] and attempt to open the door indicate that something must have occurred following Officer Nikolic's repeated request for Mr. [REDACTED] to "step out of the vehicle, please" and Mr. [REDACTED] repeated refusal. Officer Nikolic's hasty response demonstrated he was reacting to an exigent situation. Contrary to the weight of the evidence, including Officer Nikolic's statement that he thought Mr. [REDACTED] would drive off because he heard the engine revving and Mr. [REDACTED] admission that he was reaching toward the glove compartment, the Investigator summarily dismissed the officers' assertions.

The primary objective of discipline is to correct a Department member's behavior. In this case, training the accused officers on the scope of vehicle searches would ameliorate the issue more so than discipline. Therefore, based on CPD's concept of progressive discipline, which uses a graduated system to inform officers of performance issues, Officer Nikolic should receive a 7-day suspension, Officer Smith should receive a 5-day suspension, and both will receive remedial training regarding the scope of vehicle searches.

Sincerely,

[REDACTED]
David C. Brown
Superintendent of Police
Chicago Police Department