



June 14, 2019

Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

VIA Email and U.S. mail

RE: Request for Review, Log No. 1082353

Dear Executive Director Caproni:

Pursuant to Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedures 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 in the above captioned investigation.¹

The factual dispute and legal analysis are set forth below. The Department bears the affirmative burden of proof in overcoming COPA's recommendation. In this case, the Department fails to meet its burden. COPA therefore respectfully requests the Chicago Police Board reject the Department's non-concurrence and accept COPA's recommendation.

In summary, the evidence clearly demonstrates that Officer Fontaine failed to double lock [REDACTED] handcuffs resulting in Ms. [REDACTED] handcuffs becoming too tight. Handcuffs are required by Department policy to be double-locked to prevent the handcuffs from tightening – precisely what happened in this case when the handcuffs were not double-locked.

I. BACKGROUND

A. Factual Background

On September 15, 2016, Officers Torres and Fontaine arrested complainant [REDACTED]. [REDACTED] alleges that Officers Fontaine handcuffed her too tightly. Officer Fontaine conceded in her statement to COPA that she failed to double-lock Ms. [REDACTED] handcuffs, and that Ms. [REDACTED] was complaining that the handcuffs were too tight. Handcuffs are expressly required by Department policy to be double-locked. Double-locking handcuffs prevents the handcuffs from tightening (*i.e.* they become locked in place as applied).

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 a certificate that the parties met and conferred.

B. Disputed Findings & Recommendation

COPA sustained one allegation against Officer Fontaine: that Officer Fontaine handcuffed [REDACTED] too tightly to a bench/wall restraint. COPA recommended a 5-day suspension. The Department asserts the allegation should be “Unfounded.”

C. Legal Background

1. Applicable Rules and Directives

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 11: Forbids an officer from being incompetent or inefficient in the performance of duty.

General Order G06-01-02 outlines the Department’s policies and procedures concerning the physical restraint of persons in Department custody. General Order G06-01-02 provides in relevant part, “When feasible, an arrestee will be handcuffed with both hands behind the back and palms positioned outward. Handcuffs will be double-locked.”²

2. Legal Standard

The applicable legal standard for sustaining an allegation of misconduct is a preponderance of the evidence. A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct reviewed violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

II. ANALYSIS

In the instant case, a preponderance of the evidence demonstrates that Officer Fontaine handcuffed Ms. [REDACTED] too tightly to a bench/wall restraint. Department policy unambiguously requires Department members to double-lock handcuffs on **all** arrestees. A reasonable officer with police training would recognize and understand the purpose of double-locking handcuffs: to prevent an arrestee—whether intentionally or inadvertently by struggling—from tightening his or her handcuffs and potentially causing injury such as nerve damage or loss of circulation.³ Indeed, both Officer Fontaine and Officer Torres concede that handcuffs may tighten and potentially injure an arrestee if the handcuffs are not double-locked.

The Department argues that its primary concern with COPA’s findings is that Ms. [REDACTED] is not credible because she was “intoxicated and angry that Officer Fontaine arrested her.” The

² General Order G06-01-02(V)(A)(1)

³ Double-locking handcuffs prevent them from tightening and also makes it more difficult to pick the locks.

Department ignores, however, the facts of the case. Those facts are not contested by Officer Fontaine. In fact, Ms. [REDACTED] allegation that her handcuffs were too tight was corroborated by Officer Fontaine's own statement. Officer Fontaine admitted that she did not double-lock Ms. [REDACTED] handcuffs. Officer Fontaine further admitted that Ms. [REDACTED] repeatedly complained about her handcuffs being too tight and noted she specifically warned Ms. [REDACTED] to not move around. The Department's concern that Ms. [REDACTED] may have been angry is entirely irrelevant, based on the clear facts of the case.

In fact, Ms. [REDACTED] behavior during the incident makes it **more** likely that her handcuffs were too tight. As explained above, Officer Fontaine knew that handcuffs may tighten if the handcuffs are not double-locked, especially when a person moves or struggles. Officer Fontaine also knew specifically that Ms. [REDACTED] was moving around and could hurt herself by tightening her handcuffs. Officer Fontaine stated she did not double-lock the handcuffs because Ms. [REDACTED] was "verbally combative." However, General Order G06-01-02 does not contain any exception to the requirement of double-locking handcuffs. Moreover, Officer Fontaine clearly could have double-locked Ms. [REDACTED] handcuffs when Ms. [REDACTED] was safely secured at the station and numerous other officers were available for assistance, if necessary.

The Department further asserts that COPA sustained the allegation against Officer Fontaine simply for failing to double-lock Ms. [REDACTED] handcuffs and not because Officer Fontaine handcuffed Ms. [REDACTED] too tightly. This is not correct. COPA's analysis focused on Officer Fontaine failing to double lock because it was this express rule violation that led to Ms. [REDACTED] handcuffs becoming too tight. COPA expressly finds that a preponderance of the evidence demonstrates that Ms. [REDACTED] were too tight to a bench/wall restraint.⁴

III. CONCLUSION

For the reasons stated, COPA concludes Officer Fontaine handcuffed Ms. [REDACTED] too tightly to a bench/wall restraint. Accordingly, COPA respectfully requests that the Police Board reject the Department's non-concurrence and accept COPA's recommendations.

Respectfully,

[REDACTED]
Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability

⁴ COPA recognizes that Ms. [REDACTED] own conduct contributed to her handcuffs tightening. However, it is entirely foreseeable that some arrestees will move and/or struggle resulting in their handcuffs tightening if they are not double-locked. For this exact reason, Department policy requires handcuffs be double-locked.