

**BEFORE A MEMBER OF THE POLICE BOARD
OF THE CITY OF CHICAGO**

IN THE MATTER OF THE)	
RECOMMENDATION FOR DISCIPLINE OF)	No. 23 RR 05
POLICE OFFICER BRANDON KIRBY,)	
STAR No. 13335, DEPARTMENT OF POLICE,)	(CR No. 1090065)
CITY OF CHICAGO.)	

REQUEST FOR REVIEW

On August 21, 2023, the Executive Director of the Police Board of the City of Chicago received from the Chief Administrator of the Civilian Office of Police Accountability a request for review of the Chief Administrator’s recommendation for discipline of Police Officer Brandon Kirby, Star No. 13335, arising out of the investigation of Complaint Register No. 1090065 (“Request for Review”).

The investigation stems from an incident in the afternoon of June 29, 2018, in the 5th police district. According to the summary report of the investigation, three officers, including Officer Kirby, observed a man standing in the vicinity of 124 West 95th Street selling cigarettes. After a brief field interview, the officers decided to arrest the man. While waiting for a transport vehicle, the man and one of the other officers verbally abused each other, and the officer punched the man in the chest, causing him to fall to the ground. Following the conclusion of the investigation, the Chief Administrator issued recommendations for discipline of all three officers and a sergeant. The Superintendent of Police did not agree with the Chief Administrator’s recommendation for Officer Kirby. (The Superintendent agreed with the recommendations for discipline of the other Department members.)

The Chief Administrator recommended that the following allegations against Officer Kirby be *Sustained*:

No. 23 RR 05
Police Officer Brandon Kirby
Request for Review and Opinion

On or about June 29, 2018, at approximately 5:01 p.m., at or near 124 West 95th Street in Chicago, Officer Kirby:

1. Failed to report the use of excessive force;
2. Failed to report the use of excessive verbal abuse; and
3. Failed to accurately describe the facts and circumstances concerning the use of force in the arrest report of [O.W.].

The Chief Administrator recommended that Officer Kirby be suspended for a period of thirty (30) days.

The Superintendent disagreed with the Chief Administrator's recommendation that Allegation No. 3 be sustained. (The Superintendent agreed with the recommendation to sustain Allegation Nos. 1 and 2 and to suspend Officer Kirby for thirty days.)

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on August 22, 2022; (2) the Chief Administrator received the Superintendent's written response on November 16, 2022; (3) the Chief Administrator's designees met with the Superintendent's designees and concluded their discussion of this matter on August 16, 2023; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on August 21, 2023.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Paula Wolff, the member of the Police Board who was selected on a random basis, pursuant to Article VI of the Police Board's Rules of Procedure ("Reviewing Member"). On September 6, 2023, the Reviewing Member completed her review of the Request for Review pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board's Rules of Procedure.

OPINION

This case revolves around an editing error.

More than five years ago, Officer Brandon Kirby witnessed an incident involving excessive force. The Superintendent of the Chicago Police Department (CPD) and the Chief Administrator of the Civilian Office of Police Accountability (COPA) agree on a penalty of a 30-day suspension for Officer Kirby. The two parties agree on two of the three findings against Officer Kirby, including that he did not report the use of excessive force by an officer involved in the incident. This violates Rule 22 of the CPD's Rules of Conduct, which prohibits "Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, order or directives of the Department."

However, CPD and COPA disagree about whether Officer Kirby should be sanctioned because he "failed to accurately describe the facts and circumstances concerning the use of force in the arrest report," which violates a Department directive which states in relevant part: Department members will be responsible at all times: 1. for truthfully and completely describing the facts and circumstances concerning any incident involving the use of force by Department members.

According to the COPA Summary Report of Investigation, Officer Kirby indicated in his testimony to COPA that he had not witnessed the entire interaction of the incident and had not reviewed the available body-worn camera (BWC) video but relied on memory and accounts of other members of the force to write his report about the incident. The COPA report also states that "it is undisputed that the reports are poorly written." What is in dispute is COPA's assertion that the report was responsibly written with care.

In his response to COPA, the Superintendent argues the allegation that Officer Kirby failed to accurately describe the facts and circumstances concerning the use of force authoring the arrest report should not be sustained because “the evidence...does not bear this out.” The Superintendent cites as evidence for this the fact that COPA in its Summary Report of Investigation states that Officer Kirby’s report “details essentially the same information as the Officers’ statements and BWC footage” and, if this is correct, COPA undercuts its own arguments. The Superintendent argues, therefore, that the statements and BWC footage allow for an accurate description of the facts and circumstances surrounding the use of force. They offer no evidence to counter COPA’s argument that Officer Kirby did not exercise care when authoring their report.

COPA, in its response to the Superintendent, admits that report’s sentence cited by the Superintendent is incorrect; a mistake was made in the report and that the statements and BWC actually contradict the written report. COPA says: “The sentence was drafted in error.” The response closes with COPA’s statement that the Superintendent has not met his burden of overcoming COPA’s recommendation because he supplies no evidence contradicting COPA’s finding and requests that the Board reject the Superintendent’s non-concurrence and accept the penalty of a 30-day suspension, which both COPA and the Superintendent recommend.

I concur with COPA because the Superintendent does not supply evidence to overcome COPA’s recommendation, which is supported by evidence that Officer Kirby did not view the BWC video, which was available to him, but rather relied on memory and other officers’ accounts of the incident. Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Chief Administrator’s recommendation for discipline of Police Officer Brandon Kirby, Star No. 13335, shall be deemed accepted by the Superintendent.

No. 23 RR 05
Police Officer Brandon Kirby
Request for Review and Opinion

However, this case is troubling in a number of ways:

- Seemingly, the reason the disagreement process was activated is an erroneous sentence in the COPA report, which COPA admits was a mistake. This is the only evidence the Superintendent offers as the opposition to the COPA recommendation.
- COPA asked the reviewing Police Board member to accept COPA's 30-day suspension, which COPA and the Superintendent had already agreed upon.
- The incident occurred in June of 2018. It was not until August of 2022 that COPA provided the final disciplinary file to the Superintendent. In November of 2022 COPA received the Superintendent's response. Nine months later, in August of 2023, the designees of the two agencies met to try to agree. Not only is the long delay in settling this case a hardship on Officer Kirby, it is confounding that so many months have been consumed over a case in which parties agreed on the sanction but could not reach agreement on one allegation because of an erroneous sentence.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 08th DAY OF SEPTEMBER, 2023.

/s/ PAULA WOLFF
Vice President
Police Board

Attested by:

/s/ MAX A. CAPRONI
Executive Director
Police Board