



October 2, 2023

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 #2020-3820: Officer Lawrence W. Kerr #4871

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 (CPD) in Log # 2020-3820.¹

As set forth in COPA's Final Summary Report dated March 30, 2023 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of a 30-day suspension against Officer Lawrence Kerr ("Officer Kerr").

I. BACKGROUND

A. Relevant Factual Background²

In the early evening hours of May 30, 2020, Officer Kerr, one of many police officers responding to civil unrest following the death of George Floyd, encountered ██████████ near 510 N State Street, where a group of CPD officers were making an arrest. ██████████ alleged that Officer Kerr made forcible contact with her, striking her in the face with a clear acrylic shield that he was carrying, causing ██████████ to sustain a facial injury and to fall backward. Third party video of the incident shows Officer Kerr quickly approaching ██████████ disappearing from frame, and Officer Kerr standing in the place where ██████████ had been. ██████████ and her boyfriend ██████████ provided statements to COPA identifying Officer Kerr as the person who had struck ██████████ with the shield. ██████████ also supplied COPA with a video she had recorded shortly after the incident. In her video, Officer Kerr stands in the street while ██████████ shouts, alleging that Officer Kerr had struck her in the face without reason.

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's FSR, CPD's non-concurrence letter, and the certificate of meeting.

² A more detailed factual summary can be found in the FSR.

II. ARGUMENT

A. The Superintendent cannot meet his affirmative burden of overcoming COPA's recommendations where his only argument is that circumstantial evidence is insufficient to sustain the allegation by a preponderance of the evidence.

The Superintendent argues that COPA has failed to meet its burden of proof to sustain Allegation #2, because there is “no direct evidence and COPA’s finding is based on assumptions and inferences.”³ The Superintendent appears to argue that COPA’s conclusion that Officer Kerr used excessive force against ██████ is based solely on circumstantial evidence. The Superintendent is incorrect. First, direct evidence supports COPA’s finding. Specifically, ██████ and ██████ both provided statements to COPA regarding the incident.⁴ Second, even if COPA had sustained the allegation based solely on circumstantial evidence, it would have been legally sufficient so long as the preponderance of the evidence standard had been met. It is well established that circumstantial evidence alone may sustain an administrative agency’s finding.⁵ In fact, circumstantial evidence can alone support a criminal conviction,⁶ where the burden of proof of beyond a reasonable doubt is higher than the preponderance of the evidence standard applicable to administrative proceedings.

Here, contrary to the Superintendent’s claim, the preponderance of the evidence standard has been met. ██████ and ██████ identified Officer Kerr as the person who had used his clear acrylic shield to hit ██████ pushing her backwards and causing her injuries. Two videos corroborate ██████ and ██████ account of the incident.⁷ Moreover, there is no evidence that ██████ threatened, attacked, or otherwise acted in a manner that would have justified Officer Kerr’s conduct. The totality of the circumstances thus shows that it is more likely than not that Officer Kerr used excessive force against ██████. The Superintendent has failed to meet his affirmative burden to overcome COPA’s sustained finding on Allegation #2. Consequently, the Superintendent has also failed to meet his affirmative burden to overcome the sustained finding on Allegation #4, that Officer Kerr’s failure to memorialize his use of force against ██████ in a TRR violated CPD policy.

³ Superintendent’s Letter at p. 1.

⁴ “The conventional distinction is that direct evidence is testimony by a witness about a matter within his personal knowledge and so does not require drawing an inference from the evidence (his testimony) to the proposition that it is offered to establish, whereas circumstantial evidence does require drawing inferences.” *Sylvester v. SOS Children's Vill's Illinois, Inc.*, 453 F.3d 900, 903 (7th Cir. 2006) citing 1 John H. Wigmore, Evidence §§ 25-26, at p. 953.

⁵ See e.g. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 669 (1st Dist. 2011) (upholding discharge of a police officer where appellate court concluded that although no one observed officer alter her return-to-work status reports, “there was circumstantial evidence from which the Police Board could have reasonably inferred that she did so.”)

⁶ *People v. Janosek*, 2021 IL App (1st) 182583, ¶ 41

⁷ The Superintendent contends that ██████ video, which she recorded 19 seconds after being pushed and injured, is not sufficiently immediate and thus “brings her credibility into question.” Superintendent’s Letter at p. 2. The Superintendent supports his argument with no relevant case law, and COPA fails to see how an outcry mere seconds after an incident of this nature is not immediate.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet the affirmative burden of overcoming COPA's recommendation. 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 a 30-day suspension for Officer Kerr.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability