August 21, 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 #2021-0596: Lt. Kevin Keefe #283; Sgt. Nicholas Urban #1762; Officer Jonathan Ridgner #5144; and Officer Nicholas Abramson #13605.

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 # 2021-0596.[1]

As set forth in detail in COPA's Final Summary Report (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendations against Lt. Kevin Keefe #283, Sgt. Nicholas Urban #1762, Officer Jonathan Ridgner #5144, and Officer Nicholas Abramson #13605.

I. BACKGROUND

A. Relevant Factual Background[2]

On August 23, 2020, Officers Ridgner and Abramson were on patrol in the vicinity of 3800 W. Augusta Boulevard when they noticed a group of men sitting near a corner store. They observed [redacted] ("[redacted] look in their direction. The officers reported that [redacted] looked shocked or surprised, moved clothing at his waist, stood up and walked away from them as they approached. Officer Ridgner and Abramson exited the squad car and ran towards [redacted] flailed his arms in response to the sudden approach of Officer Ridgner but did not make contact with Officer Ridgner's body. Upon approaching [redacted] Officer Ridgner immediately reached for [redacted] waist. [redacted] then lifted the front of his shirt, showing that he had nothing in his waistband.[3] *See* Figures 1 and 2 below.

[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.
[3] Officer Ridgner claimed to not recall [redacted] lifting his shirt. However, according to Figures 1 and 2, Officer Ridgner can be seen extending his hand towards [redacted] waist and looking in the direction of [redacted] exposed stomach and waist area.

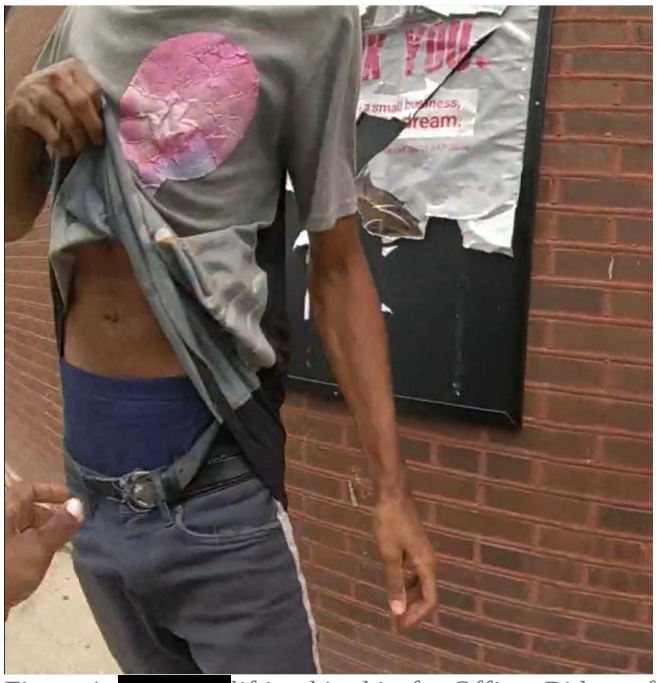

Figure 1. [redacted] lifting his shirt for Officer Ridgner from Officer Ridgner's BWC.[4]

Figure 2. View of [redacted] lifting his shirt for Officer Ridgner from Officer Abramson's BWC.[5]

Officers Ridgner and Abramson nevertheless continued to advance on [redacted] again flailed his arms and backed up towards the wall of the corner store. The officers then placed their hands on [redacted]

[4] Att. 5 at 00:48.
[5] Att. 4 at 00:50.

body as he stood against the wall of the corner store. Officer Ridgner placed his right hand on [redacted] left arm and Officer Abramson placed his left hand on [redacted] right arm. [redacted] continued to flail his arms to prevent the officers from touching him. At one point, [redacted] pulled his left arm away from Officer Ridgner's right hand and flailed his right hand in a downward motion toward Officer Ridgner's right hand. [redacted] right hand made brief contact with Officer Ridgner's right hand.

Officer Ridgner then immediately grabbed [redacted] by the throat, pulled [redacted] legs out from under him, and pushed him to the ground. Once [redacted] was seated on the ground, Officer Ridgner extended his hand to [redacted] throat once again. After releasing [redacted] throat, Officer Ridgner escorted [redacted] to his feet by using his right arm to pull [redacted] right arm in an upward motion. Once [redacted] was upright, Officer Ridgner wrapped his arms around [redacted] torso, lifted him from the ground, and threw [redacted] to the sidewalk headfirst. [redacted] head violently hit the sidewalk, causing injuries, and resulting in [redacted] lying motionless on the ground for several seconds.

Once [redacted] began to move, Officer Ridgner assisted him to his feet and escorted him, unrestrained, to the squad car. Prior to placing [redacted] in the squad car, Officer Ridgner searched and handcuffed him. [redacted] was eventually transported to the hospital for treatment. He was charged with Aggravated Battery to a Police Officer, which the Cook County State's Attorney's Office ultimately dismissed.[6]

B. Disputed Findings and Recommendations

While the Superintendent agrees with the Sustained findings against Lt. Keefe and Sgt. Urban for Allegations #1 and #2, the Superintendent disagrees with the finding that the officers violated Rule 14. Rather, the Superintendent believes that Lt. Keefe's and Sgt. Urban's conduct violated Rules 5 and 6. The Superintendent further disagrees with the findings for Allegations #2, #3, and #4 against Officer Ridgner and Allegations #3 and #4 against Officer Abramson.

C. Applicable Department Policy

1. <u>The Fourth Amendment and Investigatory Stops.</u>

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures, as does the Illinois Constitution's search and seizure provision.[7] Reasonableness under the Fourth Amendment generally requires a warrant supported by probable cause.[8] A limited exception to the warrant requirement under ***Terry v. Ohio***, 392 U.S. 1 (1968), permits a police officer to briefly stop (and therefore necessarily seize) a person for temporary questioning if he reasonably believes the person has committed, or is about to commit, a crime (hereinafter "investigatory stop").[9]

"The officer must have observed unusual conduct, leading to a reasonable, articulable suspicion that the person has committed or is about to commit a crime."[10] "Viewed as a whole, the situation confronting the police officer must be so far from the ordinary that any competent officer would be expected to act quickly."[11] The facts supporting the officer's suspicions must amount to more than a mere hunch.[12]

[6] ***People v.*** [redacted] 20 CR 0877401 (dismissed Motion State ***Nolle Prosequi*** on Dec. 18, 2020).
[7] ***People v. Thomas***, 2019 IL App (1st) 170474, ¶15, ***citing*** U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; ***People v. Smith***, 152 Ill. 2d 229, 244 (1992).
[8] ***People v. Johnson***, 237 Ill. 2d 81, 89 (2010).
[9] ***Johnson***, 237 Ill. 2d at 89, 91.
[10] ***People v. Gallagher***, 2020 IL App (1st) 150354, ¶¶ 33-P34
[11] ***Id.***
[12] ***People v. Villegas***, 2019 IL App (1st) 161682-U, ¶ 13; ***People v. Sims***, 2014 IL App (1st) 121306, ¶¶ 12, 15.

2. Use of Excessive Force by an Officer Invokes the Person's Right to Self-Defense when charged with Resisting or Obstructing a Peace Officer or Aggravated Battery.

A person commits aggravated battery when, in committing a battery, he or she knows the individual battered is a peace officer performing his or her official duties.[13] A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.[14]

The elements of the offense of resisting or obstructing a peace officer include the following: (1) the person knowingly resisted or obstructed a peace officer; (2) during the officer's performance of an authorized act in their official capacity; and (3) the person knew they were a peace officer.[15] The statute requires that the officer must be engaged in an "authorized act within his [or her] official capacity."[16] "If the officer's conduct violated the fourth amendment, it is unauthorized, and the person, therefore, is not in violation of section 31-1(a)."[17]

A person may not use force to resist arrest by a known police officer, even if the arrest is unlawful.[18] An exception to this rule is made when the officer uses excessive force.[19]

> Use of excessive force by a police officer invokes the arrestee's right of self-defense. Therefore, where a defendant is charged with resisting arrest or with the aggravated battery of a police officer during an arrest, a jury instruction on self-defense is required where […] there is evidence that the arresting officer used excessive force. However, a self-defense instruction should be given only when a defendant resists arrest ***after*** the officers resort to using excessive force. A self-defense instruction is inappropriate where the defendant resisted arrest and then officers used force to effectuate the arrest.[20]

II. ARGUMENT

A. The Superintendent cannot meet his affirmative burden of showing COPA's recommendation to separate Officers Ridgner and Abramson is unreasonable.

1. Officer Ridgner and Abramson did not have reasonable articulable suspicion to support the investigatory stop of [redacted] at its inception.

The Superintendent contends that Officers Ridgner and Abramson had reasonable articulable suspicion that [redacted] was carrying a handgun. COPA disagrees. Officers Ridgner and Abramson had no reasonable, articulable suspicion to support the investigatory stop of [redacted] at its inception. All that followed was tainted by that illegality.[21]

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[13] 720 ILCS 5/12-3.05(d)(4)(i).
[14] 720 ILCS 5/12-3(a).
[15] 720 ILCS 5/31-1(a) (2020); *People v. Gallagher*, 2020 IL App (1st) 150354, ¶ 29.
[16] *Gallagher*, 2020 IL App (1st) 150354, ¶ 29 (quoting 720 ILCS 5/31-1(a) (West 2012) *and People v. Jones*, 2015 IL App (2d) 130387, ¶ 11).
[17] *Id.*
[18] *People v. Amnions*, 2021 IL App (3d) 150743.
[19] *People v. Amnions*, 2021 IL App (3d) 150743.
[20] *People v. Amnions*, 2021 IL App (3d) 150743 (emphasis in original) (internal citations omitted).
[21] *People v. Villegas*, 2019 IL App (1st) 161682-U, ¶ 28.

Officers Ridgner's and Abramson's belief that [redacted] was armed was based on a mere hunch. Specifically, the officers observed [redacted] seated with a group of people near a corner store in broad daylight. The area was known to the officers for shootings and gang turf wars. Upon noticing their squad car, [redacted] looked surprised, touched his waistband, stood up, and walked[22] in the direction of the corner store.

The officers had not seen [redacted] with a weapon or any type of object in his waistband. [redacted] also did not appear to be hiding anything from the officers. In fact, when the officers approached him, he lifted his shirt to show that there was nothing in his waistband. The officers nevertheless detained him.

Courts have found no reasonable articulable suspicion under similar circumstances. In ***Sims***,[23] the court found no reasonable articulable suspicion to support the officer's belief that a person was armed where the officer observed the person sitting in front an abandoned building, stuff an unknown object into his crotch area, and walk away. The officer recognized the person and recalled that he had been previously arrested for unlawful use of a weapon. The court found that the officer's belief that the person was armed was based on a mere hunch. Likewise, in *Villegas*, the court concluded that the officer lacked reasonable articulable suspicion to detain a person sitting on a bus bench at 2:00 am, attempting to hide a black plastic bag behind him twice when he saw officers approaching.[24] [redacted] engaged in innocuous acts similar to those engaged in by Sims and Villegas. Consequently, Officers Ridgner and Abramson lacked reasonable articulable suspicion to detain [redacted][25]

Altogether, the evidence shows that the officers effected an investigatory stop without having the requisite degree of suspicion to support it. The Superintendent has thus failed to meet his affirmative burden of showing that COPA's recommendation to sustain allegation #3 against Officer Ridgner and Officer Abramson was unreasonable.

2. Officer Ridgner and Officer Abramson had no probable cause to arrest [redacted]

The Superintendent does not dispute[26] that Officers Ridgner and Abramson lied to cover up their use of excessive force against [redacted] Rather, the Superintendent contends that the officers had probable cause to arrest [redacted] because [redacted] committed a battery against Officer Ridgner during the incident. COPA disagrees. First, the evidence unequivocally demonstrates that, while on scene, neither officer could articulate a reason for [redacted] arrest. The officers' inability to articulate a reason for [redacted] arrest is extremely concerning, especially in light of the DOJ's identification of resisting arrest and aggravated

[22] Contrary to the officers' statements, there was no evidence that [redacted] "quickly" walked away from the group. *See* Att. 4.
[23] ***People v. Sims***, 2014 IL App (1st) 121306.
[24] ***People v. Villegas***, 2019 IL App (1st) 161682-U.
[25] In addition, what little suspicion the officers had was immediately dispelled by [redacted] when he lifted his shirt, showing that there was nothing in his waistband. The Superintendent's reliance on ***People v. Salgado***, 2019 IL App (1st) 171377, and ***People v. Jackson***, 2012 IL App (1st) 103300, is therefore misplaced. In ***Salgado*** and ***Jackson***, unlike in the instant case, the officers' suspicions were not immediately dispelled. In ***Salgado***, the defendant refused to lift his shirt for a sergeant who noticed a visible bulge on his waistband and instead grabbed the object, which turned out to be a gun. Similarly, in ***Jackson***, as soon as the officers approached the defendant, he acted bizarrely by flailing his arms, backing up, and speaking unclearly. Unlike in ***Salgado*** and ***Jackson***, in the instant case [redacted] immediately dispelled any possible suspicions Officers Ridgner and Abramson may have had. As soon as the officers approached him, [redacted] lifted his shirt, showing that there was nothing in his waistband. As the officers' suspicions were dispelled, they had no authority to seize [redacted] by placing their hands on him, grabbing him by the throat, and taking him to the ground.
[26] Superintendent's Non-concurrence Letter, section II.F.1, at p. 8.

battery to a peace officer as charges often used to cover up police misconduct, such as the use of excessive force.[27]

Second, there is insufficient evidence that [redacted] committed a battery. There is no evidence that [redacted] had the intent to make physical contact of insulting or provoking nature. Rather, the preponderance of the evidence, including the BWC footage and [redacted] own statements, show that he was attempting to create distance between himself and the officers out of fear and confusion.[28] Moreover, there is no evidence that Officer Ridgner suffered any bodily harm when [redacted] allegedly slapped his hand. During his COPA interview, Officer Ridgner was asked whether the slap caused him any pain.[29] Officer Ridgner responded "No, I wasn't in, like, any necessarily, like, any, like, debilitating pain, *per se*, but he did make physical contact."[30] Officer Ridgner claimed on his TRR that he had a "minor contusion/laceration" and "other" unspecified injury resulting from the incident.[31]Officer Ridgner provided no description of the contusion/ laceration or its location in the narrative portion of the TRR. In [redacted] arrest report, Officer Ridgner indicated that he was injured and that his injury consisted of a "strained back."[32] While it is possible that Officer Ridgner may have suffered a "strained back" as a result of the two takedowns he performed on [redacted] it is highly unlikely that Officer Ridgner's "strained back" resulted from [redacted] alleged slap on the hand.

Additionally, the totality of the circumstances demonstrates that [redacted] had legal justification to defend himself, and thus did not commit a battery when he allegedly slapped Officer Ridgner's hand. The officers here had no reasonable articulable suspicion to approach [redacted] and no probable cause to arrest him. The officers therefore could only approach [redacted] for a consensual encounter and were not entitled to use any force against him. Nevertheless, they ran at [redacted] aggressively stopped him, cornered him against the wall, and placed their hands on him. The officers' seizure of [redacted] was unreasonable. Under these circumstances, [redacted] was entitled to use self-defense against Officer Ridgner's and Officer Abramson's use of excessive force.[33] In other words, [redacted] had legal justification[34] for flailing his arms in self-defense, and thus did not commit a battery. **Allegation #4** against Officers Ridgner and Abramson was properly Sustained.

3. Each of Officer Ridgner's takedowns were unjustified.

There were two takedowns, neither of which was justified. The Superintendent concedes that the first takedown, during which Officer Ridgner grabbed [redacted] by the neck and pulled him to the ground, did not comply with Department policy. The Superintendent, however, contends that the second takedown was

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[27] DOJ Report, pg. 79 ("We heard from numerous advocates and individual victims of police abuse that officers who engaged in force against a civilian routinely file baseless police assault and battery charges against the victim and other witnesses to the misconduct."); *see also* Chicago police use 'cover charges' to justify excessive force, Oct, 23, 2018, https://www.chicagoreporter.com/chicago-police-use-cover-charges-to-justify-excessive-force/ (last accessed 1/4/2023).

[28] Att. 45 at p. 48, lines 7-24 ([redacted] explained that he was shocked and defensive when the officers surrounded him, since he did not believe he was doing anything wrong. [redacted] stated that he put his hands up and told the officers "I ain't got nothing. I ain't got nothing." [redacted] denied intentionally slapping Officer Ridgner's hand and explained that his arm moved because he "tensed up" in response to Officer Ridgner's "aggressive" approach.).

[29] Att. 27, p. 69, line 24.

[30] Att. 27 at p. 70, lines 1-10.

[31] Att. 18 at p. 1.

[32] Att. 3 at p. 3-5 (Officer Ridgner was the attesting officer on [redacted] arrest report. In the arrest report, Officer Ridgner reported that he was injured and that the injury was a "strained back").

[33] The officers could have only initiated a consensual encounter with verbal directions and police presence. Their use of holding techniques exceeded permissible force options.

[34] 720 ILCS 5/12-3(a) ("A person commits battery if he or she knowingly ***without legal justification*** by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." (emphasis added).)

objectively reasonable, necessary, and proportional. COPA disagrees. As previously explained, [redacted] had every right to defend himself against the excessive force and unauthorized actions of the officers. Officer Ridgner's two takedowns and two neck holds far exceeded any permissible parameters set out by Department policy. Consequently, **Allegation #2** against Officer Ridgner was properly Sustained.

B. The Superintendent cannot meet his affirmative burden to overcome COPA's finding that Lt. Keefe and Sgt. Urban violated Rule 14 when they certified that Officer Ridgner's and Officer Abramson's false TRRs were complete and accurate.

Lastly, although the Superintendent agrees that Officer Ridgner and Officer Abramson filed false reports, he contends that the evidence is insufficient to support COPA's finding that Lt. Keefe and Sgt. Urban (hereinafter collectively referred to as the "Supervisors") violated Rule 14 when they made or approved one or more false, misleading, inaccurate, and/or incomplete statements when they approved Officer Ridgner's and Officer Abramson's TRRs. COPA disagrees. CPD policy in effect at the time of this incident provided that CPD "will not charge a member with a Rule 14 violation unless the Department member willfully made a false statement and the false statement was made about a fact relevant to the investigation."[35] The totality of the circumstances in this case shows that the Supervisors knew they were approving false, misleading and/or inaccurate reports.

First, contrary to the Superintendent's claim, both Supervisors watched the BWCs prior to reviewing, signing, and approving the TRRs.[36] Neither could provide a credible explanation for the disparity between the incident shown on Officer Ridgner's and Officer Abramson's BWC footage and the description of the incident in the TRRs. For instance, the TRRs contained no information regarding Officer Ridgner's two neck grabs, two takedowns, [redacted] loss of consciousness, or Officer Abramson's profane death threat to bystanders. Interestingly, both Supervisors stated that they were able to see [redacted] alleged slap to Officer Ridgner's hand.[37] COPA finds that if the Supervisors were able to see the alleged slap, which is objectively difficult to discern on either of the officers' BWCs, then it is more likely than not that they observed Officer Ridgner's immediate response to that alleged slap. That response included Officer Ridgner's grabbing [redacted] neck on two occasions and performing two takedowns, causing [redacted] to lose consciousness. The Supervisors' claims that they did not see or did not appreciate the seriousness and excessive nature of Officer Ridgner's violent actions are incredible.[38] His aggression against an unarmed person is visible on the officers' BWCs. The totality of the circumstances thus indicates that the Supervisors knew that Officers Ridgner and Abramson provided false statements on their TRRs, where neither Officer Ridgner's use of excessive force, nor the fact that [redacted] lost consciousness nor that Officer Abramson threatened bystanders, all facts material to the accuracy and completeness of the reports, were mentioned. Nevertheless, the Supervisors willfully approved them. In fact, despite all evidence to the contrary, Lt. Keefe attested that Officer Ridgner's use of force complied with CPD policy. The totality of the circumstances indicates that in willfully signing and approving the officers' TRRs as complete and accurate, the Supervisors violated Rule 14.

[35] G08-01-01(II)(N), Department Member Bill of Rights (eff. May 4, 2018)
[36] Att. 48, p.16, lines 1-2 (Sgt. Urban stated that he reviewed "pretty much all of it."); Att. 33, p. 18, lines 17-22 (Lt. Keefe indicated that he watched the portion of the BWCs depicting the "physical altercation.").
[37] Att. 33, p. 27, lines 7-24; Att. 48, p. 29, lines 13-20.
[38] Att. 33 at p. 28, lines 1-24; p. 29, lines 1-24; p. 30, lines 1-12.

Second, in support of his claim, the Superintendent inappropriately relies on the Police Board's decision in *Franko*.[39] *Franko*, however, supports COPA's Rule 14 findings against both Supervisors.[40] In *Franko*, the Police Board found Sgt. Franko guilty under Rule 14 for approving TRRs that contained falsehoods about Laquan McDonald's actions prior to his murder.[41] Sgt. Franko claimed that he did not watch the entirety of the video depicting the incident prior to approving the TRRs. The Police Board found that Sgt. Franko had an obligation to review the relevant video to determine whether the officers' accounts were complete and accurate.[42] Following a full evidentiary hearing, the Police Board found Sgt. Franko's claim that he did not watch the entirety of the videos depicting the murder of Laquan McDonald, incredible.[43] Similarly, here, COPA has found by a preponderance of the evidence that Sgt. Urban's claim that he did not view the videos of the incident in their entirety incredible. Similarly, COPA has found that Lt. Keefe's claim that although he watched portions of the BWC depicting the incident, he failed to appreciate the severity of Officer Ridgner's and Officer Abramson's misconduct, not plausible. The Superintendent has not shown to the contrary for either Supervisor. As in *Franko*, this case should proceed to a full evidentiary hearing before the Police Board to determine whether Lt. Keefe's and Sgt. Urban's explanations for their failure to properly assess and review the officers' TRRs are credible.

Thus, the Superintendent has presented no compelling evidence to undermine COPA's findings and the Sustained findings on Allegations #1 and #2 against Lt. Keefe and Sgt. Urban should stand.

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 separation for all involved officers.

Respectfully,

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

[39] *In re Franko et al.*, 16PB2909 – 2912 (July 18, 2019), https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/16PB29082912Decision.pdf (last accessed Aug. 14, 2023)
[40] *In re Franko et al.*, 16PB2909 – 2912, p. 4 (finding that Franko "had a duty not merely to sign the reports, but to determine if these reports were complete and accurate before signing them." The Police Board concluded that Franko violated his duties because the reports he approved "contained several demonstrable and known falsehoods."); *see also Franko v. Police Bd.*, 2021 IL App (1st) 201362, ¶36.
[41] *In re Franko et al.*, 16PB2909 – 2912, pp. 15-16.
[42] *In re Franko et al.*, 16PB2909 – 2912, at pp. 9-10.
[43] *In re Franko et al.*, 16PB2909 – 2912, pp. 15-16.