



Brandon Johnson
Mayor

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

Larry Snelling
Superintendent of Police

April 8, 2024

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 W. Chicago Ave., 4th Floor

Re: Superintendent's Concurrence and Non-Concurrence with COPA's findings and recommendation
Log #2019-3174
Officer Michael Bryant #10680

Dear Chief Administrator Kersten:

Based on a review of the above-referenced complaint register (CR), the Chicago Police Department (CPD) concurs with the findings as to three of the sustained allegations, but does not concur with the sustained finding for five of the allegations. Furthermore, as will be discussed in greater detail below, CPD does not concur with the recommended penalty of separation. While CPD agrees that the evidence of misconduct supports the sustained findings in three of the allegations, the misconduct proven is not so egregious as to warrant separation. CPD proposes a 25-day suspension as penalty in this case. In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalty.

Summary and Analysis of the Facts and Evidence

The evidence presented for review by COPA includes video attachments, both BWC and private footage, CPD reports including arrest reports and TRR's, and statements given by the accused officer.

No statement was taken from either the arrestee, [REDACTED], nor his mother, [REDACTED], who contacted COPA to bring this matter to their attention and is the cause for the initiation of this complaint. No statement was taken from [REDACTED], the complainant for allegations 3 and 4. Despite the non-cooperation of the complainants, COPA did seek and obtain an affidavit override.

The most illuminating evidence items, aside from the statements of the accused officer, are the BWC videos of P.O. Bryant, P.O. Goetz, and P.O. Alley in evidence attachments #8, #4, and #29, respectively. While the BWC videos do generally capture the arrest of [REDACTED], none have a definitive view of the strike that is at issue in allegation 1 and the basis of the Rule 14 allegations (6-8). Despite this lack of definitive video, no statement was taken from any of the other officers who were on scene and/or assisted in the arrest of [REDACTED].

Allegation #1 – Striking [REDACTED] with a closed fist without justification in violation of Rule 9.

This allegation should not be sustained for two crucial reasons. One, COPA has not proven by a preponderance of the evidence that P.O. Bryant did in fact strike [REDACTED] with a closed fist. Having P.O. Bryant

sit for a second statement in order to "clarify" his previous statement served only to make clear that COPA hasn't proven this allegation (nor in fact proven the Rule 14 allegations, to be more fully explained below). Secondly, even if COPA had demonstrated by a preponderance of the evidence that P.O. Bryant struck ██████ with a closed fist, based on the totality of the circumstances he would've been justified in doing so.

Based on the BWC videos provided by COPA and P.O. Bryant's statement, Bryant struck ██████ (whether with closed fist or a palm strike) because he reasonably believed that ██████ was resisting arrest while still armed with a weapon that could cause death or great bodily harm. Further, ██████'s right arm was below his body, and he was stiffening his upper limbs, which caused P.O. Bryant's reasonable belief that ██████ was reaching towards his waistband area.

According to CPD General Order G03-02-01 (Force Options), which was effective on the date of occurrence, an assailant is a subject who is using or threatening the use of force against another person or himself / herself, which is likely to cause physical injury. An assailant is further defined as a subject whose actions are aggressively offensive with or without weapons. This category of assailant may include a subject who is armed with a deadly weapon, but whose actions do not constitute an imminent threat of death or great bodily harm. The use of direct mechanical strikes is authorized when dealing with an assailant. Direct mechanical techniques are forceful, concentrated striking movements such as punching and kicking, or focused pressure strikes and pressures. These techniques can be combined with take-downs or pins against the ground or other objects¹.

In this case, P.O. Bryant reasonably believed that ██████ was an assailant and armed with a dangerous weapon. That ██████ stopped fleeing or initially put his hands up in an apparent bid to surrender is of no consequence because of his subsequent actions. Department policy states that members will modify their force in relation to the amount of resistance offered by the person.² Department policy accounts for precisely what occurred in this instance, i.e., ██████ went from resister (fleeing), to compliant (hands up), to assailant (reaching toward waistband) in rapid succession, and P.O. Bryant modified his force in response.

P.O. Bryant stated to COPA that once ██████ went to the ground he continued to stiffen, tuck his arms in, and reach towards his waistband area, which is when he performed an open hand strike to the back of ██████ neck area to gain compliance. P.O. Bryant clarified to COPA that his fist was clenched, but he stunned ██████ with the lower half of his palm, which, according to Bryant, is a diffused pressure strike and not a punch³. In his second statement, Bryant further clarified that he was instructed at the Academy in how to execute an open hand strike, and that the technique he was taught involved the curling of one's fingers. There is no evidence in the record to refute this testimony.

P.O. Bryant's actions were necessary, reasonable, and proportional, based on the totality of the circumstances. ██████ fled from the police while armed with a handgun and refused to release his right arm from beneath his body, which is an evasive movement to avoid handcuffing. Further, P.O. Bryant reasonably believed that ██████ was still armed with the handgun and posed a threat of physical harm because he would not, initially, release his arms for handcuffing. More, COPA cannot demonstrate that P.O. Bryant more likely than not violated Department rules since his actions were consistent with the force options model and Department Directive on force options, at the time of the incident.

¹ Chicago Police Department Directives, Force Options G03-02-01. Effective on Aug. 07, 2019.

² *Id.*

³ COPA Statement of P.O. Michael Bryant, Attachment #15. Jul. 12, 2021.

Allegation #2 – Pointing his firearm at a group of bystanders without justification in violation of Rules 2, 8, and 6.

This allegation should not be sustained. Based on the evidence provided by COPA, one cannot make a determination that P.O. Bryant's actions were unreasonable and violated the law or Department Rules and Directives.

The Firearm Pointing Incidents Department Notice (D19-01) did not become effective until 01 Nov 2019, which is after the date of occurrence of this allegation; therefore, the examination of P.O. Bryant's actions focuses on case law and Department Directives involving use of force (G03 series).

The basis of analysis for when the use of force by officers will be considered excessive under the Fourth Amendment is spelled out by the Supreme Court of the United States ("SCOTUS") in *Graham v. Connor*. The *Graham* Court held that all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, stop, or other seizure of a free person are properly analyzed under the Fourth Amendment's objective reasonableness standard. The right to make an arrest or investigatory stop necessarily includes the right to use some degree of physical coercion, or threat thereof, to effect it.

In determining whether an officer's use of force was objectively reasonable, a court looks at factors including the seriousness of the crime allegedly being committed, whether the officer reasonably believes the suspect poses an immediate threat to anyone (including the officers present), and whether a person is attempting to escape or actively resisting arrest⁴.

In *L.A. County v. Rettele*, SCOTUS held that officers carrying out a search warrant had knowledge that at least one of the suspects likely to be present owned a registered handgun, making it only prudent to proceed as though they would encounter an armed individual who might resist⁵. Further, in *Muehler v. Mena*, SCOTUS held that the officers' actions of pointing their firearms at suspects during the execution of a search warrant were reasonable because they had cause to believe that one person living at the residence to be searched was a criminal gang member with recent involvement in a drive-by shooting⁶.

In both cases, the SCOTUS had no difficulty in finding the officers' actions in detaining suspects with weapons drawn reasonable because of the expectation of the presence of weapons, dangerous suspects, or violence-related serious crimes. In a case finding in the other direction, the United States 7th Circuit Court held, in *Baird v. Renbarger*, that an officer's actions in pointing a submachine gun at people present during the execution of a search warrant was unreasonable because of the absence of any indication of a threat to the officers or others. Unlike the previously cited cases, in *Baird*, the officers sought evidence for a non-violent crime, and there was no indication of, or even a suspicion that anyone at the location of the search was dangerous or armed⁷.

Unlike the facts in the *Baird* case, P.O. Bryant pointed his firearm at a group because he had reasonable suspicion that an individual within or near the group was dangerous and armed with a weapon that could kill P.O. Bryant or his partners. ██████ was observed on a POD camera manipulating a suspicious bulge that was protruding with a silhouette of a handgun. Further, ██████ appeared to be acting nervous while consistently moving back and forth between the said group and adjusting the object in the front of his waist band area. Additionally, P.O. Bryant had knowledge that ██████ was involved in a shooting 1-2 weeks prior to the date of this incident. These facts are

⁴ *Graham v. Connor*, 490 U.S. 386 (1989).

⁵ *L.A. County v. Rettele*, 501 U.S. 609 (2007).

⁶ *Muehler v. Mena*, 544 U.S. 93 (2005).

⁷ *Baird v. Renbarger*, 576 F.3d 340 (7th Cir.).

more like those in *Rettele* and *Muehler*, where the officers had an expectation of the presence of weapons, dangerous suspects, or violence-related serious crimes.

In his statement to COPA, P.O. Bryant stated that he pointed his firearm at the group because he observed [REDACTED] on the POD going back and forth between the group while appearing to be armed with a dangerous weapon. He reasonably thought that [REDACTED] was with the group and that there was a gun in the area. P.O. Bryant also advised COPA that he had knowledge of the area being a known gang and narcotic hot spot, and there have been previous incidents involving dangerous weapons⁸.

Based on the principles laid out in *Graham*, *Rettele*, and *Muehler*, P.O. Bryant's actions towards the group were objectively reasonable, necessary, and proportional, and he did not violate the law, Department Directives, or Rules and Regulations. Based upon the preponderance of the evidence, COPA has not demonstrated that P.O. Bryant more likely than not violated Rules 2, 8, and 6.

Allegation #3 – Attempting to strike a cell phone from the hand of [REDACTED] without justification in violation of Rule 2 and 9.

Allegation #4 – Addressed a black male, [REDACTED], as “boy” in violation of Rules 2 and 9.

Allegation #5 – Directing profanities at [REDACTED] and / or a group of bystanders in violation of Rule 9.

COPA has proven by a preponderance of the evidence that Officer Bryant committed the acts of misconduct as alleged within allegations 3, 4, and 5, in violation of Rules 2 and 9. As stated above, CPD recommends a 25-day suspension as penalty.

Allegation #6 – Making a false, incomplete, inaccurate, and / or misleading statement when completing the tactical response report (“TRR”) related to RD# JC383054 in violation of Rule 14.⁹

This allegation, as well as the similar allegations made in allegations 7 and 8, are not legally sufficient. First, some procedural matters. When this investigation was initially closed by COPA and sent to CPD for review, it was deemed incomplete in that P.O. Bryant was never presented with the video or audio evidence, related to the use of force incident against [REDACTED], and given the opportunity to clarify and amend his original statement, as required by contract.

According to Article 6, Section 6.1(m) (Conduct of Disciplinary Investigations) of the *Agreement Between Fraternal Order of Police Chicago Lodge No. 7 and The City of Chicago* effective at the time of the occurrence:

If, prior to taking an Officer's statement, the Employer, IPRA or IAD is in possession of video or audio evidence relevant to the matter under investigation, it may, in its discretion, elect to advise or not to advise the Officer of such fact and, further, may allow or not allow the Officer an opportunity to review the video or audio evidence prior to taking the Officer's statement. An Officer who is not allowed to review the video or audio evidence prior to giving a statement shall not be charged with a Rule 14 violation unless the Officer has been presented with the video or audio evidence and given the opportunity to clarify and amend the Officer's original statement. In any event, the Employer shall not charge an Officer with a Rule 14 violation unless it has determined that: (1) the Officer

⁸ COPA Statement of P.O. Michael Bryant, Attachments #15 and #17. Jul. 12, 2021.

⁹ This analysis also applies to Allegations #7 and #8

willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.¹⁰

On 12 June 2023 P.O. Bryant gave a second statement to COPA, with opportunity to review video and amend or clarify his statement. In his second statement, after much back and forth with the COPA investigators about the nature of the strike P.O. Bryant delivered, Bryant stood by his TRR and previous statement. Bryant stated that his fingers were curled, but that he struck [REDACTED] with his palm, that he believed this to be an open hand strike, and that he was trained in this technique during recruit training at the academy. Bryant did not deny curling his fingers or that his hand could be seen to be in a fist. He insisted, however, that between the strike having been delivered with his palm and the only other option on the TRR to select being closed hand/punch, his selection of open hand strike was the most accurate description of the force he used.¹¹

In order to sustain a Rule 14 violation, there must be a showing of a false statement, and also evidence that demonstrates: 1) willfulness; and 2) the false statement must be material to the incident under investigation.¹² The Police Board decision in *Mosqueda* went on to note that "A good faith but mistaken statement that is factually inaccurate or misleading would not suffice to prove the charges at issue"¹³ and also that:

Knowledge and intent must be determined at the time a false statement is made. *See, e.g., People v. Boyd*, 81 Ill.App.3d 259, 261 (3d Dist. 1980) ("An essential element of the crime of perjury is knowledge of falsity of the statements at the time of utterance.");⁶ *People v. Drake*, 63 Ill.App.3d 633, 635 (4th Dist. 1978)¹⁴

Here, COPA has not demonstrated that P.O. Bryant has made a false statement (much less willfully, or that it is material to the investigation). Bryant has consistently stated that he struck [REDACTED] with his palm and has consistently acknowledged curling his fingers into what appears to be a fist. Bryant has consistently maintained that his TRR check box selection was what he believed most accurately represented the strike at issue, i.e., an "open hand" strike and not a "punch." No evidence in the record demonstrates otherwise. COPA believes P.O. Bryant punched [REDACTED]; they have not proven it.

As regards the element of materiality (though the falsehood element is not proven) COPA states Bryant's alleged falsehood is material as the type of strike used is central to a determination of the reasonableness of P.O. Bryant's use of force. This is incorrect. Again, P.O. Bryant consistently - in his TRR and in his statements to COPA - describes [REDACTED] as an assailant. The use of a punch or closed-hand strike against an assailant is an authorized force option and P.O. Bryant's use of a punch against [REDACTED] would have been reasonable under the circumstances. COPA states that P.O. Bryant's alleged false statement is material, when the opposite is true. It would be absurd for P.O. Bryant to go to such lengths to lie, repeatedly, on official police reports and in statements given to COPA knowing the jeopardy that a Rule 14 violation would place him in over a justified, authorized, and reasonable use of force. It is the far more likely conclusion to draw that P.O. Bryant's insistence that he struck [REDACTED] with his palm and indicated it as an open hand strike in his TRR is because it is true.

¹⁰ Agreement Between Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago. Jul. 1, 2012 – Jun. 30, 2017 (Still in effect).

¹¹ P.O. Bryant's rationale is fairly straight-forward, he states he did not check the closed hand/punch option because he did not punch [REDACTED].

¹² See *In the Matter of Charges Filed Against Police Officer Raoul Mosqueda*, Star No. 13662, Department of Police, City of Chicago (No. 17 PB 2935) pg. 12.

¹³ *Id.*

¹⁴ *Id.* at pg. 14

Other Factors for Consideration

This incident occurred nearly 5 years ago - COPA's initial investigation closed in December of 2022. It then took 13 months to conduct another statement with P.O. Bryant and render their conclusions. The case notes in CMS demonstrate clearly that this case was put on the back-burner, as the COPA investigator explicitly states they were told to prioritize other cases.¹⁵ A Police Board member or an independent arbitrator reviewing this investigation will likely be troubled by the length of time this investigation took and the attendant due process issues raised by said delay. Also, as has been noted above, neither of the complainants were interviewed or participated in this investigation, nor were any of the officers on scene interviewed, despite the inconclusive nature of their respective BWC recordings.

Conclusion

The allegations regarding P.O. Bryant's conduct, demeanor, and professionalism while on the scene (Allegations 3-5) of the arrest of [REDACTED] are supported by the evidence and are therefore deemed legally sufficient. The allegations concerning P.O. Bryant's use of force and his statements on that subject (Allegations 1-2 & 6-8), however, are not legally sufficient. While the most serious of the allegations lodged against P.O. Bryan are not legally sufficient, the legally sufficient, sustained allegations are of a nature that they warrant a significant suspension. CPD's disciplinary recommendation in this case is a 25-day suspension.

CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii). If COPA and the CPD find themselves at an impasse on the resolution of this matter, the CPD asks that COPA include all attachments from the log investigation to the member of the Police Board selected to conduct the review.

Sincerely,

[REDACTED]
Larry Snelling
Superintendent of Police
Chicago Police Department

¹⁵"Noting additional developments:

-investigation delayed as investigator received instructions from supv. to postpone statements during quarantine if case does not involve supervisory officers, concerns spurious allegations, or allegations of only minor violations. Additionally, subsequent to the resumption of officer statements in late 2020, investigator received instructions to focus on multiple high priority cases, including 2019-1775, 2020-3503, 2019-1893, 2019-4600. Inv. also received instructions to prioritize 1089700 (though not high priority). Finally, investigator received PRAD assignments, including research and drafting for advisory letters, that also took precedence over certain cases."

CMS Note: CO-0088804. Inv. Hock, 21 Jun 2021