

## INTRODUCTION

On May 29, 2017, at approximately 3:23 AM, Subject 1 (“Subject 1”) was arrested by Officers A and B. Subject was transported to the 22<sup>nd</sup> District’s lockup facility located at 1900 W. Monterey Avenue, Chicago, Illinois, processed, and placed in a cell. While in the cell, Detention Aide (“DA”) Detention Aide A and Officer C, who were watching him on camera, noticed Subject 1 removing a bag from his pants. Subject 1 removed smaller bags from the larger bag that he removed from the inside of his pants. Subject 1 placed some of the smaller bags on the lockup bench, and placed some of the bags into the cell toilet.

Upon seeing this, Detention Aide A and Officer C entered Subject 1’s cell, and directed Subject 1 to lower his pants and underwear, and to remove all the bags from his person. Subject 1 lowered his pants but did not lower his underwear. Officer C pulled on Subject 1’s underwear to inspect Subject 1 for contraband. Subject 1 jerked his upper body backward, at which point Officer C delivered a close-handed strike to Subject 1’s face. The Independent Police Review Authority (“IPRA”) was notified of this incident, an extraordinary occurrence, at 11:50 AM on May 29, 2017.<sup>1</sup>

## ALLEGATIONS:

It is alleged that on May 29, 2017, at approximately 9:32 AM, at 1900 W. Monterey Ave., Chicago, IL, 22<sup>nd</sup> District lockup, **Officer C #XXXX**:

1. Unnecessarily struck Subject 1 about the face with a closed fist.

## APPLICABLE RULES AND LAW

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 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

## INVESTIGATION

### Interviews

**Subject 1 provided a statement to IPRA on May 29<sup>th</sup>, 2017.** In his statement, Subject 1 stated that he was sitting in the lockup cell after his arrest. Subject 1 relayed that he was searched prior to entering lockup, but there was marijuana stashed in his pants. Subject 1 stated that he was disrespected by the officers he dealt with in lockup. Subject 1 stated he was trying to flush the marijuana prior to the officers entering the cell. Subject 1 stated that he could see the officers approaching the cell. Subject 1 stated that he believed the officers saw him on camera so they came toward his cell. Subject 1 said that he had his hand in his shirt when the officers came up to his cell because the cell was cold. He stated that he believed there was marijuana still in the toilet when the officers entered his cell. Subject 1 described the first officer as black, skinny with a bald head, and the officer that struck him as black, chubby with a bald head. Subject 1 stated the officer that struck him was much bigger than him. Subject 1 stated that the skinny officer came into the cell first and the officer who struck Subject 1 came in behind the skinny officer. Subject 1 stated that the officers told him, “oh that’s where you put it at, that’s where you stashed it,” or something to that effect. Subject 1 said that he responded by asking, “what are you talking about?”

The officers started grabbing at Subject 1’s shirt, according to Subject 1, and Subject 1 asked why they were grabbing him. Subject 1 stated he showed no signs of aggression or reason for the officers to put their hands on him. Subject 1 further stated that the officers then grabbed him by his arms, he stepped back, and the officer (now known as Officer C) hit him in the mouth. Subject 1 stated that he asked why he was struck and why the officers were putting their hands on him. Subject 1 stated he was also pushed up against a wall in the cell. Subject 1 stated the officer then related that he would “bust his shit open again.” Subject 1 relayed that he became irritated, stood up on the cell bench, and told the officer to hit him again. Subject 1 said that he felt offended and was angry. Subject 1 stated he was arguing with the officer after he was hit up until the officer left the cell. Subject 1 further stated he did not have a problem with the skinnier officer, only the one who struck him. Subject 1 stated the incident ended with words back and forth, and then the officers left the cell. Subject 1 stated he suffered a cut in his mouth and his lip was swollen. He stated that no one ever asked if he wanted to go to the hospital, but Subject 1 requested to talk to a “white shirt.” Subject 1 stated he threatened to spit on the officers if they entered his cell again because he was mad. (Attachment 8)

**Detention Aide A provided a statement to IPRA on August 8<sup>th</sup>, 2017.** Detention Aide A stated he was working in lockup at the 22<sup>nd</sup> District at 9:32 AM. Detention Aide A stated he worked with a partner that day, Officer C. Detention Aide A believed he knew Officer C since Detention Aide A began working in the 22<sup>nd</sup> District, which has been approximately 11 or 12 years. Detention Aide A stated Subject 1 was being unruly and did not want to cooperate. Detention Aide A stated he could not process or search Subject 1 as Subject 1 was being aggressive and combative towards Detention Aide A and the arresting officers. Detention Aide A said he decided to place Subject 1 into the cell first to “cool down” before Subject 1 was searched and processed, as Subject 1 was unruly and uncooperative. Detention Aide A further stated he allowed Subject 1 to make

multiple telephone calls before entering the cell to calm Subject 1 down. Detention Aide A stated Subject 1 refused to go into the lockup cell, but Detention Aide A coaxed Subject 1 into the cell. Detention Aide A related that it took about 15 or 20 minutes to coax Subject 1 into the cell. Detention Aide A stated Subject 1 entered the cell and Subject 1 related that he would spit on anyone who entered the cell. Detention Aide A recalled that Subject 1 then laid down, and about an hour later, Subject 1 was “rambling around.”

Detention Aide A stated he and Officer C observed Subject 1 through the surveillance cameras in lockup and noticed a bag of marijuana in Subject 1’s hand. Detention Aide A stated he had to retrieve the bag of marijuana, as Subject 1 could not be sent to Cook County with contraband. Subject 1 then relayed that when he and Officer C entered the door, Subject 1 “got tough.” Detention Aide A noted that Subject 1 did not spit on Detention Aide A or his partner in the cell. Detention Aide A stated he and Officer C told Subject 1 to step back, and Subject 1 said, “you can have all of that, I don’t have anymore.” Detention Aide A recalled that Subject 1 tensed up his body when he and Officer C entered the cell and they asked Subject 1 where the rest of the contraband was.

Detention Aide A stated that when Detention Aide A and Officer C entered the cell they told Subject 1 to step back. Detention Aide A further stated Subject 1 told him and Officer C, “You’re not going to do nothing to me.” Detention Aide A relayed that Subject 1 tightened his body up and pulled back “in a fighting stance” when Officer C reached for the contraband in Subject 1’s underwear. Detention Aide A stated Officer C struck Subject 1 with either his fist or forearm after Subject 1 jerked back and that was the only strike delivered to Subject 1. Detention Aide A stated he and Officer C pushed Subject 1 to the cell bench and searched Subject 1 while he was against the bench. Detention Aide A further stated he and Officer C found marijuana in Subject 1’s underwear. Detention Aide A stated after he and Officer C searched Subject 1, Subject 1 stood on the bench and tensed up again, threatening both Detention Aide A and Officer C. Detention Aide A then relayed that he and Officer C told Subject 1 not to hit them as they backed out of the cell. Detention Aide A believed he and Officer C were in the cell for about 10 minutes. Detention Aide A then stated that Subject 1 then flushed the toilet, which still had contraband in it, and laughed at Detention Aide A and Officer C while doing so. Detention Aide A stated Subject 1 was not injured, but a Lieutenant called for paramedics. Detention Aide A stated he nor Officer C processed Subject 1 as he was combative at the time, but he was processed later after Detention Aide A’s watch. (Attachment 30)

**Police Officer C provided a statement to COPA on October 5<sup>th</sup>, 2017.** Officer C stated he was working lockup at the 22<sup>nd</sup> District on May 29, 2017 at approximately 9:32 AM. Officer C further relayed that he had been assigned to the 22<sup>nd</sup> District lockup “on and off” for 10 years. In addition to lockup, Officer C stated he worked street patrol, traffic officer, and as a watch secretary throughout his career with CPD. Officer C noted he attended to the prisoners in 15 minute intervals. The 15 minute intervals involved checking the security camera footage, and walking past the cells to inspect those being held at the 22<sup>nd</sup> District. Officer C stated there are 13 individual cells and 2 cells in the front of the lockup. Officer C then stated the room from which he was monitoring the inmates was about 30 feet from Subject 1’s cell. Officer C believed Subject 1 was the only inmate in the 22<sup>nd</sup> District at 9:32 AM. Subject 1 came into the 22<sup>nd</sup> District lockup shortly after Officer C began his shift, and Officer C stated officers from the shift prior to his shift brought Subject 1

into the lockup.

Officer C recalled that he worked with Detention Aide A that morning and Detention Aide A arrived to the 22<sup>nd</sup> District lock up approximately at 05:30. When officers brought Subject 1 into the lockup, Officer C stated he was in the restroom but he heard a commotion from outside the restroom. Officer C heard the officers telling Subject 1 “come on man, we don’t want no problems. Go ahead and get your fingerprints.” Officer C said he heard the officers were walking Subject 1 to the cell when Subject 1 stated he was not going into the cell and wanted to speak to a sergeant. Officer C stated he believed the commotion with the officers bringing Subject 1 to a cell was a distraction so the officers did not find any contraband Subject 1 had on his person. Officer C stated he believed the officers and Detention Aide A eventually coaxed Subject 1 into the cell. Officer C stated that when he exited the restroom, Subject 1 was already in a cell. Officer C said he did not know if Subject 1 was searched or fingerprinted but he knew he did not search or fingerprint Subject 1. Officer C could not recall what time Subject 1 was put into a cell. Officer C stated that after Subject 1 was put into the cell, Subject 1 laid down in the cell and appeared normal. Officer C relayed that Subject 1’s arms were in his shirt as he was laying back. According to Officer C, both he and Detention Aide A walked through the lockup to check on the inmates throughout the morning. Officer C relayed that he read Subject 1’s arrest report prior to entering the cell and noted how Subject 1 approached the arresting officers. Officer C and Detention Aide A viewed the video surveillance monitors and Detention Aide A stated, “Do you see what he is doing?” Officer C stated he and Detention Aide A saw Subject 1 placing items on the cell bench in the cell and he and Detention Aide A walked to Subject 1’s cell and opened the door.

Officer C stated he and Detention Aide A entered the cell. Officer C stated he opened the cell door and told Subject 1, “Man, what’s your problem? Don’t you know you’re on tape? You are being recorded with contraband. Give me the stuff.” Officer C stated he believed Subject 1 was a threat when Officer C entered the cell. Subject 1 responded, “I ain’t got no more stuff.” Officer C stated that he responded, “What are you talking about? Give me the rest of the contraband that you got in your shorts.” Officer C stated that Subject 1 responded, “You see what I got, everything I got is right there on the table.” Officer C stated Subject 1 then pointed to six little bags containing a green leafy substance on the concrete bench and he noticed there were also several other bags in the toilet. Officer C stated Subject 1 removed the bags from his shorts, under his scrotum. Officer C then stated, “Pull your shorts down, let me see it.” Officer C said that Subject 1 then pulled down his pants. Officer C stated he then instructed Subject 1 to pull down his shorts, to which Subject 1 stated that he did not have anything in his shorts. Officer C stated he told Subject 1 that either Subject 1 would remove the rest of the contraband from his shorts, or that he would retrieve it from Subject 1’s shorts. Officer C further stated that Subject 1 again refused having any contraband in his shorts. Officer C stated Subject 1 was not heeding his verbal commands.

Officer C stated he then grabbed Subject 1’s shorts, and Subject 1 “jerked back.” As Subject 1 jerked back, Officer C punched Subject 1 in the face with his hand. Subject 1 noted that Detention Aide A was standing to Officer C’s right, within a foot or two next to Officer C, when Officer C struck Subject 1. Officer C stated Subject 1’s hands were at his waist towards the front of his body and that Subject 1 never rose his hands towards Officer C’s face or his body before he was struck by Officer C.

Officer C stated Subject 1 puts his hands on Officer C's hands and pushed them. Officer C stated from years of experience and Subject 1's behavior up until that point, Officer C believed Subject 1 was going to strike him. Officer C stated he believed he would be struck by Subject 1 because of Subject 1's behavior with the arresting officers, his behavior when Officer C walked him to the cell, and Subject 1's failure to follow verbal commands. Officer C stated Subject 1 would be classified as aggressive, hostile, and combative according to the Use of Force Model employed by CPD in May 2017. Officer C stated he had no weapons in lockup, and he was trying to prevent Detention Aide A and himself from getting hurt. Officer C stated he struck Subject 1 to ensure Subject 1 did not destroy the contraband, so that Officer C could recover the contraband, and to protect himself and Detention Aide A. Officer C further stated he did not sustain any injuries from this incident. Officer C further stated that he viewed Subject 1's face after he was struck, but did not see any injuries on Subject 1.

Officer C stated that once he and Detention Aide A left the cell, Subject 1 flushed contraband that remained in the cell toilet. Officer C stated one can hear and communicate through the cell door. Therefore, after they left the cell, Officer C and Detention Aide A asked if Subject 1 needed medical attention, to which Subject 1 responded, "I don't want shit from you." Officer C then stated that the lieutenant on duty asked Subject 1 if he wanted any medical attention to which Subject 1 again denied. Officer C then stated that he and Detention Aide A notified the Watch Commander who called for EMS and paramedics. Officer C stated that EMS arrived about 20 minutes after the strike and viewed Subject 1's mouth and did not see any injuries.

Officer C stated he completed a Tactical Response Report (TRR) for this incident. Officer C stated he marked Subject 1 as a passive resister on his TRR. Officer C stated Subject 1 did not follow verbal direction when Subject 1 refused to remove the contraband from his underwear. Officer C further stated that he labeled Subject 1 as a passive resister because Subject 1 pushed Officer C's hands off of him. Officer C also stated he believed Subject 1 tightened up and stiffened to possibly strike him. Officer C stated Subject 1 became an active resister, as defined by CPD's Use of Force Model, after he put his hands on Subject 1 to recover the contraband. Officer C related that after he took the contraband and struck Subject 1, Subject 1 stood on the cell bench and put his hands up. Officer C stated Subject 1 took a fighting stance, and approached Officer C with both fists raised in the air. Officer C related that he completed his TRR documenting the totality of the circumstances of the incident, rather than documenting solely the use of force. Officer C later stated he struck Subject 1 based on the totality of the circumstances and he never tried to perform an open hand strike, but instinctually used a closed fist. Officer C stated that Officer D, a desk individual, completed his Officer Battery Report (OBR) because the Watch Commander assigned Officer D to complete the OBR.

Officer C stated he saw Subject 1 later when IPRA investigators arrived at the lockup. Officer C stated that Subject 1 declared that he would spit on anyone who entered the cell. Thus the IPRA investigators interviewed Subject 1 by speaking to him through the cell door. (Attachment 34)

## **Documentary Evidence**

The **Surveillance Video Footage** from Subject 1's cell, cell number 8, camera 10, in the

22<sup>nd</sup> District lockup, located at 1900 W. Monterey Ave., Chicago, IL, captures the incident, but does not capture any associated audio. Subject 1 is seen entering the cell at 08:57:10. Subject 1 is seen with a piece of white paper in his left hand. After Subject 1 enters the cell, he lies down on the cell bench and reads the piece of paper. At 08:59:22, Subject 1 lies down on the cell bench and falls asleep. At about 09:11:35, Subject 1 sits upright to place his arms in his shirt, and then once again lies on the bench and falls back asleep. Subject 1 sits upright and then stands at 09:32:11. Subject 1 reaches into his pants and walks to the cell door, staring out through the hatch. Subject 1 is then seen standing with a bag in his hands at roughly 09:32:31. Subject 1 continues to look out of the cell door, while his hands are opening the bag. Subject 1 then walks back to the cell bench, sits upright with his hands in the bag. Subject 1 stands up again and walks to the cell door, and multiple smaller bags can be seen on the cell bench at 09:33:59. Subject 1 returns to the cell bench with his hands in the bag. Subject 1 returns to the cell door and looks out, and then quickly returns to the cell bench. At 09:34:25, Subject 1 places some of the smaller bags into the cell toilet.<sup>2</sup> Subject 1 then walks to and from the cell door, looking out while he continues to pull smaller bags out of the larger bag, placing the smaller bags on the cell bench or into the cell toilet. At 09:35:17, Subject 1 quickly walks from the cell door to the cell bench, and places the smaller bags back into the larger bag. Subject 1 moves back to the cell door, and places his hands near his front waist. At 09:35:27, the bag can no longer be seen and Subject 1 pulls up his pants.

The cell door then opens at 09:35:35. Detention Aide A and Officer C both enter the cell at 09:35:38, and point at Subject 1. Detention Aide A then moves Subject 1 towards the cell bench and wipes the floor with his foot at 09:35:46. At 09:35:48, Officer C points at Subject 1 and Subject 1 lowers his pants, exposing his underwear. Officer C once again points at Subject 1, Subject 1 lowers his pants further at 09:35:55. Officer C then points at Subject 1 a third time. Officer C then walks closer to Subject 1, lifts Subject 1's shirt up and pulls Subject 1's underwear outwards at 09:36:02. As Officer C pulls at Subject 1's underwear, Subject 1 jerks backwards at 09:36:03. As Subject 1 is jerking backwards, Officer C strikes Subject 1 about the face with his closed right fist.

Officer C is holding Subject 1's shirt as he strikes Subject 1. Detention Aide A is holding Subject 1's left arm and Subject 1's right hand is not closed in a fist. The strike can be seen at 09:36:04. Immediately after the strike, Officer C holds Subject 1's shirt and pushes him towards the wall and cell bench. Officer C's cocks his right hand as if he were going to strike Subject 1 again, which can be seen at 09:36:06. Detention Aide A then throws a bag on the cell ground at 09:36:09. Officer C and Detention Aide A pull at Subject 1's pants, which can be seen 09:36:24. Officer C then places both his hands on Subject 1 at 09:37:15. Subject 1 stands up from the cell bench, and is pushed back to the cell wall by both Detention Aide A and Officer C at 09:37:59. Subject 1 then stands on the cell bench at 09:38:02 and raises both of his hands in fists at 09:38:04. Subject 1 then walks off the bench towards Officer C and assumes a boxing stance with both of his fists raised up, facing Officer C at 09:38:09. Detention Aide A then moves Subject 1 slightly back with his arm, to keep him away from Officer C at 09:38:16. Officer C and Subject 1 can be seen talking to each other, then Detention Aide A and Officer C exit backwards out of the cell at 09:39:05. Subject 1 then stares out of the cell door, and flushes the cell toilet at 09:39:26. (Attachment 38)

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<sup>2</sup> A red square can be seen on the Surveillance Video Footage. The red square blocks the view of the cell toilet, providing additional privacy for any individual using the toilet in the cell.

An **Arrest Report** for Subject 1, dated May 29, 2017, states Officer A and Officer B patrolled their beat when they were flagged down by a citizen at approximately XXXX S. Vincennes Ave., Chicago, IL. The citizen told the officers there was a white Acura SUV with a temporary Illinois license plate. The citizen also stated that it was occupied by a black male with dreads driving in the vicinity, and the driver had a firearm. The officers put the information given by the citizen over the radio and as they drove northbound on Vincennes Ave., they observed a white Acura SUV with a temporary Illinois license plate. The officers observed the white Acura SUV turn westbound down an alley without using a turn signal. The officers then observed the white Acura SUV pull into the back of the residence of XXXX S Winston Ave., Chicago, IL. The officers activated their emergency equipment and ordered the driver out of the vehicle and to show his hands to the officers. The driver was Subject 1. The Arrest Report further states that Subject 1 exited the vehicle and approached the officers in an aggressive manner and yelled obscenities at the officers. The Report further states that the officers cuffed Subject 1 and conducted a protective pat down for officer safety. The officers told Subject 1 the reason for the stop. Subject 1 could not produce a valid driver's license. Subject 1 was then placed into custody. Officer B conducted a custodial search of the front driver's seat area of the white Acura SUV. The report states that Officer B observed a handgun under the front seat and he recovered the handgun. The handgun was a Ruger 9MM handgun loaded with twelve rounds in the magazine and one in the chamber. Subject 1 was then brought into the 22<sup>nd</sup> District for processing.

The Watch Commander Comments to the Arrest Report also contain relevant information to this investigation. The Watch Commander Comments state that "Subject was observed on video retrieving suspect contraband from deep in his pants by lockup keepers. When they went to his cell to recover the contraband, the subject made a quick move that put P.O. C #XXXX in fear of being the subject of a battery. Recovered by PO C from the arrestee in the lockup cell was 25 small bags of suspect cannabis, weighing an approximate 20 grams, which was inventoried under #XXXXXXXXXX, Both additional Charges of Bring Cannabis In A Penal Inst and Agg Assault Pc Officer/Volunteer under RD #JA-XXXXXXXX."

The Lockup Keeper Comments also state that Subject 1 was interviewed by IPRA Investigator A and B at 13:38 on May 29<sup>th</sup>, 2017. Subject 1 called his girlfriend Civilian 1 at 1700 hours. Subject 1 was also moved to a different cell at 21:57. (Attachment 11)

Officer C's **Officer's Battery Report ("OBR")** documents the actual or perceived threat Officer C received at 1900 W. Monterey Ave., in a police facility, on May 29<sup>th</sup>, 2017, at 09:32:00. The OBR notes that Officer C was in uniform, worked with one partner, and C worked as lockup keeper. One officer was battered and there was one assisting officer present at the time of battery. The type of threat listed is "Threaten to spit on." The type of injury to officer is noted as "none apparent/none." There is one offender listed and the offender's activity is noted as gang related but not drug related. The OBR further states the unusual circumstances regarding officer control tactics and safety as, "Subject was observed on camera removing a plastic bag from his underwear. The Reporting Officer asked subject to lower his underwear but he refused. When the reporting officer reached for the subject's underwear the subject jerked back and the reporting officer perceived the subject's action as a fighting stances and in fear of being struck by the subject the reporting officer struck the subject. After the regaining control and removing the contraband the subject took of a fighting stance once again and continued to walk toward the reporting officer as

the reporting officer was exiting the cell. Subject suffered pain to his lower lip but decline medical attention. The subject related that if anyone else enter his cell he's going to spit on them." (Attachment 21)

Officer C's **Tactical Response Report ("TRR")** documents his use of force against Subject 1 on May 29, 2017 at 09:32:00 at 1900 W. Monterey Ave., Chicago, IL. The TRR lists that Subject 1 did not follow verbal direction, stiffened, and pushed officers hands off, classifying Subject 1 as a passive resister. The TRR further states that Subject 1 pulled away and the officers perceived Subject 1 as in a fight stance, classifying Subject 1 as an assailant as well. The TRR further notes that member presence, verbal commands, and a close hand strike/punch were employed against Subject 1. Additional information in the TRR states, "Subject complained of pain to his lower lip but refused medical attention." The TRR also states that the subject was armed. The TRR further notes that Subject 1 alleged injury but was apparently normal and refused medical aid. The injury is described as non-apparent/none.

The Subject's Statement Regarding the Use of Force on the Lieutenant's Review portion of the TRR states, "Subject stated that no one had a right to put his hands on him. He said the he didn't threaten to hit PO C and the 'officer hit me for no reason.' When asked what he was doing that made the officer come into his cell, he said 'you know what I was doing.' Subject was asked if he was injured and he said that his lip hurt. When asked if he wanted medical attention, the arrestee refused."

The Lieutenant Comments portion of the TRR states, "Based on my review of the video form the arrestee's cell, it is easy to see how PO C would perceive a threat from this particular arrestee, who was attempting to destroy and hide contraband. Subject had threatened prior CPD employees during his arrest. Prior to the above interview, it was expressed that this subject stated that he would spit on anyone who opened the cell door. Based on the totality of the circumstances, the officer acted with the caution necessary for this particular subject and his response was reasonable predicated by the movement of the subject in close quarters. I find no intentional misconduct on the part of PO C, his response was commensurate with the perceived threat." The Lieutenant is listed as Lieutenant A. The TRR also states that IPRA was notified under log number 1085683. (Attachment 15)

An Illinois Department of Corrections ("IDOC") **Report of Extraordinary or Unusual Occurrences**, JA-XXXXXX, documents the incident which occurred in the Chicago Police Department's 22<sup>nd</sup> District Lockup at 1900 W. Monterey, Chicago, at 0932. The Report notes that the type of occurrence was an "Assault on Staff," and that there was a resulting injury, being "pain in lower lip." The detainee involved was Subject 1, with the date of birth of XXXX, 1994, and confinement of 29 May 2017. The Report notes that Subject 1 was arrested for the charge 720ILCS5/24-1. 1-A. The Report further states that Subject 1 was interviewed as were the officials involved, Officer C, a police officer, and Detention Aide A, a detention aide. The principal cause of the occurrence is listed as "Above arrestee assaulted lock up keeper Officer C #XXXX." The Report stated the summary of specific details of occurrence, noted as, "While Officer C was attempting to search the arrestee for contraband, the subject jerked back as to gain position to strike the officer. Officer C responded by punching the subject once in the face." The Report was signed by Sergeant A #XXXX, and Lieutenant A #XXXX. (Attachment 17)



A City of Chicago Fire Department **Ambulance Report/Sheet** documents the paramedics findings and care regarding this incident. The complaint is for an injured victim, and the incident number is 171491091. The address is listed as 022 @ 1900 W Monterey Ave, Chicago, IL. The ambulance was dispatched at 14:04:43 and arrived on scene at 14:16:11 on May 29, 2017. No patient is listed in the Report. The Report states “Person in lockup said he was fine. Just wanted to make a phone call. No injury.” There are no findings nor care events listed. Furthermore, the disposition of the Report is “No complaint patient.” The paramedics are listed as Paramedic A and B. (Attachment 27)

Chicago Police Department **Evidence Technician photographs** taken on May 29<sup>th</sup>, 2017, captured Subject 1’s injuries. The photos depict Subject 1’s front profile, right profile, left profile, and a more zoomed in profile of Subject 1’s face and mouth area. The photos show minor swelling to Subject 1’s lips. (Attachment 35)

## **ANALYSIS**

Subject 1 alleges that on May 29, 2017, at approximately 09:32 A.M. at the 22<sup>nd</sup> District Lockup, located 1900 W. Monterey Ave., Chicago, IL, Officer C #XXXX struck him about the face with a closed fist. Subject 1 did not allege any misconduct regarding his initial arrest nor did he allege any misconduct against Detention Aide A. Officer A, Officer B, and Officer E were also interviewed to determine how Subject 1 brought in the bags containing cannabis into the 22<sup>nd</sup> District lockup, and if they had failed to properly conduct a search of Subject 1’s person. The investigation revealed that Officer A, Officer B, and Officer E had properly searched Subject 1 after his arrest, and Subject 1 was able to hide the bags in his pants throughout his arrest and processing. No evidence of any other misconduct was discovered during this investigation. COPA’s burden of proof is based on the preponderance of the evidence standard.

### **I. Officer C’s Close Fist Strike Was Not Within Policy**

According to General Order (“GO”) 03-02-01, the Chicago Police Department utilizes a Use of Force Model to provide guidance on the appropriate amount of force to be used to effect a lawful purpose.<sup>3</sup> The model may progress from member presence to the application of deadly force. The primary objective of the use of force is to ensure control of a subject with the reasonable force necessary based on the totality of the circumstances. Department members must escalate or de-escalate the amount of force which is reasonably necessary to overcome the subject’s resistance and to gain control over the subject.

GO 03-02-01 states that there are two types of resisters. A passive resister is defined by non-movement in response to verbal and other direction, and includes variable positioning. An active resister is defined by movement to avoid physical control and this can include “variable dynamics.” GO 03-02-02 further defines an active resister as “a person whose actions attempt to create distance

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<sup>3</sup> General Order G03-02 ‘Use of Force Guidelines’ effective 01 October 2002 governs Officer C and Detention Aide A’s conduct in this matter as it was effective on May 29, 2017. A new Use of Force model was enacted over the course of this investigation and is effective 16 October 2017. For the purposes of this investigation, G03-02 effective 01 October 2002 will be used.

between that person and the member's reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging from evasive movement of the arm, through flailing arms, to full flight by running.”

GO 03-02-01 and GO 03-02-02 further identify three categories of an assailant: A subject whose actions are aggressively offensive without weapons, a subject whose actions will likely cause physical injury with or without a deadly weapon, and a subject whose actions will likely cause death or serious physical injuries. GO 03-02-02 defines an assailant as “a subject who is using or threatening the imminent use of force against himself/herself or another person.”

According to GO 03-02-01, direct mechanical techniques are forceful, concentrated striking movements such as punching and kicking, or focused pressure strikes and pressures. Direct mechanical techniques may be used only against assailants. The general orders would characterize Officer C's close handed strike to Subject 1 as a direct mechanical technique. As such, Officer C's direct mechanical technique could have only been used against Subject 1 if he became an assailant.

In addition to CPD's General Orders, the authorization to use of force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

“[a] peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...”

Finally, determinations regarding the potential use of excessive force - deadly or not - in the course of an arrest, investigatory stop, or other “seizure” are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officers' actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). Moreover, the reasonableness calculation “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham*, at 396–97.

The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) “the severity of the crime at issue;” (2) “whether the suspect poses an immediate threat to the safety of the officers or others;” and (3) “whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396 (*citing Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of

an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; *see also Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003)

The lockup video camera footage captures Subject 1's movements prior to being struck by Officer C. Before being struck, Subject 1 can be seen lowering his pants, as Officer C commanded. Subject 1 appears to be compliant. Officer C is pointing at Subject 1, then walks up next to him. Subject 1's hands remained lowered and flared open, not in a fist. When Officer C pulls open Subject 1's underwear, Subject 1 jerks his upper body backwards. Subject 1 does not raise his hands nor ball them in a fist. Officer C was holding Subject 1's shirt with his left hand, and Detention Aide A can be seen holding Subject 1's left arm. As soon as Subject 1 jerks his upper body backwards, Officer C drives forward with his right hand, performing a close hand strike to Subject 1's face. The video shows Subject 1 only moving his upper body back when Officer C pulls on his underwear; Subject 1 does not raise his hands, ball his fists, or offer any other type of resistance. Only after Subject 1 is struck about the face does he assume a combative stance.

The lockup camera footage, Subject 1's interview, Detention Aide's interview, and Officer C's interview suggest that Officer C's close handed strike to Subject 1 was an excessive use of force. Subject 1's level of resistance, moving his upper body back, could classify him as an active resister according to GO 03-02-01. The lockup camera footage does not show Subject 1 pushing Officer C's hands off of him as Officer C contends, nor does it show Subject 1 approaching Officer C in an aggressive manner before he was struck. While Officer C stated he feared he may be struck by Subject 1 when Subject 1 moved his upper body backwards, Subject 1 did not ball his hands into a fist, raise his hands, nor offer any other type of resistance to Officer C or Detention Aide A. Moreover, based on the lockup video, it is reasonable that Subject 1 jerked his body backwards out of instinct, not in a threatening manner, as his genitals were exposed when Officer C pulled at his underwear. Officer C was also holding Subject 1's shirt up and Detention Aide A held Subject 1's left arm. Subject 1 could not have physically struck Officer C or Detention Aide A, as he was already restrained prior to the strike.

Officer C's close handed strike to Subject 1 was unreasonable. The severity of the issue was minor. Subject 1 was in a penal institution, in his own cell by himself, and stood back as Officer C and Detention Aide A entered the cell. Subject 1 could not destroy evidence at that point, as Subject 1 was back near the cell bench and away from the cell toilet. Officer C and Detention Aide A were blocking Subject 1's access to the cell toilet with their bodies, and as such, Subject 1 could not flush the cell toilet containing some bags of contraband. Detention Aide A and Officer C entered the cell to secure the bags containing contraband, and the room was already secure. Furthermore, Subject 1 did not pose an immediate threat to Officer C or Detention Aide A. The lock up cell surveillance camera footage shows Officer C's and Detention Aide A's interactions with Subject 1. Subject 1 did not ball his hands into fists, he did not raise his hands, nor did he make any intimidating movements which could have reasonably been perceived as a threat. Prior to being struck, Subject 1's left arm was held by Detention Aide A, and his shirt was being pulled

and held by Officer C. Officer C and Detention Aide A had control of Subject 1, and he did not threaten Officer C or Detention Aide A. Subject 1 jerked his body backwards when his genitals were exposed, and he did so in a nonthreatening manner. Subject 1 was not actively resisting arrest nor was he attempting to evade arrest by flight.

Moreover, Officer C completed his TRR in this incident, and by his own admission, he did not document his use of force solely based on each separate use of force, or in this case, his close handed strike to Subject 1. Officer C labeled Subject 1 as a passive resister, active resister, and an assailant. Subject 1 was labeled as an assailant because he assumed a fight stance. Subject 1 assumed a fight stance only *after* he was struck by Officer C. Officer C's TRR is misleading in that it characterizes Subject 1's behavior from the entire incident, or as Officer C termed it, "the totality of the circumstances."

## CONCLUSION

Based on the entirety of this investigation, the Civilian Office of Police Accountability recommends a finding of Sustained for **Allegation #1** against Officer C, that he unnecessarily struck Subject 1 about the face with a closed fist.

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Investigator A

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Supervising Investigator A

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Deputy Chief A