

SUMMARY REPORT OF INVESTIGATION¹

Date/Time/Location of Incident:	June 19, 2016 / 2:26 p.m. / 8831 S. Wabash Avenue
Date/Time of COPA Notification:	June 19, 2016 / 10:50 p.m.
Involved Officer #1:	██████████ Star ██████ employee ID ██████ Date of Appointment: ██████ 2006; Police Officer; Unit ██████ DOB: ██████ 1982; Male; Hispanic.
Involved Officer #2:	██████████ Star ██████ employee ID ██████ Date of Appointment: ██████ 2010; Police Officer; Unit ██████ DOB: ██████ 1985; Male; White.
Involved Individual #1:	██████████ 1997; Male; Black.
Case Type:	Excessive Force; False Arrest.

I. ALLEGATIONS

Officer	Allegation	Finding
Officer ██████ #█████	1. Officer ██████ grabbed ██████ without justification, in violation of Rule 9.	Exonerated
	2. Officer ██████ pushed ██████ against a fence without justification, in violation of Rule 9.	Exonerated
	3. Officer ██████ pulled ██████ to the ground without justification, in violation of Rule 9.	Exonerated
	4. Officer ██████ punched ██████ about the head without justification, in violation of Rule 9.	Not Sustained
	5. Officer ██████ elbowed ██████ about the head without justification, in violation of Rule 9.	Not Sustained
	6. Officer ██████ falsely arrested ██████ ██████ in violation of Rule 2.	Exonerated
Officer ██████ #█████	1. Officer ██████ falsely arrested ██████ ██████ in violation of Rule 2.	Exonerated

¹ 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. Therefore, 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.

II. SUMMARY OF EVIDENCE²

██████████ ran from the accused officers after they saw him drinking alcohol on the property of an abandoned building. After a foot pursuit and struggle to take ██████████ into custody, Officer ██████████ performed a takedown and used closed hand and elbow strikes to gain control of ██████████ who gave inconsistent accounts of the incident in his civil complaint and deposition, alleged that he was running not from the officers, but from an unknown subject who had robbed him prior to the officer's arrival. According to ██████████ he cooperated with Officer ██████████ as soon as he realized a police officer was behind him, but the officer still punched and elbowed him. A video recording of a portion of the incident and independent witnesses refute ██████████ claims and support Officer ██████████ account that ██████████ resisted him. Moreover, GPS data from the officers' police vehicle and contemporaneous OEMC transmissions provide additional credibility to the officers' accounts that they were pursuing ██████████ after seeing him drinking alcohol on the property of an abandoned building. In his reports and statements, Officer ██████████ described ██████████ as an assailant during the incident, but video evidence and witness accounts are not clear as to whether he was an assailant or merely a resister at the time Officer ██████████ punched and elbowed him.

III. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

²COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.” *Id.* at ¶ 28.

IV. ANALYSIS AND CONCLUSION

The version of General Order G03-02-02 that was in effect at the of this incident, titled “Force Options,” describes an active resister as “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest” and an assailant as “a subject who is using or threatening the imminent use of force against himself/herself or another person.” The same order permits an officer to use direct mechanical strikes, such as punching and kicking, on assailants but not on resisters. Because COPA finds by clear and convincing evidence that ██████ was at least an active resister at the time of this incident, COPA also finds that Officer ██████ actions of grabbing ██████ pushing him against a fence, and pulling him to the ground to be appropriate. However, it is not clear if ██████ was an assailant at the time Officer ██████ punched and elbowed him, or if he was merely a resister. In addition, COPA finds that the officers had sufficient evidence to arrest ██████ and charge with him with Drinking in the Public Way and Resisting Arrest. Although ██████ denied the charges levied against him by the officers, the evidence (namely: the OEMC transmissions, GPS data, and ██████ own inconsistent statements) clearly and convincingly supports the officers’ version of events. Consequently, Allegations 4 and 5 against Officer ██████ are **Not Sustained** and all other allegations against Officers ██████ and ██████ are **Exonerated**.

Approved:

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████████████████████

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

March 19, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:	█
Major Case Specialist:	████████████████████
Supervising Investigator:	████████████████████
Deputy Chief Administrator:	Andrea Kersten █