

SUMMARY REPORT OF INVESTIGATION**I. EXECUTIVE SUMMARY**

Date of Incident:	January 27, 2019
Time of Incident:	10:18 AM
Location of Incident:	██████████
Date of COPA Notification:	January 28, 2019
Time of COPA Notification:	10:43 AM

On January 27, 2019, the complaint, ██████████, and his girlfriend, ██████████, were meeting ██████████' ex-husband, ██████████, to retrieve ██████████' children. A confrontation occurred between the three adults and CPD responded. ██████████ alleged that Sergeant ██████████ arrested him without justification and used excessive force. After interviewing ██████████, reviewing relevant evidence, and watching available video footage, COPA recommends the allegations be Exonerated and Unfounded. COPA's findings are further discussed in the Analysis portion of this report.

II. INVOLVED PARTIES

Involved Officer #1:	██████████, Star # ██████████, Employee ID # ██████████, Date of Appointment: ██████████, 1992, Sergeant of Police, ██████████ th District, Male, Hispanic
Involved Individual #1:	██████████, Date of Birth: ██████████ 1983, Male, Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding
Sergeant ██████████	1. Arrested ██████████ without justification, in violation of Rule 3 and Rule 6.	Exonerated
	2. Forced ██████████ backwards, in violation of Rule 6, Rule 8, and Rule 9.	Exonerated
	3. Chest-bumped ██████████, in violation of Rule 6, Rule 8 and Rule 9.	Unfounded

IV. APPLICABLE RULES AND LAWS

Rules

1. **Rule 3:** Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
2. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
3. **Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.
4. **Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

General Orders

1. **General Order G03-02:** Use of Force.
2. **General Order G03-02-01:** Force Options.

Federal Laws

1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

V. INVESTIGATION¹

a. Interviews

COPA interviewed the complainant, ██████████, on February 5, 2019.² On January 27, 2019, ██████████ was a ██████████'s restaurant located at ██████████. ██████████'s girlfriend, ██████████, was collecting her children from their father, ██████████. ██████████ was already present when ██████████ and ██████████ arrived. ██████████ decided not to approach, exited the restaurant, and stood outside with ██████████. ██████████ proceeded to call the police. The three adults engaged in a verbal altercation and insulted each other prior to officers arriving.

██████████ was standing in the parking lot and Sergeant ██████████ told ██████████ to move. ██████████ declined and related he wanted to video record and remain for ██████████'s safety. Sergeant ██████████ continued telling ██████████ to move. ██████████ believed that he did not have to because he was in a public space. Sergeant ██████████ approached ██████████, and ██████████ told him that he was invading ██████████'s space, and asked the sergeant not to touch him. Sergeant ██████████ "chest-pumped" ██████████ approximately three times. ██████████ elaborated that the sergeant made physical contact with him, in that Sergeant ██████████'s Body Worn Camera (BWC) touched ██████████'s body. Sergeant ██████████

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Att. 5

bumped ██████ off balance and forced ██████ back. ██████ related that it was not forceful, but more of a tactic to exert control, provoke ██████, and get ██████ to move.

Sergeant ██████ then spoke with Officer ██████. When the sergeant returned, he handcuffed ██████ and related that ██████ was under arrest. Officer ██████ then escorted ██████ to a squad car. ██████ believed Sergeant ██████ identified ██████ as the aggressor without a proper investigation. Officer ██████ told ██████ that ██████ had signed a complaint, and that was the basis of ██████'s arrest. ██████ believed he was arrested in retaliation, because he did not comply with Sergeant ██████'s orders to move.

b. Digital Evidence

██████'s girlfriend, ██████, **provided cellular telephone footage** of ██████'s January 27, 2019 arrest.³ The recording began at approximately 10:11 AM. ██████ was asked to move several times and he declined. At the approximately 2:16 minute mark, Sergeant ██████ was in front of ██████ and telling ██████ to move back. The sergeant continued walking forward, and ██████ was walking backwards. ██████'s hand was in front of his body and it did not appear the sergeant ever made physical contact (see photo 1 below). The two continued walking back until they were at the edge of the parking lot (see photo 2 below). Sergeant ██████ then approached ██████. Shortly after, ██████ was heard stating he wanted to sign a complaint. At approximately the 3:30 minute mark, Sergeant ██████ handcuffed ██████ and stated ██████ was signing complaints. The recording ended shortly after.

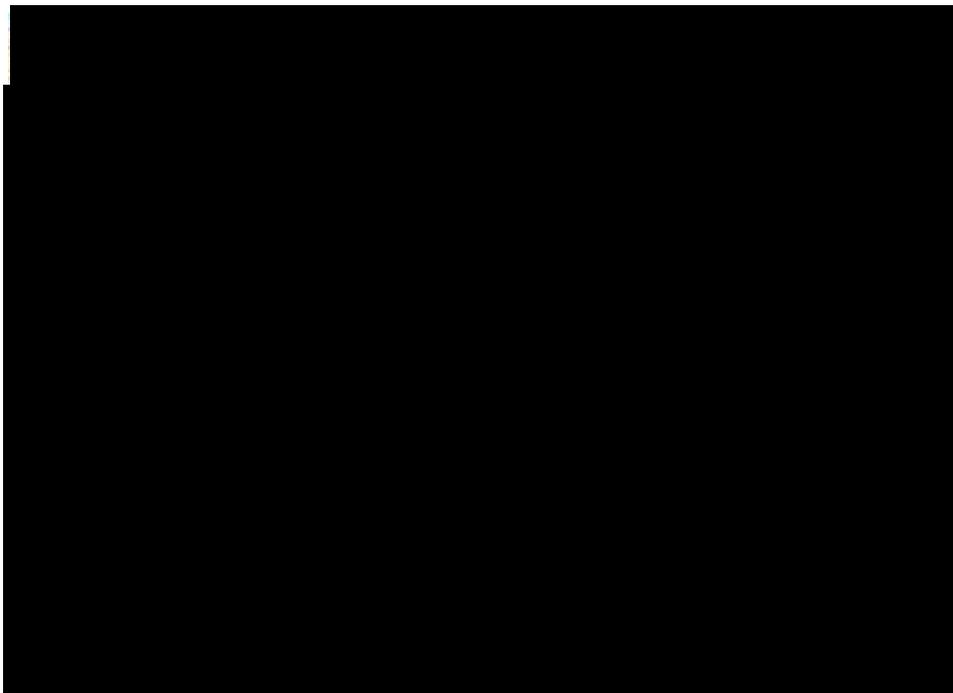


Photo 1

³ Att. 10

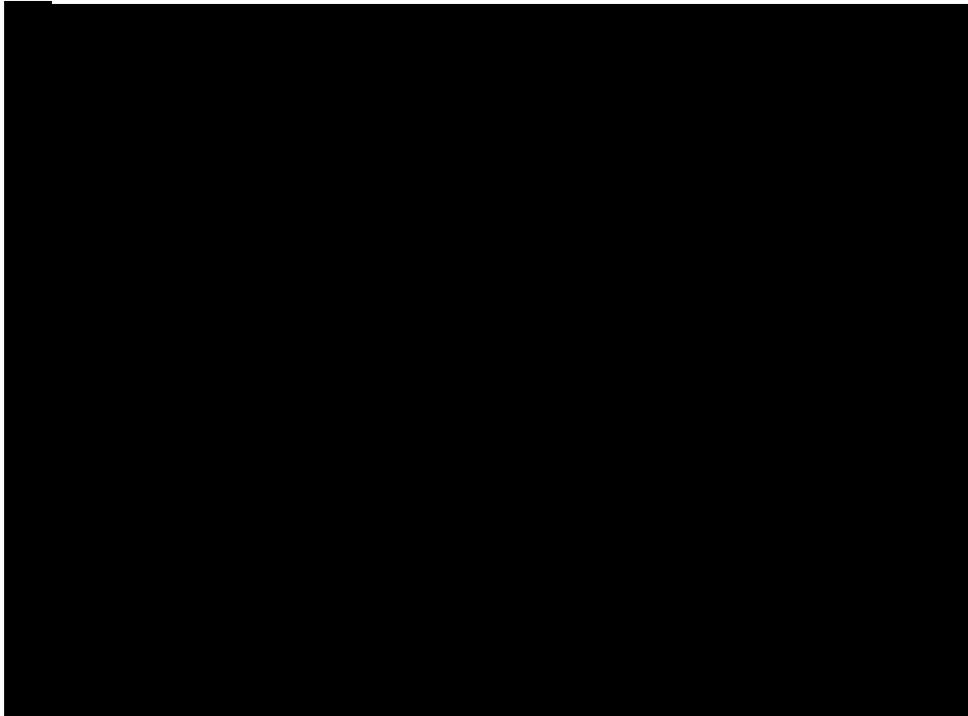


Photo 2

Body Worn Camera (BWC) footage was obtained from [REDACTED]'s arrest on January 27, 2019.⁴

Officer [REDACTED]

Officer [REDACTED]'s BWC initiated at approximately 10:08 AM. [REDACTED] related he was [REDACTED]'s boyfriend and Officer [REDACTED] asked [REDACTED] to step back. At about 10:09 AM, [REDACTED] told Officer [REDACTED] that [REDACTED] threatened to kick [REDACTED]'s ass. [REDACTED] reiterated that [REDACTED] threatened to kick his ass and was harassing him. Officer [REDACTED] asked to see [REDACTED]'s recording of said threat. Officer [REDACTED] began watching the recording and at about 10:13 AM, Officer [REDACTED] stated to [REDACTED], "All I hear is you saying like bad words to him [...] I don't hear the part where he says he threatens you [...] If you say that he [...] threatened you, then you're signing complaints and he's going to jail." [REDACTED] then related that [REDACTED] threatened him and he wanted to sign complaints. [REDACTED] was handcuffed and put in the squad car at about 10:15 AM, as [REDACTED] questioned why he was arrested for "mutual yelling." At roughly 10:16 AM, Officer [REDACTED] asked [REDACTED] exactly what [REDACTED] said. [REDACTED] responded, "He said he was gunna kick my ass [...] He was gunna beat my ass real bad. And he was approaching me, that's why I went back inside [REDACTED]." [REDACTED] agreed to meet the officers at the police station and Officer [REDACTED] returned to his car at about 10:19 AM.

Sergeant [REDACTED]

Sergeant [REDACTED]'s BWC began at roughly 10:12 AM. Sergeant [REDACTED] confirmed that [REDACTED] was "the boyfriend" and asked [REDACTED] to wait by his car. [REDACTED] said no, and Sergeant [REDACTED]

⁴ Att. 24

responded by again asking [REDACTED] to move away. Sergeant [REDACTED] continued asking [REDACTED] to move and [REDACTED] continued refusing. Sergeant [REDACTED] then got close to [REDACTED]. [REDACTED]'s hands and chest were always seen, suggesting contact was never made and Sergeant [REDACTED] did not "chest-pump" him (see photo 3 below). Sergeant [REDACTED] then approached Officer [REDACTED] and [REDACTED]. [REDACTED] stated he wanted to sign complaints. Sergeant [REDACTED] approached and handcuffed [REDACTED].

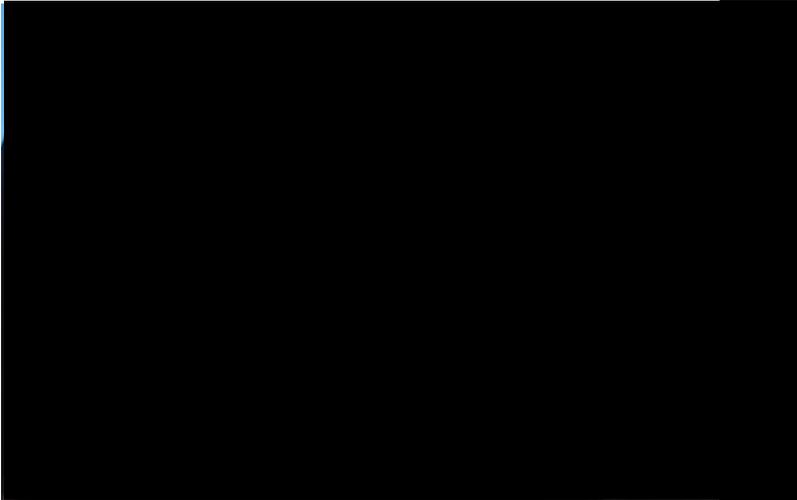


Photo 3

Officer [REDACTED]

Officer [REDACTED]'s BWC initiated at approximately 10:13 AM. Sergeant [REDACTED] was seen walking towards [REDACTED] as [REDACTED] walked backwards (see photo 3 below). No physical contact was seen between the two men. Officer [REDACTED] stayed with [REDACTED] and Sergeant [REDACTED] walked away. [REDACTED] accused Sergeant [REDACTED] of intimidation. Sergeant [REDACTED] approached and handcuffed [REDACTED] shortly after. At approximately 10:19 AM, Officer [REDACTED] asked [REDACTED] what [REDACTED] threatened. [REDACTED] responded, "He said he was gunna kick my ass [...] He said it uh, three times, Imma beat your ass, you mother fucker." Officer [REDACTED] returned to his car and terminated his BWC moments later.

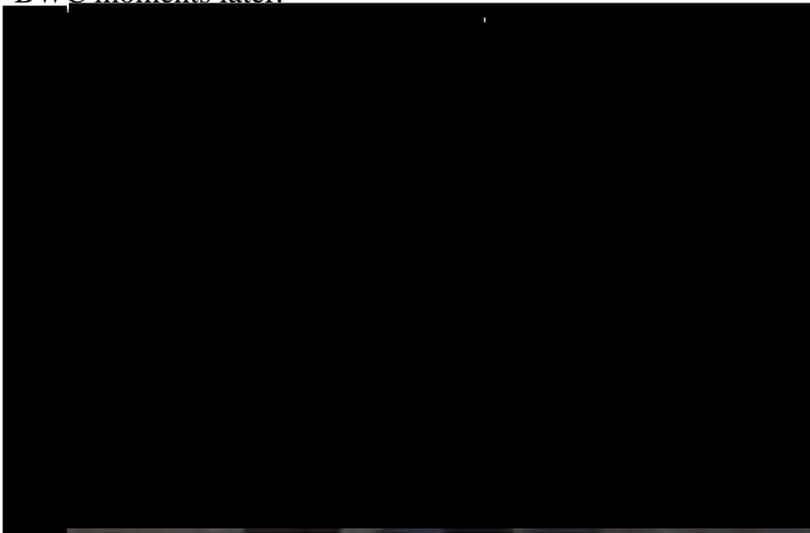


Photo 4

c. Physical Evidence

No relevant physical evidence was obtained pertaining to the present allegations and investigation.

d. Documentary Evidence

██████████'s **Arrest Report** was obtained from January 27, 2019 with **RD #** ██████████.⁵ ██████████ was charged with misdemeanor simple assault. Per this report's narrative, ██████████ was arrested on signed complaints from ██████████ after "stating 'I'll kick your ass,'" to ██████████.

An **Original Case Incident Report** was also located for **RD #** ██████████.⁶ Per this document, Officer ██████████ arrived, and ██████████ related that while dropping of his children to ██████████, ██████████ became upset and walked out of the ██████████'s. ██████████ was with ██████████, and ██████████ "threatened to beat up [...] ██████████."

A **Case Supplementary Report** for **RD #** ██████████ contained no additional, relevant information.⁷

The following relevant **Event Query Reports** and **Audio Transmissions** were obtained from the **Office of Emergency Management and Communications (OEMC)**.

- **Event** ██████████ initiated at about 10:05 AM on January 27, 2019.⁸ ██████████ called 911 and related that she was retrieving her children for visitation, but their father was "giving her hard time" and she had a "court order." In audio from this call, ██████████ stated she needed police assistance due to an issue with her ex-husband and custody of her children. ██████████ stated her ex (██████████) began calling police as soon as she arrived.
- **Event Number** ██████████ was initiated on January 27, 2019 at approximately 10:05 AM.⁹ ██████████ called 911 and related that his ex and her boyfriend were "antagonizing" ██████████. In audio from this call, ██████████ asked for a police officer because the mother of his children (██████████) broke a court order by bringing her partner (██████████), who was provoking ██████████.
- **Event Number** ██████████ was initiated at roughly 10:08 AM and contained no further, pertinent information.¹⁰

⁵ Att. 12

⁶ Att. 13

⁷ Att. 12

⁸ Atts. 15, 19

⁹ Atts. 15, 20

¹⁰ Atts. 21, 25

Criminal Case ██████████ was filed in Cook County Clerk of the Circuit Court on February 1, 2019.¹¹ ██████████ was charged with misdemeanor simple assault. The case was stricken off with leave to reinstate on February 20, 2019.

VI. 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 occurred and violated 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 misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

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.

VII. ANALYSIS

Allegation 1 against Sergeant ██████████, that he arrested ██████████ without justification, is **Exonerated**. ██████████ believed that Sergeant ██████████ arrested him in retaliation because ██████████ was not compliant with the sergeant's orders to move back. However, BWC indicated that Sergeant ██████████ remained professional and calm throughout the encounter. ██████████ made a complaint that ██████████ threatened him, creating the probable cause to arrest ██████████. Sergeant ██████████ acted upon ██████████'s complaint, and made a lawful arrest of ██████████. Therefore, this allegation is Exonerated.

Allegation 2 against Sergeant [REDACTED], that he forced [REDACTED] backwards, is **Exonerated**. Based on BWC, the Department members wanted to separate [REDACTED] and [REDACTED]. [REDACTED] refused the members' orders to stand back. Sergeant [REDACTED] then used tactical positioning to force [REDACTED] backwards. When [REDACTED] refused to follow Sergeant [REDACTED]'s commands, he became a Passive Resister. Per CPD General Order G03-02-01, a passive resister is, "a person who fails to comply (non-movement) with verbal direction." Sergeant [REDACTED] would have been justified in using holding and compliance techniques, but instead opted to deescalate the situation and contain [REDACTED] by moving him away from [REDACTED]. Since Sergeant [REDACTED]'s actions were well within policy, this allegation is Exonerated.

Allegation 3 against Sergeant [REDACTED], that he chest-bumped [REDACTED], is **Unfounded**. BWC indicates this never occurred and this allegation is therefore Unfounded.

VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Sergeant [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 3 and Rule 6. 2. Forced [REDACTED] backwards, in violation of Rule 6, Rule 8, and Rule 9. 3. Chest-bumped [REDACTED], in violation of Rule 6, Rule 8 and Rule 9.	Exonerated Exonerated Unfounded

Approved:

[REDACTED]

5/30/2019

[REDACTED]

Date

Deputy Chief Administrator – Chief Investigator

Appendix A

Assigned Investigative Staff

Squad#:	██████████
Investigator:	████████████████████, #██████████
Supervising Investigator:	████████████████████, #██████████
Deputy Chief Administrator:	████████████████████