

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	September 12, 2014
Time of Incident:	2:20 p.m.
Location of Incident:	████████████████████
Date of IPRA Notification:	September 12, 2014
Time of IPRA Notification:	4:05 p.m.

On September 12, 2014, Police Officers ██████████ and ██████████ were talking to ██████████ in front of his residence at ██████████ yelled from his own front porch at ██████████ that ██████████ did not have to allow the officers onto his property. According to a CPD report,² as the officers were returning to their squad car, Officer ██████████ heard ██████████ singing a rap song about killing the police³ and observed ██████████ place his hand underneath his shirt as if he were reaching for a weapon.⁴ Officer ██████████ approached ██████████ to place him under arrest. ██████████ alleged that Officer ██████████ used excessive force and profanity while taking him into custody. ██████████ was charged with Aggravated Assault to a Police Officer. COPA’s investigation revealed numerous credible witnesses who corroborated ██████████ account of the incident as well as the existence of video footage depicting the use of excessive force by Officer ██████████

II. INVOLVED PARTIES

Involved Officer #1:	██████████ Star # ██████████, Employee ID # ██████████, Date of Appointment: ██████████ 2002, Rank: Police Officer, Unit: ██████████, DOB: ██████████ 1975, Male, Black
Involved Officer #2:	██████████ Star # ██████████ Employee ID # ██████████ Date of Appointment: ██████████, 2004, Rank: Police Officer, Unit: ██████████, DOB: ██████████ 1977, Male, White
Involved Individual #1:	██████████ DOB: ██████████ 1978, Male, Black

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.

² Attachment 14.

³ ██████████ acknowledged that he was singing a rap song but denied that he was being disrespectful toward the officers.

⁴ It should be noted that no firearm was ever actually observed nor recovered from the scene.

Involved Individual #2:

██████████ DOB: ██████ 1997, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer ██████	1. Poked ██████ about the chest without justification, in violation of Rule 8. 2. Grabbed ██████ about the neck without justification, in violation of Rule 8. 3. Kicked ██████ without justification, in violation of Rule 8. 4. Directed profanity at ██████ calling him a “bitch” and a “pussy”, in violation of Rule 9. 5. Threw ██████ to the ground without justification, in violation of Rule 8. 6. Punched ██████ without justification, in violation of Rule 8.	Not sustained Not sustained Sustained/ 5-day Suspension Not sustained Sustained/ 5-day Suspension Sustained/ 5-day Suspension
Officer ██████	1. Directed profanity at ██████ stating “Get the fuck back,” without justification, in violation of Rule 9.	Not sustained

IV. APPLICABLE RULES AND LAWS

Rules

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

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

General Orders

G03-02: Use of Force Guidelines (eff. 10/1/02)

G03-02-01: The Use of Force Model (eff. 5/16/12)

G03-02-02: Force Options (eff. 5/16/12)

State Laws

720 ILCS 5/7.5 - Peace Officer's Use of Force in Making Arrest

V. INVESTIGATION⁵

a. Interviews

IPRA interviewed ██████████⁶ on September 14, 2014. ██████████ stated that on September 12, 2014, he was walking toward his residence from the grocery store. When he was approximately three houses away, ██████████ observed two casually dressed officers (now known to be Police Officers ██████████ and ██████████) walking toward his front gate. ██████████'s son, ██████████ was standing on the porch singing rap songs. ██████████ observed Officer ██████████ enter the gate, step on the porch, pick up ██████████, slam him to the ground, punch him in the stomach, and kick him in the leg. Officer ██████████ did not say anything before he did this. ██████████ observed Officer ██████████ remove ██████████ from the ground, handcuff him, and escort him to a squad car. Another son of ██████████ approached the area and asked what was going on. Officer ██████████ pushed ██████████ away from the area. ██████████ identified himself as ██████████ father and asked what was going on. Officer ██████████ replied, "Get the fuck back." ██████████ never observed ██████████ resist arrest during the incident. He also did not see any visible injuries on ██████████.

IPRA interviewed ██████████ ██████████⁷ on September 14, 2014. ██████████ stated that on September 12, 2014, he exited his residence and stood on the front porch while singing a rap song because he loves music. ██████████ observed Police Officers ██████████ and ██████████ outside the residence of ██████████ his neighbor. Officers ██████████ and ██████████ entered their vehicle after leaving ██████████ residence and drove to the front of ██████████ residence, where they parked and approached the gate. ██████████ stated he does not like the police and he presumed Officers ██████████ and ██████████ approached his residence because they were offended by the rap song he was singing. Officers ██████████ and ██████████ attempted to talk to ██████████ and ██████████ ignored them and continued to sing his rap song. As Officers ██████████ and ██████████ moved to enter ██████████ gate, ██████████ instructed them not to enter. Officer ██████████ entered the gate anyway and stepped onto the front porch. Officer ██████████ remained at the mouth of the gate. Officer ██████████ without provocation or explanation, repeatedly poked ██████████ on the chest, grabbed him by the neck, slammed him to the ground, punched him, kicked him, and called him a "bitch" and "pussy". Officer ██████████ then handcuffed ██████████ and took him into custody. ██████████ brother, ██████████ attempted to run on the porch while he was being taken into custody. Officer ██████████ pushed ██████████ away from the area.

██████████ stated that he sustained soreness to his neck and shoulders as a result of the alleged incident, but he did not seek medical attention. ██████████ stated he is not a gang member and that

⁵ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁶ Attachments 13, 38.

⁷ Attachments 9, 48.

at no time did he swear at the officers, resist arrest, or do anything to warrant Officer [REDACTED] actions against him.

IPRA interviewed witness [REDACTED]⁸ on September 24, 2014. [REDACTED] stated that on September 12, 2014, he was seated in a parked vehicle outside his residence with his brother, [REDACTED] when he observed their younger brother, [REDACTED] exit their residence. [REDACTED] stood on the front porch and was singing a rap song. Though the music was loud, [REDACTED] did not know the subject or the lyrics of the song that [REDACTED] was rapping. Officer [REDACTED] then entered the gate and approached [REDACTED] exited the vehicle, approached the porch, and asked Officer [REDACTED] why he was on their property. Officer [REDACTED] and [REDACTED] stared at each other while [REDACTED] continued to sing rap music. Officer [REDACTED] grabbed [REDACTED] threw him to the porch, and took him into custody. [REDACTED] did not observe any injury to [REDACTED] and was unaware of the charges against him.

IPRA interviewed witness [REDACTED]⁹ on September 24, 2014. [REDACTED] stated that on September 12, 2014, he was seated in a vehicle with his brother, [REDACTED] The vehicle was parked outside their residence. Their friend, [REDACTED] was standing on the pavement just outside the vehicle. [REDACTED] observed Officers [REDACTED] and [REDACTED] standing in [REDACTED] front yard, which is next to the [REDACTED] residence. [REDACTED] heard his younger brother, [REDACTED] inform [REDACTED] that he did not have to allow the police on his property if they did not have a warrant. At that point, [REDACTED] was standing on the [REDACTED] front porch. [REDACTED] momentarily entered his residence before returning to the porch. At that point, [REDACTED] was rapping. [REDACTED] did not see [REDACTED] wearing headphones. Although [REDACTED] could not hear what [REDACTED] was rapping about, he never heard [REDACTED] state, "Fuck the police." Officer [REDACTED] approached the porch and repeatedly asked [REDACTED] "I can't do what?" Officer [REDACTED] then grabbed [REDACTED] slammed him to the porch, kicked him in the back and told him that he was under arrest. Officer [REDACTED] pushed [REDACTED] and [REDACTED] away from the area of the front porch. [REDACTED] stated that [REDACTED] videotaped the alleged incident.

IPRA interviewed witness [REDACTED]¹⁰ on September 24, 2014. [REDACTED] stated the [REDACTED] are his next-door neighbors and he has known them for approximately five years. [REDACTED] stated that on September 12, 2014, he was entering the gate to his residence located at [REDACTED] when Officers [REDACTED] and [REDACTED] approached him from behind. Officer [REDACTED] searched him and said he was clean. [REDACTED] was on his front porch videotaping the interaction. Officer [REDACTED] approached [REDACTED] on his own front porch. [REDACTED] told Officer [REDACTED] he could not enter his gate. Officer [REDACTED] told [REDACTED] that he could do what he wanted to do. [REDACTED] was rapping as the two stood face to face. Officer [REDACTED] punched [REDACTED] in the stomach, causing [REDACTED] to fall to the porch. Officer [REDACTED] kicked [REDACTED] while he handcuffed him. [REDACTED] never heard or observed [REDACTED] threaten Officer [REDACTED]

COPA interviewed Major Case Specialist ("MCS") [REDACTED]¹¹ on August 10, 2018. At the time of this incident, MCS [REDACTED] was an investigator with IPRA and he conducted the

⁸ Attachment 32.

⁹ Attachments 30, 45.

¹⁰ Attachments 34, 46.

¹¹ Attachments 84, 85.

interviews of [REDACTED] and [REDACTED]. Prior to taking [REDACTED] statement, MCS [REDACTED] viewed video footage of the incident on [REDACTED] phone and he authored an Investigative Report¹² describing the video. Because COPA was unable to obtain the video itself, COPA took [REDACTED] sworn statement regarding what he had seen and the report he authored.

During this interview, MCS [REDACTED] stated that on September 14, 2014, he conducted an audio-recorded interview of [REDACTED] at the IPRA office. Prior to the interview, [REDACTED] showed MCS [REDACTED] a video on his cell phone. MCS [REDACTED] stated he was unable to obtain a copy of the video because, at the time, IPRA did not have the equipment to download the video. MCS [REDACTED] stated he authored an Investigative Report¹³ the following day describing what he had seen on the video. MCS [REDACTED] stated that the Investigative Report did not list any other investigators which led him to believe that he conducted the interview alone.¹⁴ MCS [REDACTED] stated that he authored the report truly and accurately to the best of his ability and he would not change anything in the report today.

During the interview, MCS [REDACTED] viewed a second video¹⁵ of the incident and was asked questions related to that video. MCS [REDACTED] stated the second video was from a different angle and distance than the one [REDACTED] had shown him. MCS [REDACTED] also stated that this second video seemed to be of the time frame immediately after the initial video [REDACTED] had shown him because in the video [REDACTED] had shown him, the handcuffs had not yet been placed on the subject. For this reason, MCS [REDACTED] stated the second video did not depict any force by Officer [REDACTED] the force had all occurred prior to [REDACTED] being placed in handcuffs.

IPRA interviewed Officer [REDACTED]¹⁶ on May 11, 2016. Officer [REDACTED] stated that September 12, 2014, he and Officer [REDACTED] were conducting a narcotics investigation on the 7200 block of South Paulina. Officer [REDACTED] could not recall the specifics of the narcotics investigation other than that he and Officer [REDACTED] were talking to a black, male subject (now known to be [REDACTED] [REDACTED] outside a residence that was next door to the [REDACTED] residence. [REDACTED] yelled to [REDACTED] from his own porch that the officers had no right to be on his property. According to Officer [REDACTED] the investigation of [REDACTED] did not lead to an arrest. As Officers [REDACTED] and [REDACTED] exited [REDACTED] gate and were walking back to their squad car, they heard [REDACTED] rapping about shooting and killing the police. Officer [REDACTED] observed [REDACTED] motioning like he was shooting at the officers. Officer [REDACTED] heard [REDACTED] say words to the effect of, "Yeah we should kill y'all right now." Officer [REDACTED] then observed [REDACTED] place his hands underneath his shirt and proceed to walk toward Officers [REDACTED] and [REDACTED].

According to Officer [REDACTED] he approached [REDACTED] told him he was under arrest, and attempted to take him into custody for Assault. [REDACTED] stepped back onto his porch. [REDACTED] father ([REDACTED] and other individuals exited the [REDACTED] residence. Officer [REDACTED] walked onto the porch, pulled out his handcuffs, and instructed [REDACTED] to turn around and put his hands behind his back. When [REDACTED] refused, Officer [REDACTED] grabbed his wrists. According to Officer [REDACTED] then stiffened and pulled away. A struggle ensued wherein Officer [REDACTED] attempted to grab [REDACTED] wrists to handcuff him as [REDACTED] pulled away to avoid being handcuffed. Officer [REDACTED] placed [REDACTED] in an armbar by forcefully grabbing his wrists and placing his arms behind his back. [REDACTED] was bending over during this time. Officer [REDACTED]

¹² Attachment 23.

¹³ *Id.*

¹⁴ This is confirmed by the audio recording of the interview, Attachment 9.

¹⁵ Attachment 69.

¹⁶ Attachments 58, 63.

forcefully took ██████ down onto the porch, causing ██████ to land on his stomach/side. According to Officer ██████ continued to avoid being handcuffed by pushing and pulling away from Officer ██████ and by attempting to get up from his prone position on the porch. Officer ██████ stated that he forcefully pushed ██████ to the porch and then placed him in handcuffs¹⁷. ██████ brothers were standing in the immediate area, yelling at Officer ██████. Officer ██████ told ██████ that ██████ was being arrested and explained to him the reason for the arrest.

According to Officer ██████ he never poked ██████ about the chest; never grabbed him about the neck; never kicked him; never punched him; and never directed profanity at him. Officer ██████ stated that Officer ██████ had no physical contact with ██████. Officer ██████ never heard Officer ██████ tell ██████ to “Get the fuck back.”

IPRA interviewed Officer ██████¹⁸ on May 12, 2016. Officer ██████ stated that, on September 12, 2014, he and Officer ██████ were partnered on the ██████ District Tactical Team and were conducting an investigation on the 7200 block of South Paulina. Officer ██████ did not recall the details of this incident and relied on the information in ██████ Arrest Report for most of his statement. Officer ██████ recalled that as he and Officer ██████ were returning to their squad car after a separate incident, they heard ██████ rapping about shooting the police and making hand motions as if he was shooting guns. According to Officer ██████ he did not recall seeing ██████ place his hands underneath his shirt as he was rapping. Officer ██████ read about this action in the Arrest Report and believed that Officer ██████ was the one who saw it. Officer ██████ took ██████ into custody, but Officer ██████ did not recall how that happened. Officer ██████ did not participate in the physical arrest of ██████. While Officer ██████ was taking ██████ into custody, Officer ██████ recalled that he was attempting to keep other individuals off the porch and telling them to get back. Officer ██████ did not recall saying to anyone, “Get the fuck back.” Officer ██████ had no other independent recollection of the incident.

b. Digital Evidence

Evidence Technician photographs¹⁹ taken on September 12, 2014, do not depict any obvious injury to ██████.

On September 14, 2014, ██████ showed IPRA Investigator (now MCS) ██████ **video footage** of the incident on his Samsung cell phone that had been taken by ██████ and sent to ██████ via text message. The following day, MCS ██████ **authored an investigative report²⁰** describing what he had seen depicted in the video. “The footage showed a black male officer push Mr. ██████ into a front screen door of a house. Mr. ██████ fell to the porch, and the black male officer appeared to punch at Mr. ██████ but the R/I was unable to determine whether the accused made contact. The accused black male officer then stood up and kicked Mr. ██████ on the lower part of the body and the video ended.”²¹ Investigator ██████ was unable to obtain the

¹⁷ It should be noted that video footage (Attachment 69) depicts a non-combative ██████ standing as Officer ██████ places handcuffs on him.

¹⁸ Attachments 61, 62.

¹⁹ Attachment 50.

²⁰ Attachment 23.

²¹ *Id.*

video footage on the date of viewing because, at the time, IPRA did not have the capability to download the footage. However, MCS ██████ did provide a sworn statement to COPA²² confirming that he had viewed the video and authored the Investigative Report. COPA made repeated attempts to obtain the video footage but was ultimately unable to do so²³.

COPA did obtain **other third-party video footage**²⁴ of the incident from ██████ on October 23, 2017. This video is different from that recorded by ██████²⁵ When the video begins, ██████ can be seen sitting on the porch up against the house, with Officer ██████ above him. Officer ██████ immediately stands ██████ up and places him in handcuffs. The video does not depict any resisting by ██████ nor does it depict any force by either officer. Officer ██████ appears to be trying to keep bystanders off of the porch, and somebody can be heard telling people to, “Get back!” A crowd of people appears to have gathered on the sidewalk and lots of shouting can be heard. Approximately four additional police vehicles arrive on scene. ██████ can be seen speaking with Officer ██████ in the street. About 30 seconds later, the police vehicles are seen driving away²⁶.

c. Documentary Evidence

The related **Arrest**²⁷ and **Case Reports**²⁸ document that on September 12, 2014, Officers ██████ and ██████ Unit ██████ were conducting a narcotics investigation at ██████ when ██████ yelled at them from his porch at ██████ As Officers ██████ and ██████ completed their investigation and were walking back to their vehicle, ██████ started rapping about killing police officers and motioning with both hands as though he was shooting guns in their direction. According to the reports, the officers observed ██████ place his hand underneath his shirt as though he was reaching for a weapon. Officer ██████ approached ██████ on his porch to take him into custody. ██████ balled his fist and took a defensive stance. Officer ██████ took ██████ to the ground using armbar and wristlock techniques and handcuffed ██████ While being transported to the ██████ District Station, ██████ told the officers that he wanted to get arrested so he could sue them. ██████ was charged with Aggravated Assault.

In Officer ██████ **Tactical Response Report**²⁹, he documented that ██████ did not follow verbal direction, stiffened, and posed an imminent threat in that he balled his fist and took a defensive stance. Officer ██████ reacted with his presence, verbal commands, wristlock, armbar, and take down/emergency handcuffing. ██████ was unable to be interviewed because he was a juvenile. The Watch Commander concluded that Officer ██████ actions were within Department Use of Force Model guidelines.

²² Attachments 84, 85.

²³ See attachments 24, 37, 49, 67, 72, 79-83.

²⁴ Attachment 69.

²⁵ ██████ can be seen in the background of this video. Additionally, in Major Case Specialist ██████ sworn statement, he states the two videos were taken of the same incident, but not of the same time frame and not from the same angle.

²⁶ Presumably with ██████ inside one of the vehicles. This is not depicted but is inferred based on conversation that can be heard in the video.

²⁷ Attachment 14.

²⁸ Attachment 16.

²⁹ Attachment 17.

In Officer ██████ Tactical Response Report³⁰, he documented that ██████ posed an imminent threat of injury. Officer ██████ reacted with his presence. ██████ was unable to be interviewed because he was a juvenile. The Watch Commander concluded that Officer ██████ actions were within Department Use of Force Model guidelines.

VI. ANALYSIS

a. Officer ██████

As to Allegation 1 that Officer ██████ poked ██████ about the chest without justification, COPA recommends a finding of **Not Sustained**. In his interview with IPRA, ██████ claimed that Officer ██████ came up to him on the porch, got in his face and began poking him in the chest. However, ██████ is the only one who mentions any “poke” throughout the investigation. Officer ██████ stated he did not recall observing Officer ██████ poke ██████ and Officer ██████ denied poking ██████. Witnesses ██████ and ██████ did not make mention of seeing Officer ██████ poke ██████ although they did witness other physical contact. Further, MCS ██████ did not indicate that he observed any poking in the video that he viewed of the incident. Due to the lack of witness corroboration and other independent evidence, COPA finds that there is insufficient evidence to prove or disprove by a preponderance of the evidence that Officer ██████ poked ██████ about the chest. Since it cannot be determined whether or not Officer ██████ poked ██████ there is no need to determine whether such an act would be justified.

As to Allegation 2 that Officer ██████ grabbed ██████ about the neck without justification, COPA recommends a finding of **Not Sustained**. In his interview with IPRA, ██████ stated that Officer ██████ grabbed him by the neck with both hands. Officer ██████ stated he did not recall Officer ██████ grab ██████ by the neck. Officer ██████ stated that he grabbed ██████ by the wrist, but denied grabbing him by the neck. ██████ stated that he saw Officer ██████ grab ██████ by his arms but did not allege that Officer ██████ grabbed ██████ by the neck. Witness ██████ did not make any mention of Officer ██████ grabbing ██████. ██████ stated that Officer ██████ picked ██████ up but he did not go into detail about how, if at all, Officer ██████ grabbed ██████. Therefore, COPA lacks sufficient evidence to prove or disprove by a preponderance of the evidence that Officer ██████ grabbed ██████ about the neck. Since it cannot be determined whether or not Officer ██████ grabbed ██████ by the neck, there is no need to determine whether such an act would be justified.

As to Allegation 3 that Officer ██████ kicked ██████ without justification, COPA recommends a finding of **Sustained**. In his interview with IPRA, ██████ stated that once he was on the ground, Officer ██████ kicked him on his side. Officer ██████ denied ever kicking ██████. However, Officer ██████ credibility is somewhat diminished by the fact that he stated in his interview with IPRA³¹ that he placed handcuffs on ██████ when he was on the ground, while video footage³² clearly depicts ██████ standing non-combatively while being placed in

³⁰ Attachment 19.

³¹ Attachment 58.

³² Attachment 69.

handcuffs. Officer ██████ did not recall observing Officer ██████ kick ██████. Furthermore, Officer ██████ version is contradicted by other witnesses and evidence. ██████ stated that he witnessed Officer ██████ kick ██████ one time. ██████ stated that he saw Officer ██████ kick ██████ in the back. In his Investigatory Report summarizing the video he witnessed of the incident, MCS ██████ stated that the footage depicted Officer ██████ kick ██████ about the lower part of his body after he had fallen on the porch. The minor inconsistencies about what part of ██████ body Officer ██████ kicked can be explained by the different viewpoints of the witnesses. Considering all of the corroborating witness statements, COPA finds that it is more likely than not that Officer ██████ did kick ██████.

Given this finding, the next step is to determine if kicking ██████ was an appropriate use of force. An officer's use of force is appropriate when it is "reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury."³³ 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.³⁴ Department members must escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control.³⁵

In his TRR, Officer ██████ categorized ██████ as an assailant who posed an imminent threat of battery. Per the General Orders, this type of assailant is one "who places a member in fear of a battery and includes advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time."³⁶ If ██████ was, in fact, acting as an assailant, kicking ██████ could be deemed appropriate. Considering ██████ statement, supported by statements from ██████ and MCS ██████ was not acting as an assailant at the time he was kicked. To the contrary, those statements suggest that ██████ was kicked while he was already on the ground. As such, ██████ was clearly not an assailant posing an imminent threat of battery at the time Officer ██████ kicked him.

This leaves Officer ██████ other classification of ██████ as a passive resister. Assuming this categorization of ██████ is proper, it still would not justify Officer ██████ kicking ██████ according to the Use of Force mode.

Because ██████ cannot be considered an assailant in the moment he was kicked and Officer ██████ other categorization of ██████ as a passive resister does not justify kicking, COPA finds that Officer ██████ did not act reasonably when he kicked ██████. Officer ██████ use of force in kicking ██████ was excessive given the totality of the circumstances.

As to Allegation 4 that Officer ██████ directed profanity at ██████ COPA recommends a finding of **Not Sustained**. In his interview with IPRA, ██████ was asked if Officer ██████ cursed at him. ██████ responded, "Yeah. Callin' me all type a pussies and bitches"³⁷. ██████ stated that Officer ██████ continued calling him the same or similar names once he was placed in the squad car. Officer ██████ did not recall Officer ██████ direct profanity at ██████ and Officer ██████ denied directing profanity at ██████ at any time. ██████ and ██████ did not make any mention of either officer using profanity. Additionally, MCS ██████ makes no mention of any profanity heard on the video footage and the other third-party footage does not depict either

³³ G03-02(III)(B).

³⁴ G03-02-01.

³⁵ G03-02-01(II)(C).

³⁶ G03-02-02(III)(C)(1).

³⁷ Attachment 48, pg. 22.

officer using profanity. Due to the lack of witness corroboration and other independent evidence, COPA finds that there is insufficient evidence to prove or disprove by a preponderance of the evidence that Officer ██████ directed profanity at ██████

As to Allegation 5 that Officer ██████ threw ██████ to the ground without justification, COPA recommends a finding of **Sustained**. Since Officer ██████ admits that he threw ██████ to the ground, it must be determined whether that use of force was justified, given the totality of the circumstances. In his TRR, Officer ██████ documented that he took ██████ down in response to ██████ acting defensive and balling his fists.

An officer's use of force is appropriate when it is "reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury."³⁸ 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.³⁹ Department members must escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control.⁴⁰

In his TRR, Officer ██████ categorized ██████ as an assailant who posed an imminent threat of battery. Per the General Orders, this type of assailant is one "who places a member in fear of a battery and includes advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time."⁴¹ If ██████ was, in fact, acting as an assailant, Officer ██████ take-down of ██████ could be deemed appropriate. In his interview when asked about ██████ actions at the time of the takedown, Officer ██████ stated, "He wasn't necessarily trying to swing on me or punch me or anything like that. He was more so just trying not to get arrested. Trying not to put his hands behind his back. Trying to get up I guess to run somehow."⁴² This description, from Officer ██████ himself, negates any classification of ██████ as an assailant at the time he was thrown to the ground.

In his TRR, Officer ██████ also categorizes ██████ as a passive resister. Assuming this categorization of ██████ is proper, this type of resistance still does not warrant a takedown according to the Use of Force Model.

Because Officer ██████ categorization of ██████ as an assailant does not apply at the moment he took ██████ to the ground and his other classification of ██████ as a passive resister does not warrant a take down, COPA finds that Officer ██████ did not act reasonably when he took ██████ down. Officer ██████ use of force was excessive given the totality of the circumstances.

As to Allegation 6 that Officer ██████ punched ██████ without justification, COPA recommends a finding of **Sustained**. In his interview with IPRA, ██████ stated that Officer ██████ swung at him a couple times and punched him about the body. Officer ██████ denied punching ██████. However, Officer ██████ credibility is somewhat diminished by the fact that he stated in his interview with IPRA⁴³ that he placed handcuffs on ██████ when he was on the

³⁸ G03-02(III)(B).

³⁹ G03-02-01.

⁴⁰ G03-02-01(II)(C).

⁴¹ G03-02-02(III)(C)(1).

⁴² Attachment 63, pg. 17.

⁴³ Attachment 58.

ground, while video footage⁴⁴ clearly depicts ██████ standing non-combatively while being placed in handcuffs. Officer ██████ did not recall witnessing Officer ██████ punch ██████. Furthermore, Officer ██████ version is contradicted by other witnesses and evidence. ██████ and ██████ both stated they saw Officer ██████ punch ██████ in the stomach. MCS ██████ noted in his Investigatory Report that the video he watched depicted Officer ██████ attempt to punch ██████ though he could not tell if the punch actually made contact. Considering all of the corroborating witness statements, COPA finds that it is more likely than not that Officer ██████ did punch ██████.

Given this conclusion, the next step is to determine if punching ██████ was an appropriate use of force. An officer's use of force is appropriate when it is "reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury."⁴⁵ 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.⁴⁶ Department members must escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control.⁴⁷

In his TRR, Officer ██████ categorized ██████ as an assailant who posed an imminent threat of battery. Per the General Orders, this type of assailant is one "who places a member in fear of a battery and includes advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time."⁴⁸ If ██████ was, in fact, acting as an assailant, Officer ██████ could potentially be justified in punching him. According to ██████ Officer ██████ began punching him as he was falling to the ground. MCS ██████ stated in his investigative report, "Mr. ██████ fell to the porch, and the black male officer appeared to punch at Mr. ██████ stated that he saw Officer ██████ punch ██████ after ██████ "went down". ██████ stated that when ██████ fell to the porch Officer ██████ punched him. These statements suggest that, at the time he was punched, ██████ was either on the ground or falling to the ground. Since an unarmed person who is on the ground or is falling to the ground does not pose an imminent threat of battery, ██████ cannot be categorized as an assailant at the time he was punched.

In his TRR, Officer ██████ also categorizes ██████ as a passive resister for stiffening his body and refusing to follow verbal commands. Assuming this categorization of ██████ is proper, it still would not justify Officer ██████ punching ██████ according to the Use of Force model.

Because Officer ██████ categorization of ██████ as an assailant is not supported at the time he punched ██████ and the second classification of ██████ as a passive resister does not justify punching, COPA finds that Officer ██████ did not act reasonably when he punched ██████. Officer ██████ use of force in punching ██████ was excessive given the totality of the circumstances.

b. Officer ██████

As to Allegation 1 that Officer ██████ directed profanity at ██████ stating "Get the fuck back," without justification, COPA recommends a finding of **Not Sustained**. In his interview

⁴⁴ Attachment 69.

⁴⁵ G03-02(III)(B).

⁴⁶ G03-02-01.

⁴⁷ G03-02-01(II)(C).

⁴⁸ G03-02-02(III)(C)(1).

with IPRA, ██████ stated that Officer ██████ told him to “get the fuck back” when he was asking Officer ██████ what was going on. Officer ██████ stated he did not recall making this comment to ██████ and Officer ██████ denied hearing Officer ██████ make this comment. In their interviews with IPRA, neither ██████ nor ██████ made reference to hearing Officer ██████ use profanity during the incident. Additionally, MCS ██████ makes no mention of any profanity heard on the video footage. While somebody can be heard saying “Get back!” on the other third-party video footage, no profanity can be heard. Due to the lack of witness corroboration, COPA finds that there is insufficient evidence to prove or disprove by a preponderance of the evidence that Officer ██████ directed profanity at ██████

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer ██████

i. Complimentary and Disciplinary History

Officer ██████ Disciplinary History includes two minor SPAR’s for “Indebtedness to the City” over the past five years. His Complimentary History, on the other hand, is quite extensive. Highlights include ninety Honorable Mentions, seven Department Commendations, and three Unit Meritorious Performance Awards.

ii. Recommended Penalty, by Allegation

1. Allegation No. 3 – Kicked ██████ without justification

As to COPA’s finding that Officer ██████ kicked ██████ without justification, COPA recommends a 5-day Suspension. The conduct is serious in nature, but both the age of the case and the availability of the evidence are considered in mitigation. Furthermore, Officer ██████ Disciplinary History does not reveal any prior transgressions involving excessive force. For these reasons, COPA believes a 5-day suspension is appropriate.

2. Allegation No. 5 – Threw ██████ to the ground without justification

For the reasons previously set forth, COPA believes a 5-day suspension is appropriate.

3. Allegation No. 6 – Punched ██████ without justification

For the reasons previously set forth, COPA believes a 5-day suspension is appropriate.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	1. Poked [REDACTED] about the chest without justification, in violation of Rule 8. 2. Grabbed [REDACTED] about the neck without justification, in violation of Rule 8. 3. Kicked [REDACTED] without justification, in violation of Rule 8. 4. Directed profanity at [REDACTED] calling him a “bitch” and a “pussy”, in violation of Rule 9. 5. Threw [REDACTED] to the ground without justification, in violation of Rule 8. 6. Punched [REDACTED] without justification, in violation of Rule 8.	Not sustained Not sustained Sustained/ 5-day Suspension Not sustained Sustained/ 5-day Suspension Sustained/ 5-day Suspension
Officer [REDACTED]	1. Directed profanity at [REDACTED] stating “Get the fuck back,” in violation of Rule	Not sustained

Approved:

[REDACTED]

January 31, 2019

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	█
Investigator:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	Andrea Kersten