

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 5, 2017
Time of Incident:	Approximately 3:30 p.m.
Location of Incident:	[REDACTED]
Date of COPA Notification:	October 5, 2017
Time of COPA Notification:	Approximately 7:45 p.m.

CPD officers were investigating allegations of fraud against the offender in a bank. The offender fled from the bank and fell to the ground, where one of the officers used four knee strikes to an offender’s head to cause the offender to desist resisting arrest. The incident was captured on security camera footage.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED]; Star # [REDACTED], Employee ID # [REDACTED]; Date of Appointment: [REDACTED] [REDACTED] 2002; Officer; Unit of Assignment: [REDACTED]; DOB: [REDACTED] 1977; Male; White
Involved Officer #2:	[REDACTED]; Star # [REDACTED], Employee ID # [REDACTED]; Date of Appointment: [REDACTED] [REDACTED], 2003; Officer; Unit of Assignment: [REDACTED]; DOB: [REDACTED], 1974; Male; White
Involved Individual:	[REDACTED]; DOB: [REDACTED], 1973; Male; White

III. ALLEGATIONS

Member	Allegation	Finding / Recommendation
Officer [REDACTED]	1. On or about October 5, 2017, at approximately 3:30 p.m., at or near [REDACTED], [REDACTED], [REDACTED], the accused used excessive force on the Complainant in that he employed knee strikes to the Complainant's head, in violation of Rule 8.	SUSTAINED / 30 Days

IV. APPLICABLE RULES AND LAWS

Rules

1. CPD Rules of Conduct, Rule 8 (prohibiting disrespect to or maltreatment of any person, while on or off duty).

General Orders

1. Chicago Police Department General Order G03-02 (Use of Force Guidelines) (effective date October 1, 2002, rescinded October 16, 2017).
2. Chicago Police Department General Order G03-02-02 (Force Options) (effective date January 1, 2016, rescinded October 16, 2017).

V. INVESTIGATION¹

a. Interviews

██████████ gave an **Audio Recorded Interview** to COPA on October 30, 2017.² In summary, not verbatim, and in pertinent part, ██████████ denied that he had resisted arrest, except for his attempts to flee the scene. He denied that he had attempted to strike either of the arresting officers. He claimed that he had been punched in the head. COPA acknowledges that there is an inconsistency between ██████████'s account and video evidence depicting the incident.³ While ██████████ was incorrect in the manner in which he received injuries to his head video evidence supports that he received an injury to his head.

Officer ██████████ gave an **Audio Recorded Statement** on December 19, 2017.⁴ Officer ██████████ stated the following:

On the date and at the time in question, Officer ██████████ and his partner, Officer ██████████, responded to a call of a deceptive practice in progress at the ██████████ Bank branch located at ██████████. Upon arriving, the officers spoke with bank employees, who informed them that ██████████ (who was still present at the bank) had attempted to open an account with fictitious identification. The officers then spoke with ██████████ and informed him that he was under arrest. ██████████ fled on foot through an emergency exit, with both officers giving chase. ██████████ fell as he ran, landing face down in the bank's drive through lane. The officers then apprehended ██████████.

Officer ██████████ stated that he placed ██████████'s left wrist in handcuffs, and that he and Officer ██████████ struggled to handcuff ██████████'s right wrist; ultimately, the two officers utilized two sets of handcuffs, because the officers had difficulty in getting ██████████'s wrists together. Officer

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

²Attachment 19.

³That video evidence is described at Section V.b. below.

⁴Attachment 40.

██████████ recalled observing Officer ██████████ utilize an estimated two-to-three knee strikes against ██████████. Officer ██████████ stated that he was in apprehension of receiving an imminent battery up until the point that ██████████ had been completely handcuffed. After being shown video excerpts that depicted the arrest, Officer ██████████ agreed that the video excerpts did not show ██████████'s arm flailing.⁵

Officer ██████████ gave an **Audio Recorded Statement** on January 18, 2018.⁶ Prior to the commencement of his statement, COPA gave Officer ██████████ an opportunity to view two videos that ██████████ Bank had provided to COPA which depict the incident.⁷ Officer ██████████'s account of the events that immediately preceded the arrest of ██████████ was substantially similar to the account given by Officer ██████████.

Concerning the arrest of ██████████, Officer ██████████ stated that while ██████████ was face down on the ground, and while he and Officer ██████████ were attempting to handcuff him, Officer ██████████ used his right hand to apply downward pressure upon ██████████'s neck for purposes of attempting to control ██████████, and that he then struck ██████████ in the head with his knee. Officer ██████████ stated that ██████████ was then an active resister and that he was in fear of receiving a battery when he applied those knee strikes. He stated that he observed that ██████████'s right fist was clenched at the time, and that ██████████ did not comply with the officers' commands to stop resisting. Officer ██████████ denied that he intended to strike ██████████'s head. Officer ██████████ denied that his knee strikes were of sufficient force to cause a fracture of ██████████'s skull.

b. Digital Evidence

██████████ Bank provided COPA with **Video Footage** taken by bank security cameras. Two of those videos depict the arrest: one of the videos taken from the interior,⁸ and one from the exterior.⁹ The interior video shows Officers ██████████ and ██████████ arrive and speak with bank staff and ██████████ for several minutes. Neither officer searches nor pats ██████████ down. ██████████ then attempts to flee by running through a door and then falls in the ██████████'s drive-through lane. The videos show the officers struggle with ██████████ for approximately forty-five seconds to handcuff him after his fall. Both videos depict ██████████ facedown with Officer ██████████ atop him. Neither video shows ██████████'s right arm flailing or moving in an aggressive or attacking manner toward either officer. Each shows Officer ██████████ holding ██████████'s head or neck down as Officer ██████████ applies four separate knee strikes to ██████████'s head. The exterior video shows ██████████'s body moving as an apparent result of the knee strikes. The exterior video also shows that ██████████ has difficulty sitting up and walking afterward.

⁵In an Original Case Incident Report dated October 5, 2017, Officer ██████████ wrote in pertinent part that ██████████ "was flailing his right arm with a clenched fist at which time Officer ██████████ did several knee strikes towards offender's upper torso and upper right shoulder area." See Attachment 14.

⁶Officer ██████████'s statement is in three parts, *see* Attachments 41 – 43.

⁷Those videos are described at section V(b) below.

⁸Attachment 15.

⁹*See* Attachment 25 at 15:25:33 – 15:30:28.

Arrest Photograph¹⁰**c. Documentary Evidence**

In an **Original Case Incident Report** dated October 5, 2017,¹¹ Officer ██████ wrote in pertinent part that ██████ “was flailing his right arm with a clenched fist at which time Officer ██████ did several knee strikes towards offender’s upper torso and upper right shoulder area. However, due to offender’s continued resistance and movements combined with the struggle [offender] was struck in the face during [the] incident.”

In an **Arrest Report** dated October 5, 2017,¹² Officer ██████ wrote in pertinent part that Officer ██████ “attempted to gain control of subject’s right arm and in fear of receiving a battery, P.O. ██████ struck offender several times into upper torso area with his knee attempting to defeat offender’s mechanical movement and struck offender in the face after he continued to resist arrest.”

In a **Tactical Response Report** dated October 5, 2017,¹³ Officer ██████ described ██████ as a passive resister, an active resister, and as an assailant presenting an imminent threat of battery, and he stated that his response to ██████’s actions included officers’ presence, verbal commands, escort holds, and “knee strike.” In the supervisor’s comments section of the report, Lt. ██████ wrote, among other things, that he could not determine if Officer ██████’s described use of force was justified “due to not being able to review the bank parking lot video.”

Sergeant ██████ submitted an **Initiation Report** dated October 5, 2017.¹⁴ In it, Sgt. ██████ reported he interviewed ██████ after his arrest at the 25th District Station at approximately 7:14 p.m. on the date of the incident. According to the Initiation Report, ██████ related Officer ██████ had repeatedly punched him in the face/head while he was on the ground.

¹⁰Attachment 11.

¹¹Attachment 14.

¹²Attachment 11.

¹³Attachment 6.

¹⁴Attachment 4.

Community First Medical Center Medical Records¹⁵ show ██████ presented there at approximately 7:55 p.m. on the date of his arrest. Imaging test results show ██████ sustained multiple facial fractures.¹⁶

VI. ANALYSIS

Excessive force claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.¹⁷ The proper application of this standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."¹⁸ "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."¹⁹

Following that standard, **Allegation # 1** against Officer ██████ is **SUSTAINED**. That Officer ██████'s knee strikes to ██████'s head were excessive force is supported by substantial evidence. ██████ was face down with Officer ██████ atop him, indicating that ██████ no longer posed an escape threat. It was at that time when Officer ██████ employed the knee strikes. That neither officer considered ██████ to be a safety threat is further demonstrated by the officers' deferential treatment of ██████, *i.e.* by not searching or patting him down inside the Bank prior to his attempt to flee, as well as the non-violent nature of ██████'s apparent crime of bank fraud.

Officer ██████'s contention that he meant to strike ██████'s torso rather than his head, is contradicted by video evidence showing Officer ██████ applying downward force upon ██████'s head or neck with his hand at the time that he employed the knee strikes. Video evidence also shows that Officer ██████ connected with knee strikes to the head on four occasions. This evidence demonstrates that Officer ██████ targeted ██████'s head and that the contact between Officer ██████'s knee and ██████'s head was intentional.

COPA finds that Officer ██████'s analysis of ██████ as an assailant to be inconsistent with General Order G03-02-02 (Force Options) then in effect. That general order authorized the use of "direct mechanical" techniques against "assailants," defining that type of resister as "a subject who is using or threatening the imminent use of force against himself/herself or another person." Although video evidence shows that the officers struggled with ██████ to place him in handcuffs, thereby supporting their claim that ██████ resisted their attempts to subdue him, it does not show that ██████ was an "assailant" under that definition. Instead, it shows that ██████ lay face down, prone, with Officer ██████ atop him at the relevant time. Moreover, that ██████ "was flailing

¹⁵Attachment 23.

¹⁶ Specifically, ██████'s medical records describe a moderately displaced comminuted fracture involving the anterior wall of his right maxillary sinus and a minimally displaced comminuted fracture involving the posterior and medial walls of his right maxillary sinus. *See*. Att. 23.

¹⁷ *Graham v. Connor*, 490 U.S. 386, 388 (1989).

¹⁸490 U.S. at 396; Chicago Police Department General Order G03-02 (Use of Force Guidelines) (effective date October 1, 2002, rescinded October 16, 2017), Section III.C.

¹⁹*Id.*

his right arm with a clenched fist” is contradicted by video evidence which demonstrates that ██████ did not flail either of his arms.

Based upon the fact that ██████’s actions were not reasonably consistent with that of an assailant as defined by the applicable general order, Officer ██████’s use of direct mechanical techniques, *i.e.* knee strikes to the head, was not authorized by that order. Therefore, based on the evidence reviewed, COPA finds that Officer ██████’s use of force was not objectively reasonable, given that ██████ was suspected of non-violent crimes and that ██████ did not pose an immediate threat to the safety of the officers.²⁰ Although ██████ fled from his initial encounter with the officers, he quickly fell while running, after which he posed no threat to the officers or the public. Accordingly, COPA sustains the allegation of excessive force against Officer ██████.

VII. RECOMMENDATIONS

i) Complimentary and Disciplinary History

Officer ██████’s complimentary history includes thirty-six honorable mentions. Officer ██████ received a reprimand for a court appearance violation that occurred on April 11, 2018. .

ii) Recommended Penalty: Allegation No. 1 – Sustained Excessive Force-30 days

²⁰*Graham, supra*, 490 U.S. at 396; Chicago Police Department General Order G03-02 (Use of Force Guidelines) (effective date October 1, 2002, rescinded October 16, 2017), Section III.C.

VIII. CONCLUSION

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

Allegation	Finding / Recommendation
1. On or about October 5, 2017, at approximately 3:30 p.m., at or near [REDACTED], the accused used excessive force on the Complainant in that he employed knee strikes to the Complainant's head, in violation of Rule 8.	SUSTAINED / 30 Days

Approved:

[REDACTED]

January 14, 2019

[REDACTED]

Deputy Chief Administrator – Chief Investigator

Date

[REDACTED]

January 14, 2019

[REDACTED]

Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	Squad # [REDACTED]
Investigator:	[REDACTED]
Supervising Investigator:	[REDACTED]
Deputy Chief Administrator:	[REDACTED]
Attorney:	[REDACTED]