

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 27, 2018
Time of Incident:	9:45 AM
Location of Incident:	[REDACTED]
Date of COPA Notification:	December 27, 2018
Time of COPA Notification:	3:56 PM

[REDACTED] (“[REDACTED]”) and Officer [REDACTED] # [REDACTED] (“Officer [REDACTED]”) were driving on N. Harlem Ave. Due to construction, two lanes were merging, so Officer [REDACTED] attempted to merge onto the same lane as [REDACTED]. Officer [REDACTED] claims that [REDACTED] did not let him merge and [REDACTED] began to drive erratically. Officer [REDACTED] approached [REDACTED]’s car to do a well-being check. [REDACTED] alleges that Officer [REDACTED] approached him aggressively, so he then pushed him about the chest. [REDACTED] further alleges that Officer [REDACTED] displayed his weapon and pushed his side mirror. Once Officer [REDACTED] and [REDACTED]’s interaction ended, [REDACTED] called 911. Officer [REDACTED] # [REDACTED] was dispatched to the scene and spoke to [REDACTED]. Officer [REDACTED] relocated to the [REDACTED] District to report the incident.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED], Star #: [REDACTED], Employee ID #: [REDACTED], Date of Appointment: [REDACTED], 2013, Police Officer, Unit of Assignment: [REDACTED], DOB: [REDACTED], 1980, Male, White Hispanic
Involved Officer #2:	[REDACTED], Star #: [REDACTED], Employee ID #: [REDACTED], Date of Appointment: [REDACTED], 1991, Police Officer, Unit of Assignment: [REDACTED], DOB: [REDACTED], 1964, Male, White
Involved Individual #1:	[REDACTED], DOB: [REDACTED], 1963, Male, White
Involved Individual #2:	[REDACTED], DOB: [REDACTED], 1982, Female, Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer [REDACTED] # [REDACTED]	1. Unnecessarily displayed his weapon at [REDACTED], in violation of Rules 2, 3, 8, and 38	Sustained/10 Day Suspension

2. Engaged in a physical altercation when he approached ██████ aggressively, in violation of Rules 2, 3, 8, and 9	Not Sustained
3. Maltreated ██████'s property when he pushed his vehicle's side mirror, in violation of Rules 2, 3, and 8	Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
3. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
4. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
5. Rule 38: Unlawful or unnecessary use or display of a weapon.

V. INVESTIGATION¹

a. Interviews

COPA contacted ██████ via telephone and mail numerous times to schedule an interview; however, the attempts were met with negative results.²

COPA contacted **witness** ██████ via telephone and mail numerous times to schedule an interview; however, the attempts were met with negative results.³

COPA **interviewed Officer** ██████ #█████⁴ ("Officer ██████") on April 2, 2019.⁵ Officer ██████ stated he was dispatched to the incident location because an individual displayed their gun to another individual. Officer ██████ did not particularly recall meeting with ██████. Officer ██████ stated he documented everything ██████ told him about "the road rage

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 Attachments 12, 14, and 30

³ Attachments 13, 14, and 30

⁴ Attachment 18

⁵ Officer ██████ was accompanied by counsel of his choosing.

incident.”⁶ After reviewing the Original Case Incident Report, Officer ██████ stated it is accurate to his recollection.⁷

COPA interviewed Officer ██████ #█████⁸ (“Officer ██████”) on April 11, 2019.⁹ Officer ██████ stated that he carried a weapon on the right of his waistband covered by his shirt and sweatshirt. Officer ██████ stated there was a construction zone on Harlem Ave., where he had to merge into a lane. Officer ██████ stated when he attempted to merge into the lane, ██████ did not allow him to merge. Officer ██████ stated ██████’s car was inches away. Officer ██████ stated he rolled down his window and tried to fold in ██████’s side mirror, so it did not damage his car. Officer ██████ stated he was unable to fold in ██████’s side mirror, but folded in his own side mirror. Officer ██████ stated he did not say anything to ██████ at this time.

Officer ██████ stated they continued to drive and while he was behind ██████, ██████ was slamming on his brakes and swerving side to side from lane to lane. Officer ██████ indicated ██████ did this on purpose because Officer ██████ tried to pass him. Officer ██████ said he did not know whether ██████ was on drugs or if there was something wrong with him. Officer ██████ stated he exited his car and approached ██████’s car. Officer ██████ stated he approached ██████ because he believed ██████ had a medical emergency and wanted to conduct a well-being check based on ██████’s irrational behavior, his drug enforcement training, and because ██████ continued to slam on his brakes. Officer ██████ stated if he were to observe similar behavior as ██████’s, he would call 911 if he was on the expressway, and if in traffic he would not get involved. Officer ██████ stated he did not call 911 after observing ██████’s driving. Officer ██████ stated his demeanor while approaching ██████ was not aggressive.

Officer ██████ stated he asked ██████ if he “was alright”¹⁰ and “do we have an issue or a problem”¹¹ to which ██████ did not reply. Officer ██████ stated ██████ then opened his door, while yelling¹², and pushed Officer ██████ in the upper chest. Officer ██████ described ██████ as mad and aggressive based off ██████’s facial expressions. Officer ██████ said his back was towards his car and oncoming traffic was a foot away. Officer ██████ stated he told ██████ to return to his car, but ██████ continued to advance on Officer ██████. Officer ██████ stated he was scared because there was oncoming traffic two feet away and he thought ██████ would push him into it. Officer ██████ stated he put his hand up and retreated about six to seven feet as ██████ continued to advance on him. Officer ██████ stated he then unholstered his weapon pointing it to the ground and told ██████ to return to his car. Officer ██████ did not announce his office. Officer ██████ said he unholstered his weapon because he was scared, he was afraid of being pushed into traffic, and of ██████ fighting him. Officer ██████ indicated that the only way to diffuse and de-escalate the situation was to unholster his weapon. Officer ██████ did not recall if ██████ verbally threatened him. Officer ██████ stated he did not give attention to whether ██████ possessed signs of being under the influence. Officer ██████ stated

⁶ Attachment 18 at 5:38 minutes.

⁷ Officer ██████ relied on the Original Case Incident Report during his statement.

⁸ Attachment 28

⁹ Officer ██████ was accompanied by counsel of his choosing.

¹⁰ Attachment 28 at 9:05 minutes.

¹¹ *Id.* at 9:06.

¹² Officer ██████ did not recall what ██████ yelled.

█████ returned to his car. Officer █████ stated he holstered his weapon and returned to his car. Officer █████ stated his wife, █████, who witnessed the incident and was a passenger in his car, neither exited the car nor spoke to █████.

b. Digital Evidence

COPA searched for **POD**¹³ cameras that would have captured the incident, however, there were none.

COPA received █████'s **911 call and CPD Radio Transmissions**¹⁴ related to the incident. █████ is heard stating that while on █████ a white male driving a white Jeep with license plate █████, tried "cutting [him] off."¹⁵ █████ is heard saying the male "grabbed [his] mirror and pulled it"¹⁶. █████ is heard stating the male approached █████'s vehicle and █████ also exited. █████ is further heard stating the male pulled a gun on him, so █████ returned to his vehicle. The dispatcher is heard informing Beat #█████ of the incident. The dispatcher is also heard stating that the license plate is owned by Officer █████.

In Officer █████' **in-car camera video footage**,¹⁷ Officer █████ and █████ are not seen, only heard. █████ is heard telling Officer █████ that Officer █████¹⁸ tried to cut him off to merge onto a lane. █████ told Officer █████ that Officer █████ pulled his side mirror. █████ is heard saying Officer █████ pulled up behind him and exited his car so he also exited. █████ is heard saying Officer █████ came up to him, █████ pushed Officer █████ backwards, Officer █████ then grabbed his weapon from the right side of his waist, subsequently, displaying it to █████. █████ is further heard telling Officer █████ that he returned to his car as did Officer █████. █████ said he was afraid Officer █████ would shoot him. █████ said Officer █████ was mad and angry. █████ said Officer █████ had road rage over merging.

c. Documentary Evidence

An **Initiation Report**^{19, 20} authored by Sgt. █████#█████ states Officer █████ arrived at the █████ District to report a battery. The report states Officer █████ attempted to merge in traffic, █████²¹ did not allow him to enter the lane by accelerating and moving closer to his car, and █████ swerved from lane to lane braking repeatedly not allowing Officer █████ to pass. The report says while they were stopped, Officer █████ exited his vehicle and approached █████ to check on his well-being. The report further states █████ then exited his vehicle and "immediately shoved" Officer █████ in the upper body with both hands. The report says that █████ started to advance towards Officer █████ placing him in fear of receiving

¹³ Attachment 8

¹⁴ Attachment 15

¹⁵ *Id.* at EV# 04250 at 0:42 seconds.

¹⁶ *Id.* at EV# 04250 at 0:45 seconds.

¹⁷ Attachment 23

¹⁸ █████ did not know Officer █████ or his name at this time.

¹⁹ Attachment 4

²⁰ *See also* attachment 6

²¹ Officer █████ did not know █████ or his name while at the district.

battery, and while retreating Officer ██████ unholstered his weapon pointing it at the ground. The report indicates ██████ and Officer ██████ then returned to their respective vehicles. The report indicates Officer ██████ was unable to announce his office because ██████ returned to his vehicle.

The **Original Case Incident Report**²², RD # ██████, lists ██████ as the victim and assault/aggravated with a handgun as the offense. The report's narrative section²³ states Officer ██████²⁴ exited his vehicle and pushed ██████'s vehicle's side mirror. The report states Officer ██████ then "rushed" at ██████ and ██████ pushed Officer ██████ backwards. The report states Officer ██████ then drew a gun from his waistband. The report says that Officer ██████ then went back to his vehicle.

The Office of Emergency Management and Communications **Event Query Report**²⁵, Event # ██████, lists the caller as ██████. The report states a white male in a white Jeep with license plate number ██████ "pulled a gun" on ██████ over road rage. The report states the owner of the license plate is Officer ██████.

d. Additional Evidence

COPA conducted a **canvass**²⁶ of the incident location and its surrounding area on January 3, 2019. The canvass was unfruitful as it produced negative results.

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

²² Attachment 5

²³ The narrative section was authored by Officer ██████.

²⁴ ██████ did not know Officer ██████ or his name at the time of the incident.

²⁵ Attachment 7

²⁶ Attachment 21

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

COPA recommends a finding of Sustained for Allegation #1 against Officer ██████ that he unnecessarily displayed his weapon at ██████. General Order G03-02-01 regulates when an officer can deploy his firearm, but the order does not address when an officer can or cannot draw his firearm from his holster. Rule 38 clarifies when an officer can display his firearm, stating that "an officer is prohibited from unlawfully or unnecessarily using or displaying a weapon." Determining whether Officer ██████'s display of his firearm was prohibited during this incident is fact dependent.

It is undisputed that Officer ██████ displayed his weapon when he removed it from his waistband and pointed it to the ground. At no point was it objectively reasonably necessary for Officer ██████ to display his firearm. Officer ██████ stated that he drew his weapon because he was scared, he was afraid of being pushed into traffic, and of ██████ fighting him. Officer ██████ also claimed the only way to diffuse and de-escalate the situation was to unholster his weapon. However, ██████ pushed him once because Officer ██████ allegedly rushed towards him. Further, ██████ did not threaten Officer ██████.

Even assuming *arguendo* that Officer ██████ did believe ██████ would batter him, Officer ██████ thought displaying his weapon would end the situation or deescalate it, which is unconvincing. At no point was it objectively reasonable for Officer ██████ to believe that ██████ would likely cause death or serious physical injury to another individual. In fact, it was Officer ██████'s actions which could have resulted in death or serious physical injury to ██████. Nothing in Officer ██████'s interaction with ██████ rose to the level of him displaying his firearm. COPA concludes that Officer ██████ only did so to scare and intimidate ██████, thus, not necessitating Officer ██████ to display his weapon. Accordingly, COPA recommends that Allegation #1 is Sustained.

COPA recommends a finding of Not Sustained for Allegation #2 against Officer ██████, that he engaged in a physical altercation when he approached ██████ aggressively. Officer ██████ denied this allegation. Although possible that Officer ██████ approached aggressively, due to the lack of corroborative or additional evidence, COPA could not determine whether he did. As such, COPA recommends that Allegation #2 is Not Sustained.

COPA recommends a finding of Exonerated for Allegation #3 against Officer ██████, that he maltreated ██████'s property when he pushed his vehicle's side mirror. Officer ██████ admitted that he attempted to fold ██████'s side mirror, so it did not damage his car.

Considering all the evidence, COPA firmly believes that a reasonable person would have done the same as Officer [REDACTED]. When looking at the totality of the circumstances, a reasonable person would not want his vehicle to get damaged. Officer [REDACTED]'s conduct was reasonable and proper. Therefore, COPA finds that the allegation against Officer [REDACTED] is Exonerated.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer [REDACTED] # [REDACTED]

i. Complimentary and Disciplinary History

1. Officer [REDACTED] has the following complimentary history:

Award Type	Count
Emblem of Recognition - Physical Fitness	3
Attendance Recognition Award	1
Department Commendation	2
Honorable Mention	17
Complimentary Letter	2
Unit Meritorious Performance Award	1

2. Officer [REDACTED] has the following disciplinary history: Court Appearance Violation – Reprimand

ii. Recommended Penalty, by Allegation

1. COPA recommends a penalty of 10 Day Suspension for Allegation No. 1.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]z # [REDACTED]	1. Unnecessarily displayed his weapon at [REDACTED], in violation of Rules 2, 3, 8, and 38 2. Engaged in a physical altercation when he approached [REDACTED] aggressively, in violation of Rules 2, 3, 8, and 9	Sustained/10 Day Suspension Not Sustained

3. Maltreated [REDACTED]s property when he pushed his vehicle's side mirror, in violation of Rules 2, 3, and 8	Exonerated
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Approved:

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

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