

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 22, 2018
Time of Incident:	2:50 am
Location of Incident:	████████████████████ Chicago, Illinois 60628
Date of COPA Notification:	August 22, 2018
Time of COPA Notification:	7:59 am

Officer ██████████ and Ms. ██████████ had a primarily sexual relationship with one another. One night, at Ms. ██████████ residence, they got into an argument and Ms. ██████████ kicked Officer ██████████ out of her home. Both parties called 911 and officers, including a sergeant, responded to the scene. Officer ██████████ was arrested and was served with allegations—by the Chicago Police Department—that he battered Ms. ██████████ and that he was intoxicated while off duty. During COPA’s interview of Ms. ██████████ she stated facts that supported an additional allegation of criminal sexual assault against Officer ██████████ which COPA served on the officer. After reviewing the evidence, COPA finds that there is insufficient evidence to prove whether or not Officer ██████████ (1) was intoxicated or (2) performed a sex act on Ms. ██████████ without her consent; those allegations are not sustained. COPA also concludes that there is clear and convincing evidence that Officer ██████████ did not strike Ms. ██████████ that allegation is unfounded.

II. INVOLVED PARTIES

Involved Officer #1:	████████████████████ Star # ████████ / Employee ID # ████████ Date of Appointment: ████████ 1999 PO / Unit ██████ DOB: ████████ 1966 Male / Black
Involved Individual #1:	████████████████████ ██████████ DOB: ████████ 1992 Female / Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer [REDACTED]	1. It is alleged that, between May and September of 2018, Officer [REDACTED] engaged in a sexual act with Ms. [REDACTED] without her consent.	NOT SUSTAINED
	It is alleged that, on August 22, 2018, at or near [REDACTED] Officer [REDACTED]	
	2. Committed a battery against Ms. [REDACTED] by striking her on the face; and	NOT SUSTAINED
	3. Was intoxicated while off duty.	NOT SUSTAINED

IV. APPLICABLE RULES AND LAWS

Rules – The following acts are prohibited:

- 1. Rule 1: Violation of any law or ordinance
- 2. 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 15: Intoxication on or off duty

State Laws

- 1. 720 ILCS 5/11-1.20 – Criminal Sexual Assault
- 2. 720 ILCS 5/12-3 – Battery

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V. INVESTIGATION¹

a. Interviews

COPA interviewed Ms. [REDACTED] Officer [REDACTED] as well as officers who responded to the scene.

i. Interview of Ms. [REDACTED]

COPA interviewed Ms. [REDACTED] on August 22, 2018 at her home on the same day of the incident. Ms. [REDACTED] stated that she first met Officer [REDACTED] in February or March of 2018 when he ticketed her for smoking a cigarette on Chicago Transit Authority (CTA) property where prohibited. Two weeks later, Officer [REDACTED] contacted Ms. [REDACTED] through a social media platform. Ms. [REDACTED] responded that, instead of issuing her a citation, Officer [REDACTED] should have just given her his number. They continued to chat on social media, exchanged phone numbers, and eventually started meeting in person.

Officer [REDACTED] would come over to Ms. [REDACTED] home around three times a month and the relationship consensually turned sexual in May of 2018; however, Officer [REDACTED] would sometimes not know “when to stop [or when] to go home.”² Their relationship was one where Officer [REDACTED] was “always willing to give” her money and pay for things.³ According to Ms. [REDACTED] Officer [REDACTED] refusal to leave her home precipitated the incident that occurred in the early morning hours of August 22. That night, Officer [REDACTED] arrived with a third-full “fifth” of Hennessy around 10 pm on August 21.

Officer [REDACTED] had already been drinking and had texted her that he was drunk; he appeared to Ms. [REDACTED] to be intoxicated⁴ and he dozed off on the couch. Ms. [REDACTED] consumed Hennessy and juice while she cleaned the house and prepared it for her son’s therapy session the following morning. After she was done cleaning, Officer [REDACTED] woke up and drank Hennessy and bottled “sangria.” All in all, they each consumed about three drinks of Hennessy while Officer [REDACTED] added the “sangria,” and Officer [REDACTED] dozed off again.

Ms. [REDACTED] approached Officer [REDACTED] took his wallet—which had been sitting on his stomach—and woke him up. She requested to use the Sam’s Club card. While looking through his wallet to find his card, she found his state ID and took a picture of it. He asked her why she took the pictures and she said she needed to know who she was dealing with and have his identification on record. He “left it alone”⁵ and the two had sex, after which Ms. [REDACTED] instructed Officer [REDACTED] to leave.

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. 6 at 5:30.

³ *Id.* at 10:25.

⁴ Ms. [REDACTED] estimated that Officer [REDACTED] was drunk approximately half of the times that she met up with him. *Id.* at 25:35.

⁵ *Id.* at 18:45.

“Everything was cool up until the point when he had to go,”⁶ which is when Officer ██████ brought up the disagreement that had occurred earlier in the night about Ms. ██████ taking pictures of the contents of his wallet. He also mentioned that he did not agree to Ms. ██████ taking video of them engaging in sexual activity, which she had done in the past. Ms. ██████ was upset that Officer ██████ allowed her to record some of their sexual activity and had a problem with the videos later. Additionally, she was upset that Officer ██████ denied giving Ms. ██████ permission to use his card to pay for her phone and for some home purchases. Ms. ██████ showed COPA two pictures, one of a driver’s license and the other of a credit card and stated that both of those pictures had been taken the night of the incident.

The disagreement escalated and Officer ██████ attempted to take Ms. ██████ phone; after they “wrestled”⁷ for it, he eventually succeeded. Officer ██████ became aggressive. Ms. ██████ told Officer ██████ that he can delete the pictures because she had already backed them up, after which he threw the phone on the floor. Ms. ██████ instructed Officer ██████ to leave and he responded, “You know who I am and you know what I do,”⁸ which Ms. ██████ took as a reference to his being a police officer.

After Officer ██████ walked out of the first and second doors, he turned around and “pimp-smacked”⁹ Ms. ██████ with the back of his hand on the right side of her face then walked to his car.

Ms. ██████ found Officer ██████ to be aggressive, including demanding sex from her despite her disinclination. Ms. ██████ described Officer ██████ as not taking “no” for an answer. On two separate occasions, in May and June of 2018, he wanted to have sex with Ms. ██████ but she refused him. Officer ██████ forcefully pulled down Ms. ██████ underwear and performed oral sex on her despite her protestations. “I said stop, he kept going, I let him finish.”¹⁰ Another once or twice, Officer ██████ respected Ms. ██████ declinations of sex.

Officer ██████ had never hit Ms. ██████ or made statements like the ones he made, before the incident.

ii. Officer ██████

COPA interviewed Officer ██████ on October 12, 2018. He met Ms. ██████ when he was ticketing her for smoking too close to the train entrance. They spoke for a short while and she told him to find her on a social media website, which he did about a month later. They had sex the second time he visited her home. He described his relationship with Ms. ██████ as a casual sexual one. Ms. ██████ also often asked him for financial help, and he sometimes—though not often—provided it. He would go to her house and they would have drinks and have sex; they never went out on dates.

⁶ *Id.* at 07:20.

⁷ *Id.* at 20:35.

⁸ *Id.* at 23:20.

⁹ *Id.* at 21:50.

¹⁰ *Id.* at 27:15

Officer ██████ estimated that he has been to Ms. ██████ house to have sex around five times. She had a larger sexual appetite than he did, sexually directing him and generally initiating sex.

Officer ██████ stated that on August 21, 2018, he was out at a birthday party and had consumed two Canadian whisky drinks¹¹ between around 5 and 8 pm. He later communicated with Ms. ██████ via text and decided to pay her a visit. Officer ██████ went to his home and picked up a full bottle of cognac which he brought with him to Ms. ██████ home. They dimmed the lights, put on music, sat on the couch, and he had a couple of drinks, falling asleep afterwards.

Officer ██████ woke up to Ms. ██████ “feeling” and “rubbing” his legs and back.¹² He presumed that they were going to have sex but she took his wallet out of his pocket instead. Still sleepy, Officer ██████ heard a camera shutter taking pictures, which he later learned was the sound Ms. ██████ phone makes when she uses it to take pictures. Out of the corner of his eye he saw her taking pictures of his IDs and credit cards. He decided not to say anything because he was there for “sex, really.”¹³

After she took the pictures, Ms. ██████ got him up, took him to the bedroom, and asked him if he was tired; he stated he was not. Ms. ██████ undressed Officer ██████ and they had sex. After they had sex, Officer ██████ went to the kitchen to get something to drink (and noticed that the bottle of cognac he had brought was missing); Ms. ██████ came outside and let Officer ██████ know that she wanted to have sex again, and so they did, all over the house.

During sex and afterwards, Officer ██████ told Ms. ██████ that she would have to delete the pictures she took. She responded that she just needed to know who he was, which he did not understand because they had already been in a casual relationship with one another. Officer ██████ repeated the demand that she delete the pictures, and she claimed she had only taken one. Ms. ██████ held the phone up to Officer ██████ who grabbed it to check for pictures. However, not knowing how her brand of phone worked, he could not find any pictures. And when Ms. ██████ claimed that the pictures were probably already saved, Officer ██████ agreed since his phone also automatically backs pictures up.

Subsequently, Ms. ██████ started yelling and cursing, stating that Officer ██████ was not doing enough for her financially. When Officer ██████ tried to calm Ms. ██████ down, she instructed him to leave her home, and she told him that he cannot expect to just come to her home and have sex with her without doing things for her.

Ms. ██████ grabbed some of Officer ██████ belongings and clothes and put them outside the door. He went to the door, grabbed his belongings, and went back into the house to get dressed and take his other belongings from the bedroom. While attempting to “brush past” Ms. ██████ Officer ██████ made light contact with her, and she hit him on his arm and shoulder. Officer ██████ instructed Ms. ██████ to calm down and, as he collected his belongings, Ms. ██████

¹¹ Officer ██████ stated that he always mixes drinks because he has colitis and drinking without mixing would upset his gastrointestinal tract. He also does not enjoy the strong taste of alcohol.

¹² Att. 39 at 7:20.

¹³ *Id.* at 8:39.

informed him that she would call the police. Officer ██████ walked out, got in his car, and called the police himself.

When the police arrived, Ms. ██████ yelled that she wants him to leave from in front of her house. When she felt like the police were not helpful, she took out her phone, and made a phone call.

Officer ██████ had witnessed Ms. ██████ act in a similar manner before with her brother, but she had not acted that way towards him before that early morning.

iii. Responding Officers

COPA interviewed Officers ██████ ██████ and ██████ ██████ who initially responded to the incident, and received reports from Officer ██████ and Sgt. ██████ ██████ who arrived on the scene later, spoke with Ms. ██████ and arrested Officer ██████

Generally, the version of events given by all three officers was consistent and matched the Body-Worn Camera footage as well as the Office of Emergency Management and Communications (OEMC) evidence.¹⁴ Officer ██████ responded to a call of a domestic disturbance and Officer ██████ went to assist. They both arrived around the same time, and Sgt. ██████ answered on the police radio that she would be responding as well, but neither officer believes that dispatch mentioned anything about a physical strike or altercation. Officers ██████ and ██████ found a man in a car and Ms. ██████ standing outside her home. Ms. ██████ informed them that the man was a police officer.

Ms. ██████ was loud and irate, all three CPD members observed her to be under the influence of alcohol or drugs, and all three attempted to calm her down and instructed her to lower her voice. Ms. ██████ requested a report and was impatient about it. All three CPD members smelled alcohol on Officer ██████ breath and agreed that it seemed like he had been drinking, but none of them believe he was drunk—he was only slightly impaired, and he was calm. Ms. ██████ incessantly requested a report and later mentioned that Officer ██████ had struck her on the face.

Officer ██████ stated that, although her name is listed as the Reporting Officer of the Original Case Incident Report, it was authored by Sgt. ██████ Officer ██████ stated that the reports were accurate, while Officer ██████ would have included the slight smell of alcohol on Officer ██████ breath in the reports.

b. Digital Evidence

Ms. ██████ provided COPA with a short video of Officer ██████ and herself engaged in a sexual conduct that, according to her, proved that Officer ██████ had consented to being recorded. It was not clear whether Officer ██████ was aware he was being recorded, and the interaction seemed consensual.

¹⁴ See Digital Evidence, *infra*.

COPA requested to see the pictures on Ms. [REDACTED] phone, and she agreed.¹⁵ Ms. [REDACTED] had photos of Officer [REDACTED] Driver's License, CPD identification card (inside his wallet), a Bank of America debit card, and his vehicle. Ms. [REDACTED] also shared some social media posts made by Officer [REDACTED] as well as messages between the two.

COPA reviewed Body-Worn Camera footage recorded by the three responding CPD members.¹⁶ The videos show officers responding to the scene (at 2:55 am) where Ms. [REDACTED] is standing outside yelling at Officer [REDACTED] who is sitting in his vehicle that is parked on the street. Ms. [REDACTED] insists that Officer [REDACTED] cannot be there and that he must "move the fuck from in front" of her house. When Officer [REDACTED] informs Ms. [REDACTED] that Officer [REDACTED] is in a public space, she still insists that he has to leave because he is in front of her house and "stalking" her. Ms. [REDACTED] asks to file a police report for stalking, and Officer [REDACTED] informs her that a supervisor is on the way.

Upset that she is being recorded, Ms. [REDACTED] takes out her phone and tells the officers that she is streaming the encounter on a social media website. When Officer [REDACTED] asks what Ms. [REDACTED] version of the story is, Ms. [REDACTED] states that Officer [REDACTED] has no right being there and that he should leave. About three minutes after the two officers arrive, Sgt. [REDACTED] arrives on the scene, and Ms. [REDACTED] complains that the CPD members are taking Officer [REDACTED] side because he is a policeman. Officer [REDACTED] informs Officer [REDACTED] that he did not leave because he knew she had called the police, so he waited for them.

Ms. [REDACTED] He is off duty, why is he here? He came to see me and I told him to leave; he didn't want to leave so I called the police. And I have the right to do that. So why he didn't leave? And then y'all take his side because he's the police.

[. . .]

Sgt. [REDACTED] Ma'am, calm down. Do you live here?

Ms. [REDACTED] I live here; this is my house.

Sgt. [REDACTED] Okay and what's the problem tonight?

Mr. [REDACTED] He came to visit and I put his ass the fuck out.

Sgt. [REDACTED] Okay.

Ms. [REDACTED] He didn't want to leave, so I called the police.

Sgt. [REDACTED] And he left now?

Ms. [REDACTED] He's still sitting here—obviously he didn't leave.

Sgt. [REDACTED] Okay how do you know him?

Ms. [REDACTED] Because I know him.

Sgt. [REDACTED] Do you have a relationship, are you friends?

Ms. [REDACTED] I mean he cool, I though he *was* a friend, but when it's time to go it's time to go.

Sgt. [REDACTED] Okay. Do you have a domestic—did you date ever?

Ms. [REDACTED] No but I'm finna file my police report now.

Sgt. [REDACTED] What report is it that you wanted to file?

Ms. [REDACTED] Because he's stalking me, basically. He don't know when to leave, he wanna put his hands on me and do all this other shit—I don't got time for it.

¹⁵ Att. 23.

¹⁶ Att. 48.

Sgt. █████ How is it that he put his hands on you?
Ms. █████ What do you mean how, with his hands?
Sgt. █████ I mean what did he do?
Ms. █████ He smacked me, that's what the fuck he did.
Sgt. █████ Where did he smack you?
Ms. █████ In my face, how else he gonna smack me?
Sgt. █████ Okay, do you need any hospitalization, do you need medical care in any way?
Ms. █████ What I need is—I need a police report, that's what I need.
[...]
Sgt. █████ Where did he hit you?
Ms. █████ In my face.
Sgt. █████ Where?
Ms. █████ [pointing to her right cheek]: Right here.

Ms. █████ then answers a phone call and asks for a police report again. When Sgt. █████ points a flashlight at her face to see if there is an injury, Ms. █████ complains about the flashlight.

Later, Sgt. █████ speaks to Officer █████ He informs her of the type of relationship he had with Ms. █████ When Sgt. █████ says that Ms. █████ alleged Officer █████ hit her, he responds that it is not true and states that she hit him when he was going back to get his identification and clothes. Sgt. █████ arrests Officer █████ and gives Ms. █████ documentation with her court date and case number.

Finally, COPA obtained CPD radio and dispatch communications from OEMC. In one recording¹⁷, Ms. █████ is complaining to the dispatcher and letting her know that Officer █████ is not leaving her apartment. Ms. █████ is yelling at the officer to leave her house and, using profanity, is complaining to him that he does not help with rent or bills. In another recording¹⁸, Officer █████ calls 911. He tells the dispatch that Ms. █████ called 911 but he could not remember the street on which he is located. Officer █████ and Ms. █████ can be heard arguing, with Officer █████ complaining that she is following him outside, and Ms. █████ saying, “Bye” and telling him that he is still outside her home. Other recordings exist but do not add any additional details. None of the recordings indicate that there was a physical altercation between Ms. █████ and Officer █████ The police radio communications¹⁹ track the calls the two parties made. None of the radio communications mention physical violence.

¹⁷ Att. 40.

¹⁸ Att. 41.

¹⁹ Att. 47.

c. Documentary Evidence

COPA obtained OEMC event query reports, GPS Data, an Arrest Report, and an Original Case Incident Report (“OCIR”). The event query reports²⁰ show that Ms. ██████ called and stated that her boyfriend, an officer, was not leaving her place and requested a supervisor. They also show that Officer ██████ called and said he was having problems with a female known to him. The Arrest Report²¹ and OCIR²² state that Officer ██████ was arrested at 3:20 am based on a signed complaint by Ms. ██████ stating that he struck her on the face.

COPA received a packet from CPD’s Bureau of Internal Affairs (BIA)²³ that included multiple documents, many of which COPA had already obtained. Most importantly, the packet includes a memorandum from a BIA sergeant—as well as a breathalyzer receipt—indicating that Officer ██████ Breath Analysis Concentration (Br.A.C.) resulted in an alcohol level of .012. The test was conducted at 5:55 am after a 20-minute observation period.

d. Additional Evidence

COPA contacted the Illinois State Police (“ISP”) team to request the performance of a retrograde extrapolation based on Officer ██████ breathalyzer results. A retrograde extrapolation calculates what someone’s blood alcohol level would have been at an earlier time based on the breathalyzer results. In its response, ISP indicated that, because the breath result was under .02, it would be “impossible to perform the calculation with certainty” because the metabolism of ethanol by the body “cannot be assumed to be linear.”²⁴

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.

²⁰ Att. 13, 14.

²¹ At. 20.

²² Att. 19.

²³ Att. 30.

²⁴ Att. 49.

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 is 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

Based on the available evidence, COPA does not sustain any of the allegations against Officer ██████

a. There is insufficient evidence to determine whether Officer ██████ engaged in a sexual act with Ms. ██████ without her consent

There is simply insufficient evidence to prove or disprove that Officer ██████ performed a sexual act on Ms. ██████ without her consent. Ms. ██████ described that Officer ██████ on two occasions, pulled her underwear down and forcefully engaged in sexual acts despite her protests. Officer ██████ says that he never forced himself on Ms. ██████ and that they engaged in a consensual relationship.

COPA has no evidence to corroborate Ms. ██████ account. In the instant case, Ms. ██████ allegations alone are not enough to find by a preponderance of the evidence that Officer ██████ performed sex acts on her without her consent. Officer ██████ faces an even higher burden, trying to prove a negative—that such a non-consensual encounter never happened—by clear and convincing evidence. His statements are not enough to meet that standard.

Where the entirety of the evidence is based on two witness statements, one that alleges that a sexual assault happened and one that insists it did not, there is simply not enough evidence to prove or disprove the allegation. Accordingly, the first allegation is **NOT SUSTAINED**.

b. There is insufficient evidence to determine whether Officer ██████ struck Ms. ██████

During her interview with COPA, Ms. ██████ stated that Officer ██████ struck her on the face. However, when the officers first responded to her home, her complaint was that Officer ██████ was not leaving and insisted on remaining in his car on the street in front of her house. It was not until later that Ms. ██████ informed the responding sergeant that Officer ██████ hit her, and even then, she did not give the sergeant many specifics. The sergeant can be seen shining her flashlight on Ms. ██████ face to see if there are any signs of a battery, and she concluded there

were none. Similarly, Ms. ██████ description of the catalyst to the incident focused on Officer ██████ not knowing when to leave and wanting to sleep over. Additionally, when Ms. ██████ called 911, her complaint to the dispatcher was that Officer ██████ would not leave the house. Even after the OEMC communications make it clear that Officer ██████ was outside of the house, which would have been allegedly after the strike had occurred, no mention is made of physical violence. None the less, Officer ██████ was arrested on signed complaints based on the strike. Moreover, Ms. ██████ made adamant and consistent statements to police and COPA regarding the strike. Of course, Officer ██████ denied the strike and minimized the contact between himself and Ms. ██████. COPA finds that there is not clear and convincing evidence to determine what occurred. Accordingly, the second allegation is **NOT SUSTAINED**.

c. There is insufficient evidence to determine whether Officer ██████ was intoxicated

Rule 15 of the CPD Rules of Conduct prohibits intoxication at any time, on or off duty. CPD’s Standards of Conduct require members’ use of intoxicants while they are off duty to be moderate to “allow the mental and physical requirements” for responding to an emergency at any time. “Alcohol intoxication means that a person’s mental or physical functioning is substantially impaired as a result of the use of alcohol.”²⁵ Because of limitations on retrograde extrapolation, there is not a preponderance of evidence supporting the allegation that Officer ██████ was intoxicated at some time prior to his arrest. Similarly, COPA does not find that there is clear and convincing evidence that Officer ██████ was *not* intoxicated—proving a negative is generally an arduous task, especially under this standard. Accordingly, the allegation that Officer ██████ was intoxicated at any point in time is **NOT SUSTAINED**.

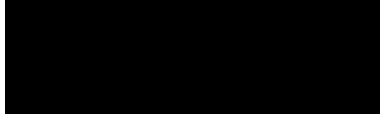
VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer ██████	1. It is alleged that, between May and September of 2018, Officer ██████ engaged in a sexual act with Ms. ██████ without her consent. It is alleged that, on August 22, 2018, at or near ██████ Officer ██████	NOT SUSTAINED
	2. Committed a battery against Ms. ██████ by striking her on the face; and	NOT SUSTAINED
	3. Was intoxicated while off duty.	NOT SUSTAINED

²⁵ Special Order S08-01-02, ¶ II.E.1.b.

Approved:



July 31, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	█
Investigator²⁶:	████████████████████
Supervising Investigator:	██
Deputy Chief Administrator:	Andrea Kersten

²⁶ If a major case specialist, change title to "Major Case Specialist".