

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 18, 2018
Time of Incident:	10:24 p.m.
Location of Incident:	████████████████████ Chicago, Illinois 60629
Date of COPA Notification:	December 20, 2018
Time of COPA Notification:	9:37 a.m.

On December 18, 2018, at approximately 10:24 p.m., Officer ██████████ (Officer ██████████ Officer ██████████ (Officer ██████████ and Sergeant ██████████ (Sergeant ██████████ arrived at or near ██████████ in response to multiple calls for service. ██████████ (██████████ initially called 911 to report there were people in the basement below his apartment who were not supposed to be there “drilling” and “banging.” Officers ██████████ and ██████████ responded to ██████████ call and spoke with ██████████ (██████████ who was in the basement. ██████████ told the Officers the building owner, ██████████ hired her to paint. The Officers advised ██████████ there was nothing they could do and to speak with the owner to address his concerns before they left. ██████████ called 911 a second time to request a supervisor. Sergeant ██████████ was dispatched to respond to ██████████ call for a supervisor.

Subsequently, ██████████ also called 911 and reported ██████████ “verbally harassed” her, kicked her out of the work area and she needed a police escort to secure the basement. Upon arrival, Officer ██████████ Officer ██████████ and Sergeant ██████████ spoke with ██████████ and ██████████ separately. The Officers placed ██████████ under arrest for simple assault after receiving a signed complaint against him from ██████████

In his interview with the Civilian Office of Police Accountability (COPA) on December 20, 2018, ██████████ alleged CPD Officers falsely arrested him for an assault on ██████████

II. INVOLVED PARTIES

Involved Officer #1:	██████████ Star # ██████████ Employee ID# ██████████ Date of Appointment: ██████████ 2017, Police Officer, ██████████ District, Date of Birth: ██████████ 1980, Male, White
Involved Officer #2:	██████████ Star # ██████████ Employee ID# ██████████ Date of Appointment: ██████████ 1991, Sergeant, ██████████ District, Date of Birth: ██████████ 1970, Male, White

Involved Officer #3: [REDACTED], Star # [REDACTED] Employee ID# [REDACTED]  
 Date of Appointment: [REDACTED] 2017, Date of Birth: [REDACTED] 1986, Male, Black

Involved Individual #1: [REDACTED] Date of Birth: [REDACTED] 1993, Male, White

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer [REDACTED]	Arrested [REDACTED] on December 18, 2018 without justification.	Exonerated
Sergeant [REDACTED]	Arrested [REDACTED] on December 18, 2018 without justification.	Exonerated
Officer [REDACTED]	Arrested [REDACTED] on December 18, 2018 without justification.	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.

Federal Laws

1. United States Constitution, Amendment IV: Prohibits unlawful searches and seizures.

**V. INVESTIGATION <sup>2</sup>**

**a. Interviews**

[REDACTED]

In an interview with COPA on December 20, 2018, Mr. [REDACTED] ([REDACTED]) provided the following information. [REDACTED] and his landlord were having issues because of basement renovations. [REDACTED] said sewer and urine odors were coming through the vents into his 1<sup>st</sup> floor apartment so he contacted the landlord to address his concerns. His kids were sneezing and getting sick, but he was afraid of going to the hospital because he did not want to be told he has his kids in bad living environment.

At approximately 9:30 p.m. on the night of December 18, 2018, [REDACTED] was having trouble putting his kids to sleep because there were noises coming from the basement and they

<sup>1</sup> During the course of this investigation Officer [REDACTED] died on March 7, 2019. See Att. 32

<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> Att. 17

were looking through the vents to see what was happening. The noises were not too loud, but he and his pregnant wife<sup>4</sup> discussed what to do. His wife suggested for him not to go down but call the cops because they did not know who was in the basement. ██████ had a feeling the landlord sent someone to the basement.

He called the police and waited for them out front. When officers arrived, ██████ told them he heard noise that could be from workers or a thief in the basement. He walked them through the gangway when one of the officers looked through a window and said “they’re working down there” to his partner.

The officers told ██████ to go to his apartment and they proceeded to enter the basement and speak to a lady who told them she was working there with the landlord’s permission. ██████ stated to COPA investigators a man had been present with the lady in the basement but he left before the officers arrived. ██████ said he could hear through the vent that the officers were questioning the lady about what she was doing and how long she was going to be there. After she said for an hour or two the officers say ok and left. ██████ said the officers told him she was going to be wrapping up soon and he responded that he could hear through the vent she was going to be another hour or two.

██████ admitted he was “pissed” after officers did not do anything and left so he called multiple times for a “white shirt,” (a CPD sergeant or other supervisor), because the officers who they sent did “shit” for him. ██████ went outside after he noticed the police, including a sergeant, were on scene and speaking with the lady, who turned out to be his neighbor. ██████ said he exchanged words with the lady’s husband and said he does not have a problem with them, it was really about the landlord having them work at this time.

██████ said he and the sergeant were talking about the reason for the call, whether it was for construction or noise coming from the basement. There was some back and forth when the Sergeant walked away with another officer towards the family. They returned to ██████ and asked if there was anything in his pocket. ██████ asked what he was getting arrested for and was told verbal assault. ██████ denied verbally assaulting her.

██████ stated he wanted to file a complaint because he was mistreated even though there was no abuse. He provided descriptions of the officers involved.

## **b. Digital Evidence**

### **1st Incident**

**Body Worn Camera (BWC) footage<sup>5</sup>** of Officer ██████ and Officer ██████ are consistent with ██████ testimony and detail the following. Officers ██████ and ██████ respond to ██████ first call for service of people working in his basement and speak to ██████ and ██████ separately. Once the Officers and ██████ reach the back of his residence, Officer ██████ directs ██████ to wait upstairs while the officers speak with ██████ explains to the Officers she is there painting and has the landlord’s permission.

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<sup>4</sup> Att. 10, ██████ provided similar testimony.

<sup>5</sup> Att. 20

As the officers begin to leave, ██████ makes his way downstairs standing just outside the entrance to the basement, Officers ██████ and ██████ tell ██████ to go back upstairs and that ██████ will be done soon, in approximately an hour. ██████ is told to speak with the landlord about his issues. ██████ becomes upset because the officers do not issue her a ticket.

## 2nd Incident

**BWC footage** of Officer ██████, Officer ██████ and Sergeant ██████ is consistent and shows all three officers speaking with ██████ and ██████ separately. The three Officers can be seen speaking with ██████ outside her home. As they approach, ██████ tells the Officers “that guy got all crazy on me”, hitting the doors and hitting the wall.

When asked if she was threatened ██████ says yes and tells the Officers ██████ came into the basement screaming and yelling at her to “get the fuck out of here” or else he was going to go look for her. ██████ said when she left, ██████ came outside looking for her.

In speaking with the officers, ██████ reiterates his earlier complaint of people in the basement doing construction and making noises. Sergeant ██████ explains to ██████ the call for the supervisor said there was construction occurring in the basement. Sergeant ██████ told ██████ Officers ██████ and ██████ investigated ██████ earlier complaint which only showed ██████ to be painting and asks if he threatened ██████ stated he did not.

Officer ██████ is seen speaking with ██████ while Sergeant ██████ and Officer ██████ discuss if there is enough probable cause. Officer ██████ suggests they have enough to arrest ██████ even though he was not aware of any threatening statements because ██████ caused ██████ to be in fear of receiving a battery by yelling at her and getting in her face. The Officers also observe ██████ shaken and terrified reaction to the encounter.

They then speak with ██████ describes ██████ entering the basement screaming and hitting the walls to the Officers. After conferring with each other Sergeant ██████ and Officer ██████ walk toward ██████ and place him under arrest.

Audio and video from the **In-Car Camera videos<sup>9</sup> (ICC)** captures ██████ being arrested but no other details related to the alleged events.

**Office of Emergency Management and Communications<sup>10</sup> (OEMC)** audio on December 18, 2018 records ██████ original call for service<sup>11</sup>, a call requesting a supervisor<sup>12</sup>, and another call<sup>13</sup> asking for an estimated time of arrival for the supervisor.

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<sup>6</sup> Att. 21

<sup>7</sup> Att. 22

<sup>8</sup> Att. 23

<sup>9</sup> Att. 24

<sup>10</sup> Att. 25

<sup>11</sup> See Att. 26

<sup>12</sup> See Att. 27 and Att. 28

<sup>13</sup> See Att. 29

OEMC audio also captures ██████ call<sup>14</sup> for service in which she describes ██████ as coming into the basement screaming and yelling while kicking her out. ██████ requests an escort, so she can secure the basement.

### c. Documentary Evidence

An **Original Case Incident Report**<sup>15</sup> states ██████ was arrested for Assault – Simple.

An **Arrest Report**<sup>16</sup> shows Officer ██████ and Officer ██████ arrested ██████ at 10:24 p.m. on December 18, 2018 at ██████. The report states ██████ alleged ██████ entered the basement kicking items, punched the wall, and stood in her face saying, “get the fuck out of here” placing her in fear of receiving a battery. The report indicates ██████ was taken into custody without incident and transported to the █ District for processing.

## VI. ANALYSIS

### I. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal

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<sup>14</sup> See Att. 30

<sup>15</sup> Att. 18

<sup>16</sup> Att. 14

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.

**Allegation 1 against Officers [REDACTED] and Sergeant [REDACTED]**

COPA finds **Allegation 1**, the arrest of [REDACTED] without justification in violation of Rule 1, against the Officers is EXONERATED. COPA’s analysis in this incident is limited to whether officers lawfully arrested [REDACTED] not whether he committed the offense for which he was arrested.

Executing an arrest without a warrant is constitutional if probable cause for the arrest exists. *Dunaway v. New York*, 442 U.S. 200 (1979). Probable cause to arrest is present when facts known to the officer at the time of the arrest are sufficient to lead a reasonable person to believe a crime has occurred and that the person to be arrested committed the crime. *People v. McGee*, 2015IL App (1st) 130367, ¶ 47. The standard for determining whether probable cause is present is based on the probability of criminal activity rather than proof beyond a reasonable doubt. *People v. Chapman*, 194 Ill. 2d 186, 218 (2000). Probable cause may be established through information which the arresting officer does not have personal knowledge, however the information must be based on sufficient facts. *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 22. It is “well settled that positive identification by a single witness who had ample opportunity to observe is sufficient to support a conviction.” *People v. Vriner*, 74 Ill. 2d 329, 343 (1978).

[REDACTED] identified [REDACTED] as the individual who, through his actions as described by [REDACTED] upon entering the basement, of which he had no authority to be in, caused her to be in fear of receiving a battery. [REDACTED] willingness to sign a complaint was sufficient to establish probable cause to arrest. As a result of the facts known to the officers at the time, the officers found [REDACTED] credible.

Therefore, there is clear and convincing evidence that [REDACTED] arrest was within policy and procedure. COPA finds that allegation of unlawful arrest without justification is Exonerated.

**VII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officer [REDACTED]	1. Unlawfully arrested [REDACTED] on December 18, 2018 without justification, in violation of Rule 2.	Exonerated
Sergeant [REDACTED]	1. Unlawfully arrested [REDACTED] on December 18, 2018 without justification, in violation of Rule 2.	Exonerated
Officer [REDACTED]	1. Unlawfully arrested [REDACTED] on December 18, 2018 without justification, in violation of Rule 2.	Exonerated

Approved:



August 30, 2019

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Andrea Kersten  
*Deputy Chief Administrator – Chief Investigator*

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Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	█
<b>Investigator:</b>	██████████
<b>Supervising Investigator:</b>	██████████
<b>Deputy Chief Administrator:</b>	Andrea Kersten