

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	January 19, 2016
Time of Incident:	10:07 AM
Location of Incident:	██████ W. 57 <sup>th</sup> St.
Date of COPA Notification:	December 18, 2018
Time of COPA Notification:	5:59 PM

The complainant, ██████████ was driving on January 19, 2016, when he was involved in a traffic accident and was seriously wounded. The vehicle ██████ was driving at the time of the accident had previously been reported stolen during an armed robbery that occurred on January 8, 2016. ██████ was arrested and charged with armed robbery, subsequently pleaded guilty, and is currently serving an eighteen-year sentence in the Illinois Department of Corrections. Nearly three years later, on December 18, 2018, ██████ filed a complaint with COPA alleging that during his arrest an unknown officer struck him in the head with a pistol, Commander ██████████ threatened his life, and he was arrested without justification. After interviewing ██████ and reviewing available evidence, COPA recommends all allegations be Unfounded or Exonerated. COPA’s findings are further discussed in the Analysis portion of this report.

**II. INVOLVED PARTIES**

Involved Officer #1:	██████████ Star #208, Employee ID # ██████ Date of Appointment: ██████, 2010, Commander, ██████ District, Date of Birth: ██████, 1960, Male, Hispanic <sup>1</sup>
Involved Officer #2:	██████████ Star #1308, Employee ID # ██████ Date of Appointment: ██████, 2004, Sergeant of Police, ██████ District, Date of Birth: ██████, 1981, Male, White <sup>2</sup>
Involved Officer #3:	██████████ Star #3599, Employee ID # ██████ Date of Appointment: ██████, 2000, Police Officer, Unit ██████ (Gang Investigation Division), Date of Birth: ██████, 1977, Male, White
Involved Officer #4:	Unknown, Male
Involved Individual #1:	██████████ Date of Birth: ██████, 1970, Male, Black

<sup>1</sup> Commander ██████ was a lieutenant at the time of ██████ January 19, 2016 arrest.

<sup>2</sup> Sergeant ██████ was a police officer at the time of ██████ January 19, 2016 arrest.

### III. ALLEGATIONS

Officer	Allegation	Finding
Commander [REDACTED]	<p>1. Told [REDACTED] words to the effect of, "You're lucky that I didn't catch you in that alley, 'cause I was gonna kill you back there," in violation of Rule 2 and Rule 8.</p> <p>2. Had officers arrest [REDACTED] without justification, in violation of Rule 3 and Rule 6.</p>	<p>Not Sustained</p> <p>Exonerated</p>
Sergeant [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
Officer [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
Officer Unknown	1. Struck [REDACTED] on or about his head with a firearm, in violation of Rule 6 and Rule 9.	Unfounded

### IV. APPLICABLE RULES AND LAWS

#### Rules

1. **Rule 2:** Prohibits 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:** Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
3. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
4. **Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.
5. **Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

#### General Orders

1. **G03-02-02:** Force Options.<sup>3</sup>

<sup>3</sup> The Force Options policy referenced in this report was effective from January 1, 2016 until October 16, 2017 (Att. 49).

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**Federal Laws**

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1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

**V. INVESTIGATION<sup>4</sup>****a. Interviews**

The complainant, ██████ wrote a letter to COPA relating that on an unspecified date, Commander ██████ “threaten[ed] [his] life while placing [█████] in custody.”<sup>5</sup> Per ██████ Commander ██████ told him, “If I would have caught you by the alley, I would have kill[ed] you back there.” ██████ also asked to review Commander ██████ Body Worn Camera (BWC) footage from this incident and accused Commander ██████ of making “false reports.” Further, Commander ██████ asked ██████ where he got a car from, stated, “fuck it, you have them in your background, so deal with it,” then asked ██████ if the person who gave ██████ the car “seem[ed] high.” ██████ also accused an officer of hitting him in the head with a gun.

COPA interviewed ██████ ██████ on July 17, 2019.<sup>6</sup> ██████ related that on January 19, 2016, he got high and borrowed a car from a friend named ██████<sup>7</sup> ██████ did not know that the car was stolen or was involved in car-jackings. ██████ stated that the first time he drove the car was on January 19, 2016. While ██████ was driving, he saw a truck following him and started driving down blocks and alleys. ██████ parked his vehicle and the truck parked as well. When ██████ drove off, another car followed behind him, which held three people: two white individuals in the front and an African American individual in the rear. Per ██████ the driver was holding a long, silver gun. ██████ then ducked down, because he did not know who these people were, and he drove off.

Once ██████ attempted to cross 57<sup>th</sup> St., the same truck he had seen earlier struck ██████ vehicle near the driver’s side door. ██████ did not know who was in this truck and denied having any interaction with them. ██████ lost consciousness after the accident. He awoke in the driver’s seat after an officer hit ██████ in the head with a gun. The officer told ██████ his head had gone through the windshield, but ██████ protested that the officer hit him with his firearm. The officer touched the wound on ██████ head and alleged he was pulling out glass, but ██████ did not believe him. ██████ described this officer as white or Latino, male, approximately 5’5”, black haired, and in his late 40s. ██████ neck and back were injured from the car accident and his head was bleeding from being hit by the gun. ██████ elaborated that he was slumped over and as he gained consciousness, he saw Commander ██████ approach and ask him whose car it was and what that person looked like. Commander ██████ then told ██████ “Well fuck it, you will have to take care of this in the court room,” since ██████ had “nine counts of armed robbery.”<sup>8</sup> Commander ██████ then told ██████ “You’re lucky that I didn’t catch you in that alley, ‘cause [sic] I was gonna [sic] kill you

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<sup>4</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>5</sup> Att. 4

<sup>6</sup> Att. 39

<sup>7</sup> ██████ did not know ██████ real name, but related he lives near ██████ and ██████

<sup>8</sup> Approximately 6:54 minute mark of Att. 39.

back there.”<sup>9</sup> Per ██████ this was a reference to an alley he went into before the accident. ██████ believed the Department members knew that they had arrested the wrong person. ██████ later learned a replica gun was found in the car, which he denied knowing was in the vehicle. ██████ related that he pleaded guilty to avoid spending life in prison.

#### b. Digital Evidence

COPA obtained the **CPD Evidence Technician photographs** from ██████ arrest under **RD # ██████**. Shards of broken glass were seen on the Toyota’s front seat (see photo 1) and back seat (see photo 2), with blood seen in the back seat (see photo 2). Glass shards were also photographed on the ground near the Toyota. The passenger-side windshield of the Toyota had a large, splintered crack (see photo 3) and the passenger side of the vehicle was severely damaged. There was also damage to the Toyota’s rear and the rear-left side. Photographs indicate that the accident ended on the front/side yard of ██████. The Toyota’s airbags apparently deployed, and the Toyota’s windows were seemingly rolled down in these photos. A silver handgun, believed to be a replica, was also photographed, as was the other involved vehicle.



Photo 1

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<sup>9</sup> Approximately 7:04 minute mark of Att. 39.

<sup>10</sup> Atts. 42, 43, 44



Photo 2



Photo 3

COPA made a request to CPD for a copy of the police observation device (POD) footage that was requested by Detective [REDACTED] on January 19, 2016.<sup>11</sup> As of this report,

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<sup>11</sup> Att. 46

COPA has not received a response.<sup>12</sup> The video was not inventoried by CPD, per available records.<sup>13</sup>

### c. Physical Evidence

██████████ **Medical Records** were obtained from Mt. Sinai Hospital.<sup>14</sup> ██████████ was admitted on January 19, 2016, after a motor vehicle collision. Per this document, ██████████ was driving, going an unknown speed, not wearing his seatbelt, and the airbags deployed. Hospital staff noted that ██████████ experienced a loss of consciousness and head pain. ██████████ received a CT scan and his head wound was stapled. ██████████ was instructed to take over the counter pain reliever and to follow up in 10 days to have his staples removed. ██████████ was discharged into police custody on January 20, 2016, at about 12:40 PM.

██████████ **records from the Chicago Fire Department (CFD)**, who transported ██████████ from the accident to the hospital.<sup>15</sup> CFD arrived at 5700 S. California at roughly 10:17 AM. ██████████ complaint was listed as a head injury, with a cause of a motor vehicle collision and a symptom of confusion. When CFD arrived, ██████████ was in police custody, walking, and handcuffed. CFD reported that ██████████ had a “head injury, lacerations, pieces of glass in head.” Further, ██████████ “was involved in a high speed accident,” in which his windshield cracked. He was not wearing a seat belt, the air bags deployed, and the car was damaged. CFD wrote that ██████████ “was the driver and ended with head in passenger side windshield.” ██████████ reportedly told CFD that he had smoked cocaine prior to the accident and did “not remember the incident.” CFD arrived at the hospital at approximately 10:43 AM.

### d. Documentary Evidence

An **Original Case Incident Report** was located for **RD # ██████████**. On January 8, 2016, two civilians, ██████████ and ██████████ reported to police that a male demanded money, displayed a firearm, and stole their blue Toyota Camry with Illinois license plates ██████████ **Case Supplementary Reports** were obtained for **RD # ██████████** which related that ██████████ was unable to identify an offender during a January 19, 2016 photo array.<sup>17</sup>

██████████ **Arrest Report** was obtained from January 19, 2016 with **RD # ██████████**. ██████████ was charged with five Class X felonies: two counts of robbery with an armed firearm and three charges of armed robbery with a dangerous weapon. ██████████ was arrested, “after he was involved in a traffic accident at ██████████ W. 57<sup>th</sup> St.” and driving a vehicle that had been “reported stolen during a vehicular carjacking.” A “small, silver-colored replica of a semi-automatic handgun” was found in the car. ██████████ was taken to Mt. Sinai Hospital after the accident. There was no TRR completed related to ██████████ arrest.

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<sup>12</sup> Att. 50

<sup>13</sup> Att. 47

<sup>14</sup> Att. 41

<sup>15</sup> Att. 45

<sup>16</sup> Att. 6

<sup>17</sup> Atts. 7, 8

<sup>18</sup> Att. 5

The following **Supplemental Reports** were obtained from the **Gang Investigation Division** in relation to [REDACTED] arrest on January 19, 2016:<sup>19</sup>

- Per a **Gang Intelligence Unit Supplementary Report** for RD [REDACTED] this arrest was also associated with the following RD numbers: [REDACTED] and [REDACTED]. The Gang Intelligence Unit Supplementary Report stated that officers were conducting surveillance on a blue Toyota with license plate [REDACTED] that had been “taken in a vehicular hijacking” on January 8, 2016. The officers were reportedly, “aware of a robbery pattern, in which the [blue Toyota] was described in approximately 8-10 different armed robberies.” On January 19, 2016, officers learned (via plate reader) that said car was located near [REDACTED] and Artesian.<sup>20</sup> Officer [REDACTED] located the parked vehicle while additional officers “established surveillance on the vehicle.” Covert surveillance officers followed [REDACTED] who “was observed weaving in and out of side streets and alleys in the close vicinity.” Eventually, [REDACTED] “looked into the direction of enforcement officers who were parked at [REDACTED] W. 53<sup>rd</sup> St.,” and “made an immediate turn southbound into the east alley of Kedzie.” Surveillance officers continued following [REDACTED] when they saw him fail “to stop at the intersection of [REDACTED] & California,” before striking an occupied car. The officers then called for emergency medical services and approached both cars. Sergeant [REDACTED] recovered a small caliber handgun, which was later determined to be replica. [REDACTED] reportedly told Sergeant [REDACTED] and Officer [REDACTED] “I know what’s been going on with this car, I know it’s a heater, I can get you guns, just please let me work with you.”
- The **Vehicle Tow Report** was located for RD [REDACTED]. The Toyota was towed from [REDACTED] S. California on January 19, 2016. Per this document, the vehicle was stolen, then involved in an automobile accident. Similarly, a **Driver’s Crash Statement** was located for RD [REDACTED] stated that on January 19, 2016, he was driving home from work when he was stuck by [REDACTED] car at the intersection of [REDACTED] and California.
- **Traffic Citations** were issued to [REDACTED] on January 19, 2016 for driving on a suspended or revoked license, operating an uninsured vehicle, disobeying a solid red signal, driving the wrong direction on a one-way street, and failing to yield to a vehicle entering an intersection.

The following relevant **Event Query Reports** were obtained through the Office of Emergency Management and Communications (OEMC).

- **Event Number** [REDACTED] initiated on January 8, 2016 at approximately 5:01 AM with [REDACTED] reporting his blue Toyota Corolla was stolen by two men.<sup>21</sup> [REDACTED] alleged that one of the men had a gun.
- **Event Number** [REDACTED] was initiated on January 19, 2016 at roughly 10:01 AM, with a report of an auto accident and possible fatality.<sup>22</sup> [REDACTED] information was

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<sup>19</sup> Att. 18

<sup>20</sup> [REDACTED] Ave. is one block east of [REDACTED] Ave.

<sup>21</sup> Att. 9

<sup>22</sup> Att. 10

searched at roughly 11:07 AM. At about 12:29 PM, Beat [REDACTED] reported going to Mt. Sinai Hospital. At approximately 1:00 PM, Beat [REDACTED] reported that the offender was getting an x-ray, was stable, and going to be treated then released. Several calls reporting the car accident were also identified, which contained no additional, relevant information.<sup>23</sup>

The following relevant **criminal dockets** were located through the Cook County Clerk of the Circuit Court.

- **Case Number** [REDACTED] was filed on January 21, 2016.<sup>24</sup> [REDACTED] was charged with five Class X felonies: two for armed robbery with a firearm and three for armed robbery – other. On February 10, 2016, the case was superseded by direct indictment and transferred to the Criminal Division as Case Numbers [REDACTED] [REDACTED] and [REDACTED]
- **Case Numbers** [REDACTED] [REDACTED] and [REDACTED] were filed on February 9, 2016.<sup>25</sup> [REDACTED] was charged with multiple felonies including: aggravated robbery, receive/possess/sell stolen vehicle, aggravated unlawful restraint, and armed robbery/no firearm. [REDACTED] pleaded not guilty on February 17, 2016. On April 10, 2019, charges were amended, and [REDACTED] pleaded guilty to aggravated robbery. A judgement of nolle prosequi was entered for the remaining charges. [REDACTED] was sentenced to 18 years in the Illinois Department of Corrections with credit for time served and three years of mandatory supervised release.

**Original Case Incident Reports and Supplementary Reports** were located for **RD** # [REDACTED] **RD** # [REDACTED] and **RD** # [REDACTED]. On October 18, 2015, January 11, 2016, and January 12, 2016, three different individuals respectively reported that they were robbed, with the latter two incidents involving a blue Toyota. On January 19, 2016, all three victims identified [REDACTED] as the offender in separate photo arrays.

## 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

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<sup>23</sup> Atts. 11, 12, 13

<sup>24</sup> Att. 14

<sup>25</sup> Att. 15, 16, 17

<sup>26</sup> Atts. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38



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 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

**Allegation 1** against **Commander [REDACTED]** that he told [REDACTED] words to the effect of, "You're lucky that I didn't catch you in that alley, 'cause I was gonna kill you back there," is **Not Sustained**. Additionally, **Allegation 1** against **Officer Unknown**, that he struck [REDACTED] with his firearm, is **Unfounded**.

[REDACTED] did not actually observe the unknown officer striking his head with a gun. Rather, [REDACTED] reported to COPA that he lost consciousness, awoke in the driver's seat, saw an officer reaching towards him, then felt his head bleeding. [REDACTED] therefore assumed that the officer caused his injury. However, all available evidence, including ET photos, indicate that [REDACTED] head hit the windshield, which in turn caused his head to bleed. [REDACTED] even related to COPA that the unknown officer told [REDACTED] his head had gone through the windshield and there was glass in [REDACTED] head. Additionally, medical records reported that [REDACTED] had glass in his head and his injuries were caused by a car accident. Since [REDACTED] did not observe an officer using force and all evidence indicates that [REDACTED] injuries were caused by the accident, Allegation 2 is Unfounded against the unknown officer.

While COPA does not necessarily believe [REDACTED] was willfully being untruthful, he admitted that he was doing drugs prior to his arrest and that he lost consciousness after the accident. CFD records also reported that [REDACTED] had smoked cocaine, lost consciousness, was confused, and did not remember the accident. These factors almost certainly affected [REDACTED] ability to correctly recall and perceive the events surrounding his arrest on January 19, 2016. Moreover, there is simply no evidence to prove or disprove that Commander [REDACTED] stated those words to [REDACTED]. Accordingly, Allegation 1 against Commander [REDACTED] is Not Sustained.

**Allegation 2** against **Commander [REDACTED]** and **Allegation 1** against **Sergeant [REDACTED]** and **Officer [REDACTED]** that [REDACTED] was arrested without justification, are **Exonerated**. [REDACTED] was driving a stolen vehicle, involved in a motor vehicle collision, and there was a replica gun inside the car.

Additionally, he was later positively identified in photo arrays. These factors created sufficient probable cause for [REDACTED] arrest and criminal charges, and these allegations are Exonerated.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding
Commander [REDACTED]	1. Told [REDACTED] words to the effect of, “You’re lucky that I didn’t catch you in that alley, ‘cause I was gonna kill you back there,” in violation of Rule 2 and Rule 8.  2. Had officers arrest [REDACTED] without justification, in violation of Rule 3 and Rule 6.	Not Sustained  Exonerated
Sergeant [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
Officer [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
Officer Unknown	1. Struck [REDACTED] on or about his head with your firearm, in violation of Rule 6 and Rule 9.	Unfounded

Approved:

[REDACTED]

September 24, 2019



\_\_\_\_\_  
 Andrea Kersten  
 Deputy Chief Administrator – Chief Investigator

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 Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	Four
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	Andrea Kersten, #7