

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 31, 2019
Time of Incident:	6:17 PM
Location of Incident:	5555 W. Grand Ave.
Date of COPA Notification:	October 31, 2018
Time of COPA Notification:	7:36 PM

On October 31, 2019, the complainant, [REDACTED], was arrested and taken to the [REDACTED] District. [REDACTED] alleged that while in lock-up, Detention Aide (D.A.) [REDACTED] denied [REDACTED] use of his inhaler, stated that he hoped [REDACTED] died, and choked [REDACTED]. The video footage from the district undermines [REDACTED] recollection of events. COPA’s findings are further discussed in the Analysis portion of this report.

II. INVOLVED PARTIES

Involved Member #1:	[REDACTED] Employee # [REDACTED], Date of Appointment: [REDACTED] 1996, Detention Aide, [REDACTED] District, Date of Birth: [REDACTED], 1973, Male, Black <sup>1</sup>
Involved Member #2:	[REDACTED], Employee # [REDACTED], Date of Appointment: [REDACTED], 2014, Detention Aide, [REDACTED] District, Date of Birth: [REDACTED], 1964, Male, White
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED], Male, Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding
Detention Aide [REDACTED]	1. Denied [REDACTED] use of his inhaler, in violation of Rule 8.	Exonerated
	2. Told [REDACTED] words to the effect of "I hope you die," in violation of Rule 8.	Not Sustained
	3. Choked [REDACTED] by applying pressure to his windpipe, in violation of Rule 6 and Rule 9.	Unfounded

<sup>1</sup> CPD Detention Aides do not have star numbers.

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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1. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
2. **Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.
3. **Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

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##### General Orders

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1. **G03-02:** Use of Force.
2. **G03-02-01:** Force Options.

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##### Special Orders

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1. **S06-01-02:** Detention Facilities General Procedures and Responsibilities.
2. **S07-01-01:** Inventorying Arrestees' Personal Property.<sup>2</sup>

#### V. INVESTIGATION<sup>3</sup>

##### a. Interviews

COPA interviewed the complainant, [REDACTED], on July 23, 2019.<sup>4</sup> On October 31, 2018, [REDACTED] was arrested, had shortness of breath, and while he was escorted to lockup, he asked Detention Aide (D.A.) [REDACTED] for his inhaler. D.A. [REDACTED] told [REDACTED] it was not allowed, and that [REDACTED] needed to stay in his cell. [REDACTED] asked for a supervisor, but D.A. [REDACTED] denied the request. Per [REDACTED], D.A. [REDACTED] told him to get the fuck into lockup and pushed [REDACTED] into the cell. D.A. [REDACTED] put his arm on [REDACTED] neck while D.A. [REDACTED] put his knee on [REDACTED] stomach.<sup>5</sup> [REDACTED] stated that D.A. [REDACTED] forearm was pressing on [REDACTED] windpipe, which affected his breathing. The detention aides left the room and [REDACTED] started screaming. [REDACTED] wanted to speak to a supervisor and make a complaint, and D.A. [REDACTED] responded that he hoped [REDACTED] would die. [REDACTED] denied provoking or threatening the detention aides, but admitted he told D.A. [REDACTED] he hoped he died after D.A.

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<sup>2</sup> The Inventorying Arrestees' Personal Property policy referenced in this report was effective from December 1, 2017 until September 24, 2019 (see Att. 31).

<sup>3</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>4</sup> Att. 18

<sup>5</sup> COPA did not serve this allegation against D.A. [REDACTED], as video footage revealed this action did not occur. Video footage did reveal, however, that D.A. [REDACTED] seemingly had his left leg over [REDACTED] body to restrain [REDACTED] as [REDACTED] was an active resister during D.A. [REDACTED] search procedure.

██████████ made the same comment. Eventually, a sergeant arrived, ██████████ asked for medical care for shortness of breath, and he was taken to the hospital.

COPA interviewed **Detention Aide** ██████████ on August 28, 2019.<sup>6</sup> On October 31, 2018, D.A. ██████████ encountered ██████████ in lockup. D.A. ██████████ denied that ██████████ displayed any breathing issues or complained about a medical issue when he first entered lockup. D.A. ██████████ related that ██████████ asked for his asthma inhaler, which D.A. ██████████ denied in accordance with CPD policy, and ██████████ became agitated. Per D.A. ██████████, the inhaler was kept in ██████████ personal property bag. D.A. ██████████ elaborated that detainees have to go to the hospital if they need to use an inhaler. D.A. ██████████ related that ██████████ stated he had asthma but did not need his inhaler at that time. D.A. ██████████ denied telling ██████████ words to the effect of, “get the fuck into your cell” or pushing ██████████ into the cell.

Once inside the cell, the detention aides searched ██████████. After watching the Police Observation Device (POD) video from this incident, D.A. ██████████ related he removed ██████████ shoes and socks as part of the search procedure. D.A. ██████████ did not recall talking with ██████████ during the search, but assumed he was telling ██████████ to remove his personal items. D.A. ██████████ recalled that ██████████ was upset, uncooperative, and making threats, but D.A. ██████████ did not recall specifically what ██████████ said. D.A. ██████████ related that he pointed to the rear wall and had ██████████ put his hands on the wall as part of the search. D.A. ██████████ stated that ██████████ was not following their orders, which required the detention aides to physically move ██████████ themselves to complete the search. D.A. ██████████ denied applying pressure to ██████████ neck and related he may have extended his hand towards ██████████ to keep ██████████ from getting in D.A. ██████████ face. D.A. ██████████ did not observe that ██████████ had shortness of breath after the altercation, or any injuries. Per D.A. ██████████, a supervisor was alerted that an altercation had occurred. D.A. ██████████ denied saying that he hoped ██████████ would die. When asked why ██████████ was asked out of the cell after the altercation, D.A. ██████████ stated it is possible they searched ██████████ in a cell to contain him because he was being uncooperative, then continued processing ██████████. D.A. ██████████ related that ██████████ was screaming and making noises in lockup, and it is possible ██████████ spoke to a supervisor. D.A. ██████████ did not know why ██████████ went to the hospital several hours after the altercation.

On August 29, 2019, COPA interviewed **Detention Aide** ██████████.<sup>7</sup> After watching CPD video, D.A. ██████████ related that he saw nothing unusual, aside from ██████████ not wanting to be searched. D.A. ██████████ stated that it is not typical to search arrestees inside a cell, but it is done to ensure safety if the arrestee is noncompliant. However, D.A. ██████████ did not specifically recall ██████████ or why they searched ██████████ in a cell. D.A. ██████████ stated that, in general, if a detainee asks for their asthma inhaler, the detention aides will alert a supervisor and send the individual to a hospital. D.A. ██████████ asserted that they are not allowed to give arrestees their inhaler, or any medication. D.A. ██████████ acknowledged that sometimes detention aides use profanity and forceful language to control detainees. D.A. ██████████ did not believe that D.A. ██████████ choked ██████████. D.A. ██████████ denied ever hearing D.A. ██████████ wish death to an arrestee. D.A. ██████████ speculated

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<sup>6</sup> Att. 25

<sup>7</sup> Att. 32

that when D.A. [REDACTED] motioned for [REDACTED] to leave the cell, it was because [REDACTED] was done being searched and needed to sign for his property.

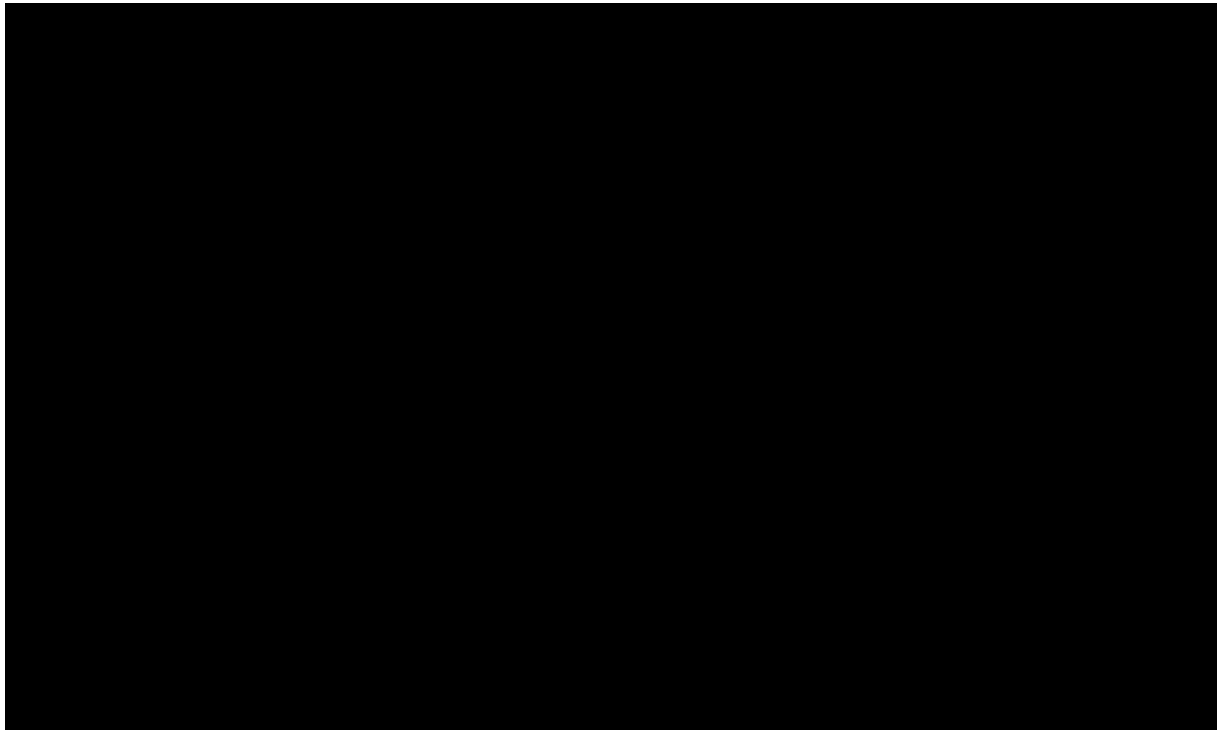
**b. Digital Evidence**

**Police Observation Devise (POD) footage** was obtained of [REDACTED] in 025 lockup on October 31, 2018, in cell 3-3.<sup>89</sup> D.A. [REDACTED] brought [REDACTED] into a cell at approximately 6:17 PM, followed by D.A. [REDACTED]. [REDACTED] sat down on the bunk and apparently removed one of his shoes. D.A. [REDACTED] kicked [REDACTED] shoe out of the cell, grabbed [REDACTED] right leg, and threw [REDACTED] second shoe out of the cell. [REDACTED] then stood up. He and D.A. [REDACTED] seemed to be exchanging words before D.A. [REDACTED] pushed [REDACTED] back onto the bunk. [REDACTED] responded by jumping to his feet and seemed upset. D.A. [REDACTED] put his left hand near [REDACTED] collar bone area and forced [REDACTED] back onto the bunk (see Photo 1). D.A. [REDACTED] seemingly had his left leg on [REDACTED] lap to restrain him while D.A. [REDACTED] continued inspecting [REDACTED] feet. At about 6:18 PM, D.A. [REDACTED] let go of [REDACTED], who again attempted to get up, and D.A. [REDACTED] again pushed him onto the bunk. D.A. [REDACTED] then pointed to the rear wall. [REDACTED] put his hands on the wall while D.A. [REDACTED] performed a pat down. At approximately 6:18:40 PM, a struggle ensued between D.A. [REDACTED] and [REDACTED]. About three seconds later, D.A. [REDACTED] forced [REDACTED] onto the bunk and had his left hand near [REDACTED] neck (see Photo 2). D.A. [REDACTED] continued searching [REDACTED] for several more seconds while [REDACTED] seemed upset. D.A. [REDACTED] then seemingly repositioned his body so that his right hand was pressing on [REDACTED] chest (see Photo 3). The detention aides left the cell and D.A. [REDACTED] returned shortly after, at about 6:19 PM, motioned to [REDACTED] to go with him, and [REDACTED] followed D.A. [REDACTED] out of the cell. The video ended at roughly 6:40 PM, without [REDACTED] seen on camera again.

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<sup>8</sup> Att. 10

<sup>9</sup> This video footage does not include audio.



A **CPD Evidence Technician** took **photos** of [REDACTED] on October 31, 2018 at approximately 9:04 PM.<sup>10</sup> The photos included [REDACTED] right breast, his back, his left side, his neck, his face/head, and his full body. No obvious injuries were visible, though portions of [REDACTED] body and head were red-colored.

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<sup>10</sup> Att. 30

### c. Physical Evidence

██████████ **Medical Records** were obtained from ██████████.<sup>11 12</sup> ██████████ was admitted on November 1, 2018 at about 12:30 AM, while he was in police custody and complaining of shortness of breath. ██████████ was diagnosed with mild intermittent asthma with acute exacerbation, acute respiratory distress, general hyperhidrosis, and essential hypertension. Hospital staff noted the ██████████, “declined further treatment, states he wants to leave.” ██████████ received a therapeutic treatment and was discharged with albuterol and prednisone on November 1, 2018 at about 2:06 AM.

### d. Documentary Evidence

██████████ **Arrest Report** was obtained from October 31, 2018, under **RD #** ██████████.<sup>13</sup> ██████████ arrested at approximately 1:40 PM and charged with felony residential burglary. He was received in the ██████████ District Lockup at about 6:15 PM. Per D.A. ██████████, ██████████ was verbally aggressive and threatened D.A. ██████████. D.A. ██████████ wrote that at roughly 7:00 PM, ██████████ “Refused To Comply With Search Procedure Or Follow Directions To Sit On Bed And Remove Shoes, Arrestee Became Further Verbally Aggressive And Threatening, And Made Furtive Movements At Which Time Arrestee Was Assisted To Feet And Searched Against Wall, Arrestee Made Further Movements As To Pull Or Duck Away From ██████████ Arrestee Was Restrained Momentarily With Single Hand on Chest While Search Was Completed.” ██████████ was reported as irrational and taking medications for his heart, asthma, and seizures. ██████████ was reportedly not compliant and was argumentative with D.A. ██████████ while he was being searched, and ██████████ was moved to a different cell. ██████████ refused medical attention on October 31, 2018 at about 10:40 PM. ██████████ was sent to ██████████ for medical clearance on November 1, 2019, at approximately 12:17 AM, and returned to the ██████████ District Lockup at about 4:11 AM.

Sergeant ██████████ submitted an **Initiation Report** on October 31, 2018.<sup>14</sup> ██████████ alleged that Detention Aide (D.A.) ██████████ “pushed ██████████ forcibly into the wall and choked him by the neck.” Sergeant ██████████ watched video footage from male lockup “and observed the complainant jump up in the face of D.A. ██████████ at which time the complainant was restrained back onto the bed by D.A. ██████████ with a hand to the chest. The complainant was then physically directed to the wall [...]” Per Sergeant ██████████, ██████████ “ducked away from D.A. ██████████ at which time D.A. ██████████ restrained the complainant by a single hand to the upper chest [...]” Sergeant ██████████ wrote that that he did not see D.A. ██████████ “choke the complainant or use any excessive force,” nor did Sergeant ██████████ “observe any misconduct” by D.A. ██████████.

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<sup>11</sup> Att. 23

<sup>12</sup> ██████████ Arrest Report stated he went to ██████████ on November 1, 2018. ██████████ ██████████ purchased and replaced ██████████ in December 2014. Source: ██████████

<sup>13</sup> Att. 5

<sup>14</sup> Att. 4

**Inventory Sheets** were obtained from [REDACTED] arrest, and for his wife [REDACTED], under RD # [REDACTED].<sup>15</sup> Inventoried items included evidence, jewelry, cash, and other personal items. A vapor inhaler was inventoried for Flores.

An **Arrest Report** was located for [REDACTED] wife, [REDACTED], under RD # [REDACTED].<sup>16</sup> Flores was charged with misdemeanor theft. **Detective Supplementary Reports** and an **Original Case Incident Report** were also identified for RD # [REDACTED].<sup>17</sup> These reports contained no additional information pertaining to the present allegations.

## 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 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 D.A. [REDACTED], that he denied [REDACTED] use of his inhaler, is **Exonerated**. Per CPD Special Order S0-6-01-02, "Arrestees will **NOT** be allowed to keep drugs

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<sup>15</sup> Att. 24

<sup>16</sup> Att. 11

<sup>17</sup> Atts. 12, 13, 14, 6

or medications with them while in custody.”<sup>18</sup> By ██████ own admission, D.A. ██████ denied ██████ request for his inhaler because of CPD’s rules. Since D.A. ██████ was following CPD policy, this allegation is Exonerated.

**Allegation 2** against D.A. ██████, that he told ██████ words to the effect of "I hope you die," is **Not Sustained**. There is not enough evidence to determine whether D.A. ██████ made this statement, as the POD footage lacks audio. That being said, ██████ has diminished credibility because his recollection of events differed from what was seen in lock-up footage. First, ██████ alleged D.A. ██████ pushed ██████ into the cell. Video shows ██████ walking into the cell on his own and sitting on the bench, without D.A. ██████ touching ██████. ██████ also alleged that D.A. ██████ put his forearm on his windpipe while D.A. ██████ put his knee on ██████ stomach. Video suggests that D.A. ██████ never touched ██████ stomach area and D.A. ██████h was only touching ██████ feet, not his neck. Similarly, while D.A. ██████hand was seen near ██████ neck, it was not his forearm and it appeared to be below ██████ throat. Conversely, D.A. ██████ and ██████ were, by all appearances, having a contentious verbal exchange and COPA cannot determine, by clear and convincing evidence, that D.A. ██████ did not tell ██████ "I hope you die."

**Allegation 3** against D.A. ██████, that he choked ██████ by applying pressure to his windpipe, is **Unfounded**. POD video shows both detention aides with their hands near ██████ neck at various points, but both seemingly kept their hands near ██████ clavicle and upper chest. COPA does not believe ██████ windpipe was ever affected by either detention aide. In this interaction, ██████ was confrontational and an active resister. Therefore, the members’ use of control holds were within policy.<sup>19</sup> ██████ narrative is not supported by the lock-up video footage, and this allegation is Unfounded.

**VIII. CONCLUSION**

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

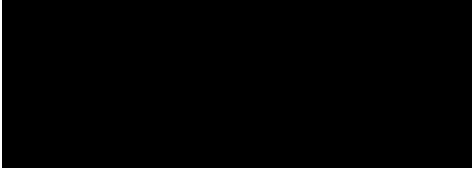
Officer	Allegation	Finding
Detention Aide ██████	1. Denied ██████ use of his inhaler, in violation of Rule 8.  2. Told ██████ words to the effect of "I hope you die," in violation of Rule 8.  3. Choked ██████ by applying pressure to his windpipe, in violation of Rule 6 and Rule 9.	Exonerated  Not Sustained  Unfounded

<sup>18</sup> Emphasis in original.

<sup>19</sup> Per General Order G03-02-02, Department members do not need to complete a Tactical Response Report (TRR) if “the member’s actions did not extend beyond verbal commands and/or control holds utilized in conjunction with handcuffing and searching techniques which do not result in injury or allegation of injury.” Since D.A. ██████ and D.A. ██████ actions included only restraining ██████ while performing a search, a TRR was not required and COPA did not serve this allegation.



Approved:



October 28, 2019

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Andrea Kersten  
*Chief Administrator*

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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, #7