

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 18, 2018
Time of Incident:	10:25 pm
Location of Incident:	Wentworth Gardens Housing Complex
Date of COPA Notification:	March 26, 2018
Time of COPA Notification:	1:07 pm

Three officers from Area Central’s Gang Enforcement unit were patrolling in an unmarked car when they observed a transaction between a man, [REDACTED] and a vehicle. The officers turned around and approached [REDACTED] who was standing near the complainant, [REDACTED]. Two officers detained [REDACTED] and recovered narcotics and a firearm. Officer [REDACTED] engaged [REDACTED] who was holding an open glass bottle of cognac. After handcuffing [REDACTED] Officer [REDACTED] performed an emergency takedown of [REDACTED] who sustained a laceration to the inside of his lip. [REDACTED] complained that Officer [REDACTED] used excessive force.

During the processing of [REDACTED] arrest, Detention Aide [REDACTED] [REDACTED] indicated in the arrest report that [REDACTED] did not display signs of obvious pain or injury. However, the booking photo clearly shows an injury. As discussed further in the analysis section, COPA does not sustain the allegation of excessive force against Officer [REDACTED] and sustains the allegation of improper documentation against Detention Aide [REDACTED].

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] [REDACTED] Star # [REDACTED] / Employee # [REDACTED] Date of Appointment: [REDACTED] 2007 PO / Unit [REDACTED] DOB: [REDACTED] 1976 Male / Hispanic
Involved Officer #2:	[REDACTED] [REDACTED] Star # [REDACTED] / Employee # [REDACTED] Date of Appointment: [REDACTED] 2004 PO / Unit [REDACTED] DOB: [REDACTED] 1978 Male / Hispanic
Involved Officer #3:	[REDACTED] [REDACTED]

Involved Officer ¹ #4.	Star # [REDACTED] / Employee # [REDACTED] Date of Appointment: [REDACTED] 2004 PO / Unit [REDACTED] DOB: [REDACTED] 1981 Male / Hispanic
Involved Individual #1:	[REDACTED] Employee # [REDACTED] Date of Appointment: [REDACTED] 2014 Detention Aide / Unit [REDACTED] DOB: [REDACTED] 1960 Male / White
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1971 Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	It is alleged that, on March 18, 2018, around 10:20 PM, near 3843 S. Princeton Avenue, Officer [REDACTED] used excessive force in effecting an emergency takedown on Complainant, causing injury, in violation of Rules 8 & 9.	EXONERATED
Detention Aide [REDACTED]	It is alleged that, on March 19, 2018, at District [REDACTED] Lockup, Detention Aide [REDACTED] <ol style="list-style-type: none"> 1. Did not conduct a proper visual check of Arrestee [REDACTED] in violation of Rule 10. 2. Did not properly document the condition of Arrestee [REDACTED] in violation of Rule 10. 	UNFOUNDED SUSTAINED

IV. APPLICABLE RULES AND LAWS

Rules – Prohibited acts include:

1. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

¹ Mr. [REDACTED] is not a sworn CPD Officer; he is a Detention Aide.

2. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

3. Rule 10: Inattention to duty.

General Orders

1. G03-02: Use of Force
 2. G03-02-01: Force Options
 3. G06-01-01: Field Arrest Procedures
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V. INVESTIGATION²

a. Interviews

i. ██████████ – Complainant³

COPA interviewed ██████████ on April 3, 2018. ██████████ stated that around 7-7:30 pm, he was walking past dumpsters in Wentworth Gardens with an open bottle of Cognac and an open bottle of water, and another person was also walking in the same direction. The Cognac was not in a bag and was visible. ██████████ stated that a police truck came into the parking lot and stopped at his location; officers exited and instructed ██████████ to come over. When he asked why, the three officers, dressed in plain clothes, replied that it is because he walked by the dumpster. ██████████ asked whether walking by a dumpster is illegal and an officer (identified by COPA as Officer ██████████) then instructed ██████████ to put his hands on the police vehicle.

██████████ set his water bottle and alcohol bottle on the curb and stood next to Officer ██████████. ██████████ asked what formed the basis of the Officer ██████████ probable cause and whether he was under arrest and the officer refused to answer.

Officer ██████████ then instructed ██████████ to put his hands behind his back. ██████████ asked the officers whether they had body-worn cameras on, and none of the three officers did. ██████████ let Officer ██████████ cuff him while still asking why he was being arrested. Officer ██████████ and ██████████ began to yell at each other.

As Officer ██████████ moved to take ██████████ into the car, Officer ██████████ yelled out, “He is resisting arrest.” At that point, Officer ██████████ threw ██████████ to the ground, injuring ██████████ lip, teeth, shoulder, and knee. A crowd started to gather. The officers called for backup and it arrived in the form of three additional cars. ██████████ was taken to the police station.

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

³ Att. 5.

At the station, ██████ asked for the reason for his arrest and was told that he was arrested for resisting arrest. ██████ asked the underlying reason for the original arrest he resisted; he was given no answer.

██████ then talked to Officer ██████ after they had both had a chance to calm down. ██████ told Officer ██████ that, although he has a stressful job, he acted wrongly and that ██████ is a follower of Louis Farrakhan. After hearing this, Officer ██████ brought his own phone and showed ██████ pictures of himself in a mosque, telling ██████ that he too is a Muslim. ██████ was released 7 hours later on his own recognizance.

ii. ██████ – Witness Officer⁴

On June 29, 2018, COPA interviewed Officer ██████ as a witness. Officer ██████ stated he, along with Officer ██████ and Officer ██████ were patrolling near the Chicago Housing Authority (“CHA”) Wentworth Gardens complex. As they were driving by the mouth of the parking lot, they noticed a transaction between a vehicle and a man, later identified as ██████ standing by a dumpster. They made a U-turn and headed to the dumpster, where they saw two men, ██████ and ██████. Officers ██████ and ██████ approached ██████ and eventually recovered a plastic bag with multiple smaller “baggies” of what they suspected to be marijuana, as well as a firearm.

While Officers ██████ and ██████ were dealing with ██████, Officer ██████ approached ██████ who was holding an open bottle of cognac. ██████ at first refused to put the bottle down but would later put it down. ██████ was agitated but Officer ██████ finally gained control over him.

According to Officer ██████ he was concentrated on ██████ during the incident; however, he did look at Officer ██████ intermittently to make sure everything was okay. Officer ██████ saw Officer ██████ handcuff ██████. Afterwards, ██████ was moving his upper body around in multiple directions. While ██████ was handcuffed and moving around, Officer ██████ observed Officer ██████ take ██████ down.

Officer ██████ stated that he did not think ██████ presented a threat to him. However, he stated that if he were closer to ██████ he would have been on higher alert that ██████ actions could be an attempt to flee or to present a possible danger of hitting the officer.

iii. ██████ – Accused Officer⁵

COPA interviewed Officer ██████ on August 13, 2018. Officer ██████ stated that he was sitting in the back seat of the unmarked car with Officers ██████ and ██████. Officer ██████ learned that his partners spotted what they described as a transaction. After they drove towards two men near the dumpster, Officer ██████ exited the back seat and saw that ██████ had an open bottle of alcohol. Officer ██████ approached ██████ for a field interview to let him know that drinking in public or on CHA property is prohibited. Officer ██████ noticed that ██████ was

⁴ Att. 48.

⁵ Att. 46.

intoxicated and that he became agitated quickly. Officer ██████ stated that smelled a strong odor of alcohol on Mr. ██████ breath as he was speaking loudly. ██████ swung around the heavy glass bottle in his hands.

Officer ██████ instructed ██████ to put the bottle down, but ██████ did not comply at first. Officer ██████ was planning to give ██████ an Administrative Notice of Violation (“ANOV”) and was trying to make sure the situation did not escalate. However, ██████ started getting loud and flailing his arms. Officer ██████ attempted to de-escalate the situation by keeping his distance from ██████ and verbally explaining to him what was happening; however, he could not de-escalate the situation and decided that he would arrest ██████ and process him for drinking in public.

When Officer ██████ tried to place the handcuffs on ██████ continued flailing his arms and moving his body around. Officer ██████ came and assisted Officer ██████ in handcuffing ██████. After ██████ was cuffed, Officer ██████ told Officer ██████ and ██████ that he found a gun and narcotics on ██████ and so Officer ██████ turned his focus once again towards ██████

At this point, ██████ was standing between Officer ██████ and the squad car near the passenger side fender. ██████ was facing away from Officer ██████ towards the vehicle. ██████ was still loud and irate, and residents began to come out to observe what was happening. The officers called for backup. While Officer ██████ was awaiting backup, ██████ started moving around and twisting his body. ██████ was creating distance between him and Officer ██████ by using his body and elbows to attempt to push Officer ██████ away. In order to regain control over ██████ Officer ██████ took him down to the ground.

Additional cars finally arrived and took ██████ to the police station. At the police station, Officer ██████ realized that ██████ had a cut on his lip and requested medical assistance for him. Medical personnel evaluated ██████ but he did not want to go to the hospital. Officers began processing him.

iv. ██████ – Accused Detention Aide⁶

COPA interviewed Detention Aide ██████ on June 25, 2018. Upon viewing ██████ mugshot, DA ██████ conceded that ██████ had an obvious injury. When shown a copy of the Arrest Report and asked why it stated that ██████ did not have an obvious injury, DA ██████ stated that he must have made a mistake in filling out the “Lockup Keeper Processing” section of the Arrest Report. DA ██████ insisted that he did perform a visual check, as such a check is an important part of his job that he does on a routine basis; however, he conceded that not indicating that ██████ had an obvious injury was an oversight for which he accepts responsibility.

b. Digital Evidence

██████ provided COPA with two clips of personal cell phone video taken during his detention.⁷ In summary, the videos depict ██████ asking the people holding the phones to get video of his face. ██████ is heard saying, “Look at my face, look what they did. I don’t fault them, cause

⁶ Att. 47.

⁷ Att. 6-2.

I just talking. Cause I talk.” The videos get a close view of [REDACTED] mouth with blood. An officer sitting over [REDACTED] points toward the camera and states, “Grab him for obstruction.” One video depicts a black male, now known as [REDACTED], who was taking cell phone video of [REDACTED] being handcuffed and told he was being arrested for obstruction.⁸

c. Documentary Evidence

Officer [REDACTED] attested to an **Arrest Report**⁹ for [REDACTED]. The arrest report, including the narrative section attested to by Officer [REDACTED] is consistent with the Officers’ account of the arrest. The Arrest Report identifies Detention Aide [REDACTED] as the Lockup Keeper. In the section entitled “Lockup Keeper Processing,” under the “Visual Check of Arrestee” subheading, the report states that there is no “obvious pain or injury.”

Officer [REDACTED] also prepared a Tactical Response Report (TRR)¹⁰ documenting his use of force against [REDACTED]. The TRR states that during an investigatory stop [REDACTED] who was not armed with a weapon, did not follow verbal directions, stiffened, and pulled away. According to the TRR, Officer [REDACTED] attempted to use his presence, verbal direction/control techniques, additional unit member, and tactical positioning, among other things, to mitigate the use of force; however, he finally performed a takedown on [REDACTED].

Officer [REDACTED] completed two Investigatory Stop Reports (ISRs). The first¹¹ states that [REDACTED] who was a part of a narcotics investigation, presented a bag containing suspected cannabis to the officer. The second ISR¹² states that 15-year-old [REDACTED] “ran directly up on R/O’s (within 3 feet) with a black object in his hand[,] invading R/O’s working space and interfering with R/O’s investigation.”

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.

⁸ BWC was recovered from responding officers on this arrest; however, none of the footage depicted the incident. Area Central Gang unit was not issued BWC and therefore Officer [REDACTED] and [REDACTED] did not have BWC.

⁹ Att. 21.

¹⁰ Att. 22.

¹¹ Att. 34.

¹² Att. 35.

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

The allegations Officer ██████ used excessive force against ██████ are Not Sustained. However, the allegation against Detention Aide ██████ is sustained.

a. There is insufficient evidence that Officer ██████ used excessive force.

It is uncontested that (1) Officer ██████ performed a takedown of ██████ while ██████ was cuffed and (2) ██████ sustained injury to his face and mouth because of the takedown. At issue is whether Officer ██████ was justified in performing the takedown.

General Order 03-02-02 instructs that an officer may perform an emergency takedown when a subject's actions create or attempt to create distance between the person and the member's reach with the intent to avoid physical control. The directives define a person engaged in such actions as an active resistor.¹³ According to Officer ██████ started moving around and twisting his body and created distance between him and Officer ██████ by using his body and elbows to attempt to push Officer ██████ away.

In contrast, ██████ stated that after being placed in cuffs, while protesting for a basis for his arrest, Officer ██████ threw ██████ to the ground while yelling "he is resisting." Based on ██████ account, he never attempted to create distance as described by Officer ██████

COPA has no video footage of the incident and Officer ██████ stated he was not concentrated on ██████ or ██████ while he was dealing with ██████ therefore, the only evidence in this case are the statements of Officer ██████ and ██████

Officer ██████ provided a statement that was consistent with the contents of both the arrest report he authored and the TRR he filled out because of the use of force. ██████ complained to COPA three days after the incident and can be observed on the cell phone videos expressing the same complaints contemporaneously with the arrest. In sum, the evidence does not indicate that

¹³ G03-02-01, IV.B.2.

either party is more credible than the other. Therefore, COPA lacks sufficient evidence to determine exactly what happened. The allegations are therefore **Not Sustained**.

b. Detention Aide ██████ did not fail to visually inspect ██████ but he did fail to properly document ██████ condition.

Detention Aide ██████ admits that he failed to enter ██████ condition properly. Detention Aide ██████ insistence on taking responsibility for his actions is commendable and the fact that he is willing to admit fault makes his statement more credible in that the mistake was one of data entry and not of failure to inspect ██████ condition. Therefore, there is clear and convincing evidence that Detention Aide ██████ did visually inspect ██████ but entered his information incorrectly. There is no indication that Detention Aide ██████ did this intentionally. Accordingly, the allegation against Detention Aide ██████ that he failed to properly document ██████ condition is **Sustained**; the allegation against him that he failed to perform a visual check of ██████ is **Unfounded**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Detention Aid ██████ Palwak

i. Complimentary and Disciplinary History

One complimentary letter.

ii. Recommended Penalty, by Allegation

1. Allegation No. 2

Detention Aid Palwak failed to document ██████ injury. Based on the nature of the offense and the lack of disciplinary history, COPA recommends a reprimand.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer ██████	It is alleged that, on March 18, 2018, around 10:20 PM, near 3843 S. Princeton Avenue, Officer ██████ used excessive force in effecting an emergency takedown on Complainant, causing injury, in violation of Rules 8 & 9.	NOT SUSTAINED
Detention Aide ██████	It is alleged that, on March 19, 2018, at District ██████ Lockup, Detention Aide ██████	

- | | |
|--|------------------|
| 1. Did not conduct a proper visual check of Arrestee [REDACTED] in violation of Rule 10. | UNFOUNDED |
| 2. Did not properly document the condition of Arrestee [REDACTED] in violation of Rule 10. | SUSTAINED |

Approved:

[REDACTED]

July 29, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

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