

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	December 31, 2015
Time of Incident:	9:30 PM
Location of Incident:	[REDACTED]
Date of COPA Notification:	January 1, 2016
Time of COPA Notification:	2:48 PM

On December 31, 2015, at approximately 9:30 p.m., at [REDACTED], located at [REDACTED] Street, an employee of the restaurant, [REDACTED], called the police because several people were drinking liquor and smoking in the restroom at the location. Officer [REDACTED] was the first to arrive on scene. Upon arrival, Officer [REDACTED] approached several individuals standing in front of the restaurant, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. A verbal altercation ensued between Mr. [REDACTED] and Officer [REDACTED]. Mr. [REDACTED] spat at Officer [REDACTED], and Officer [REDACTED] requested additional officers to assist with the call. Officer [REDACTED] became verbally and physically abusive toward Mr. [REDACTED]. Mr. [REDACTED] gave a sworn statement to IPRA on January 1, 2016, while in custody.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED]; Star # [REDACTED]; Employee ID # [REDACTED]; Appointment Date: [REDACTED], 1995; Police Officer; Unit of Assignment: District [REDACTED]; Date of Birth: [REDACTED], 1962; Male; White
Involved Officer #2:	[REDACTED]; Star # [REDACTED]; Employee ID # [REDACTED]; Appointment Date: [REDACTED], 2013; Police Officer; Unit of Assignment: [REDACTED]; Date of Birth: [REDACTED], 1983; Male; White
Involved Officer #3:	[REDACTED]; Star # [REDACTED]; Employee ID # [REDACTED]; Appointment Date: [REDACTED], 2011; Police Officer; Unit of Assignment: District [REDACTED]; Date of Birth: [REDACTED] 1984; Male; Asian

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Individual #1: [REDACTED], Date of Birth: [REDACTED], 1977,
Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]. [REDACTED]	1. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED], Chicago, IL [REDACTED], you used an open hand to strike Mr. [REDACTED] about the face without justification, in violation of Rule 8.	Exonerated
	2. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you forcefully pulled [REDACTED]'s hood off without justification, in violation of Rule 8.	Sustained
	3. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you stepped on [REDACTED]'s foot without justification, in violation of Rule 8.	Sustained
	4. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you used profanities directed at Mr. [REDACTED] by stating words to the effect of "you're a bitch," in violation of Rule 9.	Not Sustained

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 bring discredit upon the Department.
2. Rule 6: Disobedience of an order or directive, whether written or oral.
3. Rule 8: Disrespect to or maltreatment of any person, while on or off-duty.

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

General Orders

1. G03-02 – Use of Force Guidelines – Effective date: 01 October 2002
 2. G03-02-01 – The Use of Force Model – Effective date: 16 May 2012
 3. G03-02-02 – Force Options – Effective date: 11 March 2015
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State Laws

1. 720 ILCS 5/7-5 -Peace Officer's Use of Force in Making Arrest.

V. INVESTIGATION²

a. Interviews

Civilian Interviews

In his interview with IPRA on January 1, 2016,³ the complainant, ██████████, stated that he and his friends and family, including ██████████, ██████████, and ██████████, stopped at the ██████████ to use the restroom on their way to see the ball drop for New Year's Eve. Mr. ██████████ stated there were other individuals in the restroom as well, and the manager of the location was upset. Mr. ██████████ stated he went inside the restaurant and advised his friends and family to leave because he did not want the police to be called. Mr. ██████████ stated upon exiting the restaurant he consumed insulin, which he takes for diabetes. Mr. ██████████ stated that after taking the medication, he vomited. An Officer, (now known to be Officer ██████████), approached Mr. ██████████. Officer ██████████ was very irate and stated, "snitches get stitches," and "bitch." Mr. ██████████ stated Officer ██████████ knew him from a previous arrest. Officer ██████████ asked Mr. ██████████ to stand up and stated, "a criminal will always be a criminal." Officer ██████████ proceeded to put his hand over Mr. ██████████'s face and pushed him, causing Mr. ██████████ to fall.

Mr. ██████████ stated he was reaching behind him to ensure he was falling back into the chair. Mr. ██████████ stated Officer ██████████ went inside the ██████████, and when he came out his nose was bleeding, and he stated, "you're going down." Mr. ██████████ stated he did not recall striking Officer ██████████ in the nose. Mr. ██████████ stated the Officers (now known to be Officer ██████████ and Officer ██████████) were attempting to separate himself and Officer ██████████. Mr. ██████████ advised that Officer ██████████ picked up a wine bottle that was sitting next to him and attempted to hit him with the bottle. Mr. ██████████ was charged with Felony Aggravated Battery to a Police Officer.

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 See Attachment #8.

In her interview with IPRA on January 1, 2016, the complainant, [REDACTED], stated she went into 7-11 to see what her nephew was doing so she could leave with her husband, Mr. [REDACTED], when an officer (now known as Officer [REDACTED]) pulled up and began antagonizing her husband. The officer started calling him a “snitch” and a “pumpkin head.” Officer [REDACTED] became irate and tried to grab his chair. The encounter escalated from there. Officer [REDACTED] had a bottle of wine in his hand and made a gesture indicating that he would hit Mr. [REDACTED] in the head with the bottle. Mr. [REDACTED] stated he would move after his insulin settled. Ms. [REDACTED] related that Mr. [REDACTED] threw up. Officer [REDACTED] continued to make smart comments and antagonized Mr. [REDACTED] to get out of his chair. Ms. [REDACTED] related that Mr. [REDACTED] told the Officer that he would spit on him. Ms. [REDACTED] stated that her husband almost stood up and wobbled forward and backward attempting to catch his balance. Ms. [REDACTED] then stated Officer [REDACTED] struck her husband in the face twice, on the left side. Ms. [REDACTED] advised that her husband hit him in retaliation from being struck. Ms. [REDACTED] also stated Officer [REDACTED] stood on her husband’s foot. Other officers attempted to deescalate the situation. Officer [REDACTED] grabbed the back of his coat to yank her husband down. Ms. [REDACTED] stated that the Officer’s nose was bleeding. However, she did not recall her husband having any visible injuries.

In his interview with IPRA on January 02, 2016, [REDACTED]⁴ reported that he was inside a bar, [REDACTED], located at [REDACTED] Street, standing in the doorway and waiting for people to arrive to the location, when he looked out the window and saw a police officer step out of his vehicle and pick up a liquor bottle and approach a man in a wheelchair. He noticed three to four police officers surrounding the man in the wheelchair. He then observed the man in the wheelchair stand up and shove the officer to the far right. Mr. [REDACTED] heard people yelling police brutality, so he decided to cross the street to tell the police what he saw. At that point, the man in the wheelchair stood up and hit the officer in the face, causing the officer to spin in a half circle to the left and knocking his hat off. The officer who was struck in the face went inside the [REDACTED] to clean his nose of blood. Mr. [REDACTED] stated the man in the wheelchair was very aggressive and stated that the police were harassing him. Mr. [REDACTED] believed that the Officers handled the situation appropriately.

In her interview with IPRA on March 06, 2016, [REDACTED]⁵ reported that she was inside the bar, [REDACTED], located at [REDACTED] Street, with her family and was sitting at a table near the window of the location. She was with her husband, [REDACTED], her son [REDACTED], her son, [REDACTED] and [REDACTED]’s girlfriend [REDACTED]. She noticed there was a commotion across the street and saw two police vehicles and approximately four to five officers. She could not hear anything that was being said during the incident. However, [REDACTED]. [REDACTED] stated she saw a man in a wheelchair stand up and go after the officer, whose back was to her. She stated that the officer appeared to have a broken nose. She stated [REDACTED] was not in the bar when the incident occurred and did not observe the incident. Mrs. [REDACTED] stated that she noticed that [REDACTED] went across the street after the officer was punched in the nose. Mrs. [REDACTED] was unable to describe the officer involved. She believed the officer and the man in the wheelchair were approximately two feet away from one another. Mrs. [REDACTED] stated she saw the officer get transported to the hospital via ambulance.

⁴ See Attachment #86.

⁵ See Attachment #81.

In her interview with IPRA on April 05, 2016, ██████████⁶ reported that she was across the street from the incident at a bar called ██████████. Ms. ██████████ and a group of friends were standing by the window, when she noticed police lights. There was a man in a wheelchair, and she noticed three to four people by him. She recalled that about 5 minutes into the man's discussion with the officer, the man in the wheelchair stood up and punched the police officer in the face. The friends of the man in the wheelchair seemed to get agitated. The other police officers tried to calm them down. Ms. ██████████ related that another police vehicle arrived and blocked her view. She recalled seeing blood going down the face of the officer that was struck in the face. She was not able to provide a description of the individuals with the man in the wheelchair but believed there was one female and the rest were males. Ms. ██████████ advised that she had not recorded the incident and had not spoken to anyone about it.

In his interview with IPRA on April 05, 2016, ██████████⁷ reported that on the date of the incident he was working at the ██████████ where the incident occurred, and the store was very busy. Mr. ██████████ stated there were a lot of "gangbangers," who were in the store smoking and drinking. He was unable to identify the odor, but it didn't smell like cigarettes. Mr. ██████████ stated he asked them to leave, and they looked at him funny. He stated he called 9-1-1 because the "gangbangers" were loud and obnoxious. Mr. ██████████ stated the subjects ran out when they saw the police arrive. He did not exit the store as he did not want to get involved. He stated that one of the officers entered the store and went to the bathroom to wash his face. He believed that officer to be a man named ██████████ who works in the area. Mr. ██████████ did not observe a physical altercation. However, he did see that people were arguing.

In his interview with IPRA on March 09, 2016, Chicago Fire Department Paramedic ██████████⁸ reported that he worked third shift on the day of the incident and responded to the scene. Mr. ██████████ did not recall anything about the incident independent of the ambulance report.⁹ Mr. ██████████ was provided photos taken by the Evidence Technician and remembered the officer having a bloody nose. He related that he remembered the officer stating he had been struck by someone in the bathroom. However, he did not remember the man in the wheelchair.

In his interview with IPRA on March 09, 2016, Chicago Fire Department Paramedic ██████████¹⁰ reported that he was working on the day of the incident and responded to the scene. Mr. ██████████ remembered a man in a wheelchair was alleged to have punched a police officer in the face. He stated he did not witness the man punching the officer in the face, but several civilians informed him of what happened. He recalled the officer had something covering his nose when the ambulance arrived on scene but was very calm. Mr. ██████████ stated that the man in the wheelchair was yelling and swearing at everyone. He also remembered the man yelling racial slurs but could not recall what specifically was said. The officer mentioned that he had been punched in the nose by the man in the wheelchair. Mr. ██████████ initially spoke to the other officers on scene and did not speak with Officer ██████████ until he came to the ambulance. He stated that based on his report, he

⁶ See Attachment #108.

⁷ See Attachment #111.

⁸ See Attachment #90.

⁹ See Attachment #48.

¹⁰ See Attachment #93.

did not have any respiratory distress. He does not recall anyone giving the man in the wheelchair any medical attention.

Police Interviews

In his interview with COPA on March 13, 2019, **Officer [REDACTED]**¹¹ reported that on the day of the incident he was working Beat [REDACTED] and did not have a partner. Officer [REDACTED] stated that he responded to a VICE¹² call. Upon arrival, Officer [REDACTED] stated he observed Mr. [REDACTED] seated in a wheelchair and spitting on Officer [REDACTED]. Officer [REDACTED] stated that per his report there was a verbal altercation between Officer [REDACTED] and Mr. [REDACTED], but he did not have an independent recollection of this. The report also stated that Mr. [REDACTED] struck Officer [REDACTED] with a closed right fist. Officer [REDACTED] did not recall whether Officer [REDACTED]'s nose bled immediately after being struck by Mr. [REDACTED].

Officer [REDACTED] stated that he believed the responding officers placed Mr. [REDACTED] in custody directly after he struck Officer [REDACTED]. Officer [REDACTED] stated that he completed a TRR because he “went hands on,” with Mr. [REDACTED] in that he performed an open hand strike to Mr. [REDACTED]'s chest. Officer [REDACTED] stated he did not list his physical interaction with Mr. [REDACTED] in the case report because he completed a TRR. Officer [REDACTED] stated to the best of his knowledge he did not believe that the case report, arrest report, or TRR were written incorrectly.

Officer [REDACTED] stated viewing the videos refreshed his recollection of the events. Officer [REDACTED] stated that per the video he recalled seeing Officer [REDACTED] lift his right foot and appeared to be stepping on something. Officer [REDACTED] was unable to identify what Officer [REDACTED] stepped on; however, his view was obstructed by the “red jacket.” Officer [REDACTED] recalled seeing Officer [REDACTED] with a wine bottle in his hand. Officer [REDACTED] stated that Mr. [REDACTED]'s demeanor was very agitated.

In his interview with COPA on July 31, 2019, **Officer [REDACTED]**¹³ reported that on the night of the incident he was partnered with Officer [REDACTED] in Beat [REDACTED]. He stated he and his partner were assigned to the Entertainment district, which is responsible for responding to all the bars in the area. He did not remember many details from the incident. Officer [REDACTED] was not present for the verbal or physical altercation between Officer [REDACTED] and [REDACTED]. He stated he responded to the location as an assist unit and was listed on the arrest report as 2nd Arresting Officer because Officer [REDACTED] was transported to the hospital because his nose was broken due to being battered by Mr. [REDACTED]. Officer [REDACTED] stated that Officer [REDACTED] informed him of the details from the incident. Therefore, the narrative of the Arrest Report mirrors the narrative of the General Offense Case Report, which is authored by Officer [REDACTED].

¹¹ See Attachment #132.

¹² A Vice call is a call involving narcotics or prostitution.

¹³ Officer [REDACTED] appeared with his attorney [REDACTED], who was present during the interview. Officer [REDACTED]'s interview is incorporated as Attachment #145.

In his interview with COPA on March 28, 2019 **Officer [REDACTED]**¹⁴ reported that on the night of the incident he was assigned to the [REDACTED]th Watch, working Beat [REDACTED]. Officer [REDACTED] did not recall arriving to [REDACTED] Street for an aggravated battery of a police officer. Officer [REDACTED] did not remember encountering Mr. [REDACTED]. Officer [REDACTED] stated he knows of Officer [REDACTED]; however, he does not know him personally. Officer [REDACTED] reviewed the Event Query and it did not assist him in any independent recollection of the incident. He stated he contacted Officer [REDACTED] to inquire about the incident; however, Officer [REDACTED] advised him to contact FOP. Officer [REDACTED] was provided the video of the incident. Officer [REDACTED] was able to identify himself, Officer [REDACTED] and Officer [REDACTED] from viewing the video. Officer [REDACTED] stated based on watching the video there was a fight between Mr. [REDACTED] and Officer [REDACTED]. Officer [REDACTED] did not recall observing Officer [REDACTED] raising his foot the night of the incident. After observing the video, Officer [REDACTED] believed that he called for back-up. Officer [REDACTED] believes he called for back-up to assist with the incident. Officer [REDACTED] described Officer [REDACTED]'s demeanor as serious. Officer [REDACTED] was not able to independently recollect any of the events from the incident.

In his interview with COPA on July 31, 2019, **Accused Officer [REDACTED]**¹⁵ reported that on the night of the incident he was working Beat [REDACTED] and was the first to arrive on scene. Officer [REDACTED] stated he pulled up to the location and observed [REDACTED] drinking from a wine bottle. Mr. [REDACTED] was known by Officer [REDACTED] from prior contact. Officer [REDACTED] stated he was warned about Mr. [REDACTED] when he came to the district. He stated that Mr. [REDACTED] had a reputation of spitting on officers to purposely spread contagious disease. Officer [REDACTED] was not able to recall whether he first spoke with the manager of [REDACTED] or Mr. [REDACTED] upon arrival at the location. However, Officer [REDACTED] stated Mr. [REDACTED] refused to leave the location. [REDACTED] was positioned on the sidewalk in front of the location and backed his wheelchair up against the easement of the building. Officer [REDACTED] did not recall whether OEMC provided a description of the offenders in the VICE call. During the incident, Officer [REDACTED] advised Mr. [REDACTED] that he would receive a citation for drinking on the public way, and Mr. [REDACTED] became combative stating words to the effect of, "you're always fucking with me." At that point, a verbal altercation ensued between the two of them. Officer [REDACTED] was not able to recall exactly what was said but stated he used his "loud police voice." Officer [REDACTED] did not recall using profanities directed at Mr. [REDACTED] nor did he recall stating, "you're a bitch."

Officer [REDACTED] recalled requesting back-up and Officers [REDACTED] and [REDACTED] and Sergeant [REDACTED] arriving on scene. However, he did not remember their actions during the incident other than being a guard officer. Officer [REDACTED] did not recall the verbal direction given to Mr. [REDACTED]. Officer [REDACTED] stated Mr. [REDACTED] spat at him at least 5 times during the incident. The spit landed in the corner of Officer [REDACTED]'s eye and mouth on the 5th time. Officer [REDACTED] stated that other officers on scene were trying to use time and distance to de-escalate the situation as they waited for the transport vehicle to arrive.

¹⁴ Officer [REDACTED] appeared with his attorney [REDACTED], who was present during the interview. Officer [REDACTED]'s interview is incorporated as Attachment #136.

¹⁵ Officer [REDACTED] appeared with attorney [REDACTED], who was present during the interview. Officer [REDACTED]'s interview is incorporate as attachment #144.

Officer [REDACTED] stated Mr. [REDACTED] punched him in the face and caused his nose to bleed. After being punched in the nose, Officer [REDACTED] stated he attempted to strike Mr. [REDACTED] to protect himself from further battery. Officer [REDACTED] believes he used a closed fist to strike Mr. [REDACTED] in the face. Officer [REDACTED] stated he picked up his leg and placed it down but did not remember making contact with Mr. [REDACTED]'s foot. Officer [REDACTED] stated he firmly placed his foot on the group to effect the arrest of Mr. [REDACTED]. Officer [REDACTED] did not believe that Mr. [REDACTED] was injured during the incident. Officer [REDACTED] classified Mr. [REDACTED] as an assailant under the old use of force model because his intent was to cause great bodily harm due to this infectious disease. However, Officer [REDACTED] did not recall if Mr. [REDACTED] spoke of an infectious disease during the incident. Officer [REDACTED] stated that Mr. [REDACTED]'s hood became detached during the arrest process. Officer [REDACTED] stated that he grabbed Mr. [REDACTED]'s hood to place him into custody for drinking on the public way. Officer [REDACTED] did not observe Mr. [REDACTED]'s hood on the ground and did not recall what happened after the hood was grabbed. Officer [REDACTED] stated he grabbed the hood because Mr. [REDACTED] was under arrest and he didn't want Mr. [REDACTED] to be in proximity of other officers as he was an assailant.

Officer [REDACTED] stated he did not author the arrest report and therefore, could not provide an answer as to why the actions of the officers on scene were not documented on the arrest report. However, Officer [REDACTED] believes the Tactical Response Report is more appropriate for documenting actions taken by officers. Officer [REDACTED] described Mr. [REDACTED] as being partially disabled in that he can stand and take approximately 15 steps. During the statement, Officer [REDACTED] denied the allegation of using an open hand to strike Mr. [REDACTED] about the face, without justification. Officer [REDACTED] stated he recalls using a closed fist to strike Mr. [REDACTED] and the strike was justified given the fact that Mr. [REDACTED] was an assailant. Officer [REDACTED] denied the allegation of pulling Mr. [REDACTED]'s hood off without justification because Mr. [REDACTED] was an assailant in standing in close proximity of two other officers and he feared for the officers' safety. Additionally, Officer [REDACTED] stated he attempted to place Mr. [REDACTED] in custody. Officer [REDACTED] denied that allegation that he stepped on Mr. [REDACTED]'s foot without justification because after watching the videos, he believed firmly planted his foot down and did not make contact with Mr. [REDACTED]'s foot. Finally, Officer [REDACTED] denied the allegation that he used profanities by stating words to the effect of "you're a bitch." Officer [REDACTED] stated he denied these allegations because after watching the videos, he believes he only said two or three words that he could hear, the situation was very chaotic, and he heard other people saying those words.

b. Digital Evidence

Photographs of Mr. [REDACTED]¹⁶ taken on January 1, 2016 depict possible swelling to the left side of Mr. [REDACTED]'s cheek.

Photographs of Officer [REDACTED]¹⁷ taken on January 1, 2016 depict the swelling of Officer [REDACTED]'s nose and blood residue on his face, uniform, and gloves.

¹⁶ See Attachment #50.

¹⁷ See Attachment #47.

██████████ took two **cellular phone video recordings**¹⁸ that were provided to IPRA. The videos depict three on-duty officers surrounding a man in a wheelchair, ██████████. One video depicts a group of people yelling at the on-duty officers. Mr. ██████████ is seen standing up and swinging his arm in an apparent attempt to gain balance. Officer ██████████ then moves toward Mr. ██████████ and pushes him in the face. Mr. ██████████ stood up and struck Officer ██████████ in the face with a closed fist. Other officers present attempt to deescalate the situation by asking the bystanders to calm down and back away from the wheelchair. Officer ██████████ is seen pulling Mr. ██████████'s hood as Mr. ██████████ is facing away from Officer ██████████. The hood is seen detaching from Mr. ██████████'s coat. Officer ██████████ is also seen raising his leg and lowering it in the location of Mr. ██████████'s foot, while Mr. ██████████ is seated in the wheelchair. Officer ██████████ appears to wipe his nose several times during the video.

Surveillance video recordings¹⁹ from ██████████ restaurant were provided to IPRA. The videos depict 4 camera views, which cover the entire store. There are several individuals inside the location drinking what appear to be alcoholic beverages. Mr. ██████████ walks inside the restaurant and spoke to several individuals seated near the food counter and then heads to the back of the store near the restrooms.²⁰ After speaking with the individuals Mr. ██████████ exits the restaurant.²¹ Mr. ██████████ is not seen engaging in any drinking or illegal narcotics. Blue flashing lights can be seen in the video and an unknown male subject wearing a black and blue coat with a fur hood can be seen looking toward the front of the store out the window.²² Officer ██████████ enters the restaurant and rummages through the trash can, which is located at the front of the store. Blood can be seen on his face.²³ Officer ██████████ is seen talking with the employees and one of them gave him a napkin.

A **Photo Array**²⁴ administered to ██████████ on February 5, 2016 displayed 6 photos of male, white Chicago Police Officers in uniform. Mr. ██████████ identified the accused, Officer ██████████ as the person being responsible for striking him about the left side of the face with an open hand palm.

c. Physical Evidence

Officer ██████████'s **Medical Records**²⁵ from ██████████ Hospital state that Officer ██████████ arrived at the hospital on December 31, 2015 at 2201 hours. He was treated by Doctor ██████████ and Doctor ██████████. The primary diagnosis was epistaxis²⁶ and closed fracture of nasal bones. Officer ██████████ was prescribed Tramadol, an oral table to be taken every six hours. The discharge summary stated that he was stable upon release and should follow-up with his primary care physician in one to two days.

¹⁸ See Attachment #17.

¹⁹ See Attachment #116.

²⁰ Id. at 22:33

²¹ Id. at 22:34

²² Id. at 22:39, video labeled ██████████

²³ Id. at 22:43, video labeled ██████████

²⁴ See Attachment #74.

²⁵ See Attachment #94

²⁶ Epistaxis is an acute hemorrhage from the nostril, nasal cavity, or nasopharynx.

d. Documentary Evidence

Mr. ██████'s **Arrest Report**,²⁷ which was authored by Officer ██████, documents that he was charged with one count of Aggravated Assault to a Police Officer.²⁸ According to the report, Assisting Officers responded to a VICE complaint at the location and observed Mr. ██████ spitting on Officer ██████ and a verbal altercation then ensued between the two. Officer ██████ observed Mr. ██████ punch Officer ██████ in the nose causing it to bleed. The report does not document any physical contact Officer ██████ made with Mr. ██████.

The **Original Case Incident Report (RD # ██████)**,²⁹ which is authored by Officer ██████, contains essentially the same account of ██████'s arrest as found in the Arrest Report.

The **Ambulance Report/Sheet**³⁰ lists Officer ██████ Star # ██████ as a patient who was transported from ██████ Street to ██████ Hospital by Ambulance # ██████ on December 31, 2015. The incident is categorized as a battery. Both ██████ and ██████ are listed as crew members. The narrative states Officer ██████ was bleeding when the ambulance arrived. However, there were no claims of other injuries or pain.

The **OEMC Event Queries**³¹ lists the caller as Mr. ██████. The caller stated there was a disturbance with an unknown number of males inside the bathroom smoking drugs. No additional details were given. The first unit to arrive on scene was ██████, Officer ██████. The event query also lists Officer ██████'s injuries as well as his transport to the hospital. Units ██████, ██████, ██████, ██████, ██████ and ██████ responded to the scene.

Officer ██████'s **Tactical Response Report**³² described ██████ as an assailant who committed a battery without a weapon. In the report, Officer ██████ lists that he used verbal commands, an open hand strike, and an emergency take/down handcuffing technique to effect the arrest of Mr. ██████.

Officer ██████'s **Tactical Response Report**³³ described ██████ as an active resister and an assailant in that he pulled away to defeat arrest. Officer ██████ gave verbal commands as well as an open hand strike and performed an emergency handcuffing technique to arrest ██████ without further incident.

Officer ██████'s **Battery Report**³⁴ states that Officer ██████ was in uniform working alone in a marked squad car. There were two assist units on scene. Officer ██████ was struck using blunt force. Officer ██████ was also verbally assaulted in response to a call of a disturbance. The

²⁷ See Attachment #23.

²⁸ On July 19, 2016, ██████ pled guilty to one count of Aggravated Assault to a Police Officer.

²⁹ See Attachment #24.

³⁰ See Attachment #48.

³¹ See Attachment #34.

³² See Attachment #25.

³³ See Attachment #27.

³⁴ See Attachment #26.

offender is described as a male, black with date of birth of [REDACTED], 1977. Officer [REDACTED] received non-fatal minor injuries as a result of the altercation.

The **Detective Supplemental Report**³⁵ lists the victim as Officer [REDACTED]. [REDACTED] is listed as the offender of a battery which occurred on December 31, 2015 at [REDACTED] Street, Chicago, IL. Additionally, [REDACTED] and Officer [REDACTED] were listed as witnesses. The report was authored by Detective [REDACTED]. Detective [REDACTED] reviewed all reports regarding the incident, and then relocated to the scene to interview [REDACTED]. [REDACTED] related that he was standing across the street and observed the officer pull up in a squad car and approach a group of people on the sidewalk. There was a man in a wheelchair, [REDACTED], who stood up and pushed the officer and then struck him in the face. Detective [REDACTED] also interviewed [REDACTED] who stated he was minding his own business when an officer came up and started grabbing him. [REDACTED] admitting to swatting at Officer [REDACTED] at which time, he accidentally made contact with Officer [REDACTED]'s nose.

The **Method CAU Supplemental Report**³⁶ reports the same information listed in the Detective Supplemental Report.

VI. Applicable legal standards

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 allegation 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** is 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 than not 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

³⁵ See Attachment #67.

³⁶ See Attachment #68.

criminal offense. See *e.g.*, *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing is 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

a. Allegations against Officer [REDACTED]

The standard for analyzing use of force issues is found in General Order G03-02 Use of Force Guidelines. This policy, citing the United States Supreme Court case *Graham v. Connor* (490 U.S. 386 (1989)), states that “the central inquiry in every use of force is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.”³⁷ Reasonableness cannot be defined, but rather is viewed in light of the circumstances, including (a) the severity of the crime at issue; (b) whether there is an immediate threat posed by the individual to the officers or others; and (c) whether the individual is attempting to evade arrest by flight or actively resisting arrest.³⁸ The totality of circumstances when viewed from the perspective of a reasonable officer on the scene will determine whether a particular use of force was reasonable.³⁹ Further, the directive on Force Options sets forth the policy of *using the least amount of appropriate force*.⁴⁰

Graham, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

Not every push or shove, even if it may later seem unnecessary . . . violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a situation.

Id. at 396-97 (internal citations omitted).⁴¹

Analyzing this incident employing these standards, COPA finds that based upon the witness accounts and video of the incident it is more likely than not that Officer [REDACTED] engaged in misconduct. There is video evidence that depicts the interaction between Officer [REDACTED] and [REDACTED]

COPA finds that **Allegation #1** that Officer [REDACTED] used an open hand to strike Mr. [REDACTED] about the face without justification is **EXONERATED**. Officer [REDACTED] related that he exercised force because Mr. [REDACTED] spat at him several times during the altercation and

³⁷ G03-02(III)(C).

³⁸ G03-02(III)(C)(1).

³⁹ G03-02(III)(C)(2).

⁴⁰ G03-02-02(II)(B) (emphasis added.)

⁴¹ CPD’s use of force orders (G03-02 and G03-02-01) and Illinois’ statute governing peace officer’s use of force (720 ILCS 5/7-5) are consistent with *Graham v. Connor*, in some instances, are more restrictive than the Fourth Amendment. As explained below, COPA finds that multiple officers violated the Fourth Amendment, and thus separate analysis under the more restrictive state statute and CPD orders is unnecessary.

he considered Mr. ██████ to be an assailant. Officer ██████ stated Mr. ██████'s spit landed in the corner of his eye and on his lip. Officer ██████ had knowledge that Mr. ██████ was infected with a contagious disease, and therefore used an open hand strike to eliminate the threat of receiving another battery. Ms. ██████ confirmed that Mr. ██████ threatened to spit on Officer ██████. Given the totality of the circumstances, Officer ██████ did not violate any General Orders or State/Federal laws with this use of force incident. The force that Officer ██████ used is classified by the Chicago Police Department as a "direct mechanical strike technique," which was authorized force against an assailant. Therefore, COPA finds that this allegation is **Exonerated**.

COPA finds **Allegations #2 and 3** that Officer ██████ forcefully pulled Mr. ██████'s hood off and stepped on Mr. ██████'s foot, without justification are **SUSTAINED**. During his statement, Officer ██████ stated he classified Mr. ██████ as an assailant and stated that he took these actions in order to effect an arrest on Mr. ██████ and prevent Mr. ██████ from causing injury to the other officers. The department defines an assailant as a subject who is using or threatening the imminent use of force against himself/herself or another person. The Use of Force Model categorizes assailants into three categories.⁴² Force options include direct mechanical techniques, Impact Weapons such as the baton and Impact Munitions. The Force Options policy⁴³ states that members will maintain a courteous and professional demeanor when dealing with the public. The policy further states that whenever practical, members will attempt to de-escalate confrontations by utilizing verbal control techniques prior to, during, and after the use of physical force.

At the time that Officer ██████ pulled Mr. ██████'s hood and stepped on his foot, Mr. ██████'s back was turned to Officer ██████. There are no allegations from any other officers that Mr. ██████ was threatening them and no allegation from Officer ██████ that Mr. ██████ was saying or doing anything threatening at the moment. Additionally, Officer ██████ does not appear to be attempting to arrest Mr. ██████ at this point. After pulling the hood, Officer ██████ steps back, returns and steps on his foot. At no point, does he attempt to gain control of his body or restrain him. In this moment, Officer ██████ is seen as an aggressor. The situation was heightened by Officer ██████ pulling Mr. ██████'s hood and stepping on his foot rather than de-escalated. Informative is the fact that no other officer on scene appears to believe physical force of the kind exerted by Officer ██████ is necessary. Therefore, these allegations are **Sustained**.

COPA finds **Allegation #4** that Officer ██████ used profanities directed at Mr. ██████ by stating words to the effect of "you're a bitch," is **NOT SUSTAINED**. There is insufficient evidence to prove or disprove this allegation. The video evidence does not support this allegation. Officer ██████ cannot be heard on the video evidence provided conversing with Mr. ██████. Additionally, during his statement, Officer ██████ did not recall having any conversation with Mr. ██████. The video evidence only captured the physical altercation between the two. Therefore, this allegation is **Not Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

⁴² G03-02-02(III)(C)(1)

⁴³ G03-02-02(II)

a. Officer [REDACTED]

i. Complimentary and Disciplinary History

1. **Complimentary:** 1 Democratic Convention Award, 1 Presidential Election Deployment Award, 3 Department Commendations, 1 2004 Crime Reduction Ribbon, 82 Honorable Mentions, 25 Complimentary Letters, 1 Honorable Mention Ribbon Award, 1 NATO Summit Award, 1 Life Saving Award, 1 2009 Crime Reduction Award
2. **Disciplinary:** No applicable disciplinary history.

ii. Recommended Penalty, by Allegation

1. **Allegation No. 2:** 5-Day Suspension and De-Escalation Training
2. **Allegation No. 3:** 5-Day Suspension and De-Escalation Training

COPA has considered Officer [REDACTED]'s disciplinary and complimentary history in making the disciplinary recommendations above. COPA also considered the length of time since the incident occurred. However, COPA finds that Officer [REDACTED] failed to take responsibility for his actions or acknowledge that his conduct escalated the situation.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	<ol style="list-style-type: none"> 1. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you used an open hand to strike Mr. [REDACTED] about the face without justification, in violation of Rule 8. 2. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you forcefully pulled [REDACTED]'s hood off without justification, in violation of Rule 8. 3. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you 	<p>Exonerated</p> <p>Sustained / 5-Day Suspension and De-Escalation Training</p> <p>Sustained / 5-Day Suspension and De-Escalation Training</p>

stepped on [REDACTED]'s foot without justification, in violation of Rule 8.

4. It is alleged by [REDACTED] that on or about December 31, 2015, at approximately 2130 hours, at [REDACTED] Street, Chicago, IL [REDACTED], you used profanities directed at Mr. [REDACTED] by stating words to the effect of "you're a bitch," in violation of Rule 9.

Not Sustained

Approved:

[REDACTED]

August 30, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

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