

SUMMARY REPORT OF INVESTIGATION¹

Date/Time/Location of Incident:	April 7, 2016 / 6:00 pm / ██████ S. Merrill Avenue
Date/Time of COPA Notification:	April 7, 2016 / 9:00 pm ²
Involved Sergeant #1:	Sergeant ██████ / Star # ██████ / Employee ID# ██████ / DOA: ██████, 2004 / Unit: ██████ / DOB: ██████, 1978 / White / Male
Involved Officer #1:	Officer ██████ / Star # ██████ / Employee ID# ██████ / DOA: ██████, 2013 / Unit: ██████ / DOB: ██████, 1984 / Black / Male
Involved Officer #2:	Officer ██████ / Star # ██████ / Employee ID# ██████ / DOA: ██████, 2014 / Unit: ██████ / DOB: ██████, 1986 / White / Male
Involved Officer #3:	Unidentified
Involved Individual #1:	██████████ / DOB: ██████, 1944 / Black / Male
Case Type:	05A – Excessive Force / On Duty - Injury

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Sergeant ██████	1. It is alleged that Sgt. ██████ punched ██████ without justification.	Not Sustained.
	2. It is alleged that Sgt. ██████ kicked ██████ without justification.	Not Sustained.
	3. It is alleged that Sgt. ██████ kneed ██████ without justification.	Not Sustained.
	4. It is alleged that Sgt. ██████ failed to document your contact with ██████ in a Tactical Response Report.	Sustained / 2-day Suspension – retraining on TRRs.

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.

² IPRA received a Taser notification on April 7, 2016, under Log 1080010; however, the notification was closed and merged it with this log number, which was registered on April 8, 2016 at 3:31 pm.

	5. It is alleged that Sgt. █████ failed to report that Officer █████ punched █████ without justification.	Not Sustained.
Officer █████	1. It is alleged that PO █████ discharged his taser at █████ 2. It is alleged that PO █████ discharged his Chemical OC spray at █████ 3. It is alleged that PO █████ struck Mr. █████ with an expandable baton. 4. It is alleged that PO █████ kicked █████	Exonerated. Exonerated. Not Sustained. Not Sustained.
Officer █████	1. It is alleged that PO █████ punched █████ without justification. 2. It is alleged that PO █████ failed to document your contact with █████ in a Tactical Response Report.	Not Sustained. Sustained / Written Reprimand – Retraining on TRRs
Unidentified Officer	1. It is alleged that an unknown officer punched █████ about the face and body. 2. It is alleged that an unknown officer kicked █████ about the body. 3. It is alleged that an unknown officer struck █████ with an expandable baton.	Not Sustained. Not Sustained. Not Sustained.

II. SUMMARY OF EVIDENCE^{3,4}

On April 7, 2016, at approximately 6:45 pm, Mr. █████⁵ armed with a hammer, forced his way into █████ S. Merrill Ave., Apartment █████ through a rear window. The resident in

³COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

⁴ The Summary of Evidence is based on numerous statements and reports. All the information detailed is contained in multiple pieces of evidence that IPRA/COPA obtained.

⁵ █████ is approximately 6’6” in height with a slender build. He is also known to Department members and member of the community as █████ or █████”

⁶ Apartment █████ is not a ground level apartment.

Apartment ■■■ contacted 911 and reported the break in. Upon arrival of Department members, ■■■ was encountered at the door of Apartment ■■■ holding a wooden stick and a metal pipe. Several Department members issued orders for ■■■ to drop both weapons; however, he did not comply and instead raised the weapons. Officer ■■■ deployed his taser at ■■■. The taser was ineffective and ■■■ while still armed, continued to advance on the various Department members while stating words to the effect of “I’m the god of death.”⁷ Officer ■■■ deployed his taser a second time, but it was again ineffective. After being tased, ■■■ reentered Apartment ■■■ shut the door and refused orders to exit, while stating words to the effect of “I’m going to kill you all.”⁸ Sgt. ■■■ ordered Officer ■■■ to force entry into the rear of the apartment. Officer ■■■ entered the apartment and opened the front door. Various Department members enter the apartment and inside encountered a still armed ■■■ who began to swing his weapons. Once inside, various Department members instructed ■■■ to calm down and drop his weapons. ■■■ did not comply and attempted to break a window in an apparent attempt to escape. After being unable to break the window, ■■■ advanced on various Department members while swinging the stick and pipe. Officer ■■■ deployed his Oleoresin Capsicum spray (OC) at ■■■. Once the OC was deployed, ■■■ dropped the weapons and was taken to the ground with an emergency takedown. Once on the ground ■■■ was swinging his arms and kicking his legs, while refusing to comply with verbal direction to stop fighting. Eventually, ■■■ was handcuffed in front of his body. He continued to struggle and attempted to remove the handcuffs. Additionally, ■■■ grabbed Officer ■■■ leg and bit his ankle – causing no injury. ■■■ was eventually restrained in leg shackles and carried from the apartment, while still writhing and kicking. ■■■ was placed on the floor in the rear of the CPD transport wagon. Once in the wagon, ■■■ kicked the door frame and the exit door. Additionally, ■■■ wrapped his legs around Officer ■■■ legs and attempted to sit up. To address ■■■ resistance and concerns that ■■■ was attempting to bite him, Officer ■■■ pushed ■■■ in the shoulder or upper chest to hold ■■■ down, while freeing his leg from ■■■ grasp. Once free, Officer ■■■ exited the wagon. Sgt. ■■■ entered the wagon and once inside used direct mechanical blows towards the floor of the wagon. Neither Sgt. ■■■ nor Officer ■■■ completed a Tactical Response Report (TRR) or any other report detailing their interactions with ■■■.

■■■ was transported to Jackson Park Hospital for a mental health evaluation. Upon arrival at Jackson Park Hospital, ■■■ expressed to Department members that he was done and appeared to be exhausted. During his treatment it was discovered that ■■■ had extensive rib fractures to seven left ribs (six of the ribs were significantly displaced and two ribs were fractured in two places); a fractured vertebra; and minimal pneumothorax.⁹ ■■■ injuries were “fresh”, however, it is unknown exactly when or how ■■■ sustained his injuries.¹⁰ Not a single member recalled observing any signs or complaints of injuries nor did any Department members recall any other Department members striking, kicking, kneeling, or using a baton to address ■■■ actions.

⁷ Att. 4, pgs. 3-4.

⁸ Att. 4, pgs. 3-4.

⁹ ■■■ treating physicians varied in their descriptions of the injuries. One stating the injuries were the result of “tremendous force” and could have been caused by being kicked. Another opining that the injuries could have been caused by kicking or falling. See Att. 35.

¹⁰ Atts. 35 and 36.

IPRA was notified of the taser deployment and registered a complaint on behalf of [REDACTED] from daughter, [REDACTED].¹¹ IPRA/COPA attempted to obtain statements from [REDACTED] however, those attempts were unsuccessful. IPRA sought and was granted an Affidavit Override.

III. 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.

IV. ANALYSIS AND CONCLUSION

a. Use of Force related allegations

COPA finds that Allegations #1 and #2 against Officer [REDACTED] are **exonerated**. An assailant is defined by policy as "a subject who is using or threatening the imminent use of force against himself/herself or another person."¹² Department members are permitted to deploy tasers and OC to gain compliance when facing an assailant.¹³

¹¹ There is no evidence to show that [REDACTED] had any direct knowledge of this incident.

¹² G03-02-02(IV)(C)(1). Att. 180.

¹³ *Id.*

Here, based on both an independent witness and Department members, it is undisputed that [REDACTED] was armed with a hammer or wooden stick and metal pipe when Officer [REDACTED] first encountered him. Additionally, it is undisputed that [REDACTED] failed to drop the weapons when instructed to do so, and instead approached various Department members while swinging the weapons and making threatening statements. Based on [REDACTED] actions, COPA determined he was an assailant, immediately prior to Officer [REDACTED] deployment of the taser and OC spray. The evidence is clear and convincing that Officer [REDACTED] actions were within policy and therefore are exonerated.

COPA finds that Allegations #1, #2 and #3 against Sgt. [REDACTED] Allegations #3 and #4 against Officer [REDACTED] Allegation #1 against Officer [REDACTED] and all the allegations against the unidentified officer are **Not Sustained**. In light of the extent of the injuries [REDACTED] had at the time he was treated, it is troubling that none of the Department members recalls noticing any signs or complaints of injury from him. But given the lack of evidence as to when [REDACTED] sustained those injuries, no other determination is practicable. Here, COPA could not locate enough evidence to determine if Officer [REDACTED] ever struck [REDACTED] with a baton or kicked [REDACTED] therefore, those allegations must be **not sustained**. While COPA was able to locate evidence that shows Sgt. [REDACTED] and Officer [REDACTED] struck [REDACTED] while he was in the rear of the transport wagon, COPA could not locate enough evidence to determine what [REDACTED] actions were at the time. Further, based on [REDACTED] continued resistance and combativeness during the entire interaction, COPA believes it to be reasonable to conclude that [REDACTED] was not a compliant subject while in the rear of the wagon. Therefore, the use of force allegations against Sgt. [REDACTED] and Officer [REDACTED] are **not sustained**.

b. Tactical Response Report (“TRR”) allegations

COPA finds that Allegation #4 against Sgt. [REDACTED] and Allegation #2 against Officer [REDACTED] are **sustained**. Department members are required to complete a TRR detailing force used on any subject who is an active resister, unless the act of resistance is “fleeing and the member’s actions did not extend beyond verbal commands and/or control holds...,” and when force is used against an assailant.¹⁴

Even though COPA could not determine if Sgt. [REDACTED] use of force – direct mechanical strikes – was in accordance with policy, it was clear that he did use that force. Department policy is clear that direct mechanical strikes can only be used when a subject is an assailant or greater.¹⁵ Regardless of whether [REDACTED] was an active resister or an assailant at the time Sgt. [REDACTED] exercised his use of force, he was required to complete a TRR.

During his statement, Officer [REDACTED] detailed [REDACTED] actions – which were wrapping his legs around Officer [REDACTED] leg, sitting up, and attempting to bite Officer [REDACTED] These actions would make [REDACTED] an assailant, and therefore even the use of control tactic – as Officer [REDACTED] detailed it – would require the completion of a TRR.

¹⁴ G03-02-05(II)(A) (eff. 10/30/14 – 8/18/16). Other circumstances giving rise to and limiting the need for the requirement of a TRR are also in the policy but are not relevant here (Att. 142). *See* Footnote No. 12 for the definition of an assailant.

¹⁵ G03-02-02(IV)(C)(1) (Att. 180).

c. Failing to report allegations

COPA finds that Allegation #5 against Sgt. [REDACTED] is **not sustained**. Since COPA was unable to determine if Officer [REDACTED] force was within policy, COPA is also unable to determine if Sgt. [REDACTED] was required generate an Initiation Report detailing the force used.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Sgt. [REDACTED]****i. Complimentary and Disciplinary History**

1. **Complimentary:** 4 Department Commendations; 1 Honorable Mention Ribbon; 3 Complimentary Letters; 112 Honorable Mentions.
2. **Disciplinary:** None

ii. Recommended Penalty, by Allegation

1. **Allegation No. 4** – 2-day Suspension and Retraining on when TRRs are required.

As a supervisor who is responsible for ensuring required Department reports are completed, Sgt. [REDACTED] should have known that his actions – direct mechanical strikes – required him to complete a TRR.

b. Officer [REDACTED]**i. Complimentary and Disciplinary History**

1. **Complimentary:** 1 Life Saving Award; 3 Department Commendations; 39 Honorable Mentions; 1 Complimentary Letter.
2. **Disciplinary:** None

ii. Recommended Penalty, by Allegation

1. **Allegation No. 2** – Written Reprimand and Retraining on when TRRs are required.

During his statement, Officer [REDACTED] explained that he did not complete a TRR because he only used a control tactic that does not require a TRR. This is an incorrect statement which COPA believes can be corrected by additional training.

Approved:



August 29, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	5
Investigators:	
Supervising Investigator:	
Deputy Chief Administrator:	Andrea Kersten