

SUMMARY REPORT INVESTIGATION

I. EXECUTIVE SUMMARY

Date/Time of Incident:	August 25, 2014, approximately 10:02 p.m.
Location of Incident:	[REDACTED]
Date/Time of IPRA Notification:	August 26, 2014, approximately 12:08 a.m. <sup>1</sup>

Four on-duty CPD officers ordered a crowd to disperse from a City sidewalk. One of the individuals, [REDACTED] (“[REDACTED]”) refused that order and subsequent orders to disperse. In response, the officers approached [REDACTED] who then took a fighting posture. The officers then arrested [REDACTED].

II. INVOLVED PARTIES

Involved Member #1:	[REDACTED]; Star # [REDACTED], Employee ID# [REDACTED]; Date of Appointment: [REDACTED], 2002; Rank: Police Officer; Unit of Assignment: [REDACTED]; Date of Birth: [REDACTED], 1962; M/B
Involved Member #2:	[REDACTED]; Star # [REDACTED], Employee ID# [REDACTED]; Date of Appointment: [REDACTED], 2005; Rank: Police Officer; Unit of Assignment: [REDACTED]; Date of Birth: [REDACTED], 1979; M/W
Involved Member #3:	[REDACTED]; Star # [REDACTED], Employee ID# [REDACTED]; Date of Appointment: [REDACTED], 2002; Rank: Police Officer; Unit of Assignment: [REDACTED]; Date of Birth: [REDACTED], 1971; M/B
Involved Member #4:	[REDACTED]; Star # [REDACTED], Employee ID# [REDACTED]; Date of Appointment: [REDACTED], 2004; Rank: Police Officer; Unit of Assignment: [REDACTED]; Date of Birth: [REDACTED], 1979; F/B
Involved Individual:	[REDACTED]; Date of Birth: [REDACTED], 1980; M/B

<sup>1</sup>The Independent Police Review Authority (IPRA) first became aware of the subject incident on August 26, 2014, when a CPD supervisor made a timely Taser deployment notification. See Attachment 29. IPRA then opened an investigation under Log #1071188. IPRA closed that investigation on January 22, 2015, apparently due to its inability to make contact with the Involved Individual. IPRA opened this investigation on October 4, 2016, after having been informed that the individual had commenced a civil action arising out of the incident. On September 15, 2017, COPA replaced IPRA as the CPD’s civilian oversight agency. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the findings and recommendations set forth herein are the findings and recommendations of COPA.

III. ALLEGATIONS<sup>2</sup>

Member	Allegation	Finding/ Recommendation
Officer ██████████	<p>1. On August 25, 2014, at approximately 10:00 p.m., at ██████████, you ordered Mr. ██████████ to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained ██████████ without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. ██████████.</p> <p>4. At the same time and place, after you deployed a Taser, you failed to request that a supervisor respond to the scene.</p> <p>5. At the same time and place, after you deployed a Taser, during which deployment an electrical current was applied to the body of Mr. ██████████, you failed to request that OEMC assign medical personnel to the scene.</p>	<p>Not Sustained</p> <p>Exonerated</p> <p>Not sustained</p> <p>Sustained</p> <p>Sustained</p>
Officer ██████████	<p>1. On August 25, 2014, at approximately 10:00 p.m., at ██████████, you ordered ██████████ to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained Mr. ██████████ without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. ██████████.</p>	<p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>
Officer ██████████	<p>1. On August 25, 2014, at approximately 10:00 p.m., at ██████████, you</p>	<p>Not Sustained</p>

<sup>2</sup> At the time the allegations were brought to COPA it was alleged that Commander ██████████ was present at the scene and made commands to taser ██████████ after he was already handcuffed. COPA has determined this allegation to be without merit to bring against Commander ██████████: COPA was unable to find evidence that Commander ██████████ was working on the day of the incident; No Officer on scene indicated in their interviews or field reports that Commander ██████████, or any other supervising officer, was present during or after the arrest of ██████████; The sustained allegation 4 against Officer ██████████ further shows that there were no supervising officers on scene.

	<p>ordered Mr. [REDACTED] to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained Mr. [REDACTED] without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].</p>	<p>Exonerated</p> <p>Not Sustained</p>
Officer [REDACTED]	<p>1. On August 25, 2014, at approximately 10:00 p.m., at [REDACTED], you ordered Mr. [REDACTED] to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained Mr. [REDACTED] without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].</p>	<p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>

**IV. APPLICABLE RULES AND LAWS**

**Rules**

1. Rule 5, CPD Rules of Conduct (prohibiting the failure to perform any duty).
2. Rule 6, CPD Rules of Conduct (prohibiting the disobedience of an order or directive).
3. Rule 8, CPD Rules of Conduct (prohibiting maltreatment).

**General Orders**

1. General Order G03-02-02, Force Options (Effective date: May 16, 2012; Rescinded March 11, 2015).

**Special Orders**

1. Special Order S03-02-02, Other Weapon Discharge Incidents (Effective date: June 14, 2012; Rescinded October 30, 2014).

**Federal Laws**

1. U.S. Constitution, Fourth Amendment

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**Municipal Ordinances**

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1. Municipal Code of Chicago, Section 8-4-010 (Disorderly Conduct)
2. Municipal Code of Chicago, Section 8-4-030 (Drinking on the Public Way)

**IV. INVESTIGATION<sup>3</sup>****a. Interviews<sup>4,5</sup>**

Officer ██████████ (“Officer ██████████”) gave an audio recorded statement on August 28, 2018.<sup>6</sup> Prior to the commencement of Officer ██████████ statement, COPA provided him with an opportunity to review the arrest report and his testimony from ██████████ criminal trial.<sup>7</sup> The following is a summary of Officer ██████████ statement.

When Officer ██████████ arrived on the scene, he noted that people were drinking on the sidewalk near the funeral parlor.<sup>8</sup> He stated that he was familiar with the scene of the incident and he noted that a funeral home owner there had reported problems with illicit drug transactions in front of his business. He acknowledged that he did not observe any narcotics sales at the site immediately prior to giving dispersal orders.<sup>9</sup>

Officer ██████████ and the other involved members got out of their car after ██████████ had disobeyed the dispersal orders and approached ██████████. ██████████ then dismounted his bicycle, assuming a “fighting stance” while simultaneously stating, “bust the move,” which Officer ██████████ understood as a sign that ██████████ wanted to hit him.<sup>10</sup> Officer ██████████ then grabbed at ██████████ at about the same time that ██████████ pushed him.<sup>11</sup>

Officer ██████████ was able to grab one of ██████████ arms and Officer ██████████ (“Officer ██████████”) grabbed the other, and both officers struggled to get ██████████ wrists together so that they could handcuff him.<sup>12</sup> While Officers ██████████ and ██████████ struggled with ██████████, Officer ██████████ (“Officer ██████████”) tasered ██████████ in the torso but the Taser had no apparent effect, and ██████████ was able to remove the Taser’s prongs.<sup>13</sup> Officer ██████████ stated that Officer ██████████ (“Officer ██████████”) was standing to Officer ██████████ west at the time of the

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<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> Despite repeated requests from COPA (see Attachments 30, 34, 40, and 60), ██████████ did not make himself available for an interview in connection with this investigation.

<sup>5</sup> ██████████ declined to be interviewed by COPA.

<sup>6</sup> Attachment 86 is an audio recording of that statement; Attachment 89 is a transcript.

<sup>7</sup> Attachment 43 is a copy of that transcript, which is summarized at Section V.A.8 above.

<sup>8</sup> *Id.*, p. 22, line 19, through p. 25, line 22.

<sup>9</sup> *Id.*, p. 24, lines 3 – 8.

<sup>10</sup> *Id.*, p. 28, line 4, through p. 29, line 14.

<sup>11</sup> *Id.*, p. 30, line 24, through p. 31, line 19.

<sup>12</sup> *Id.*, p. 31, line 21 through p. 33, line 8; p. 35, line 19, through p. 37, line 13.

<sup>13</sup> *Id.*, p. 37, line 14, through p. 40, line 16.

struggle, working to contain a crowd of ten or more people that had gathered at a place on the sidewalk that was close enough to observe the incident.<sup>14</sup> Other CPD officers then arrived and were able to get ██████ to his knees and to handcuff him.<sup>15</sup>

*Officer ██████*

Officer ██████ gave an audio recorded statement on July 30, 2018.<sup>16</sup> Prior to the commencement of Officer ██████ statement, COPA provided him with an opportunity to review the arrest paperwork and his testimony at ██████ criminal trial.<sup>17</sup> The following is a summary of Officer ██████ statement.

Officer ██████ stated that the involved officers asked the crowd gathered at the incident site to disperse because, “in that area ... we’ve made arrests for gambling, there’s been shootings. ... [T]hey sell narcotics in the area. I believe it was warmer that evening, just to kind of cool (inaudible) the sidewalk, so [there] wouldn’t be, maybe, future problems the rest of that evening.” Officer ██████ stated that the 011<sup>th</sup> District Commander at the time “was very big on” keeping sidewalks clear<sup>18</sup> and that “[i]t was one of his sticking points, keeping the corners clean, keeping the vacant lots [and] property in front of the buildings clean. Or ... congregating big groups, and that did, in fact, keep people from getting shot, people from getting robbed, people from gambling.”<sup>19</sup> Officer ██████ could not recall whether the officers had been ordered by superiors to clear the incident site on the evening in question,<sup>20</sup> but he stated that “it’s just part of what we do, as a tact team, just to keep the crowds from gathering too big.”<sup>21</sup>

Officer ██████ stated that ██████ would have been free to leave up until the point that ██████ took a fighting stance, stated “bust a move,” and pushed Officer ██████.<sup>22</sup> Officer ██████ and another officer each grabbed one of ██████ arms. The two of them struggled to get ██████ wrists together for handcuffing.<sup>23</sup> Officer ██████ then deployed a Taser at least twice to the front of ██████ body, below his head,<sup>24</sup> but that the Taser had no apparent effect.<sup>25</sup> Officer ██████ was standing to his west at the time of the struggle, containing a crowd.<sup>26</sup> Officer ██████ then employed a drive stun to ██████ front, again to no effect.<sup>27</sup> Meanwhile, other officers arrived and assisted in getting ██████ to his knees and to handcuff him.<sup>28</sup>

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<sup>14</sup> *Id.*, p. 33, line 21, through p. 35, line 14.

<sup>15</sup> *Id.*, p. 42, line 14, through p. 43, line 21.

<sup>16</sup> Attachment 79 is an audio recording of that statement; Attachment 88 is a transcript.

<sup>17</sup> Attachment 43 is a copy of that transcript, which is summarized at Section V.A.8 above.

<sup>18</sup> *Id.*, p. 13, line 18, through p. 14, line 4.

<sup>19</sup> *Id.*, p. 14, lines 9 – 15.

<sup>20</sup> *Id.*, p. 13, lines 6 - 11.

<sup>21</sup> *Id.*, p. 13, lines 12 – 13.

<sup>22</sup> *Id.*, p. 26, line 19, through p. 28, line 23.

<sup>23</sup> *Id.*, p. 27, line 5, through p. 30, line 14.

<sup>24</sup> *Id.*, p. 33, lines 3 -20.

<sup>25</sup> *Id.*, p. 33, line 21, through p. 34, line 17.

<sup>26</sup> *Id.*, p. 30, line 15, through p. 31, line 5.

<sup>27</sup> *Id.*, p. 35, line 20, through p. 36, line 24.

<sup>28</sup> *Id.*, p. 37, line 8, through p. 39, line 3.

Officer ██████ stated that he could not remember if a CPD supervisor was at the incident scene.<sup>29</sup> ██████ made no request for medical attention in his presence, and that it never occurred to him to request an ambulance for ██████.<sup>30</sup> Officer ██████ did not observe any injuries to ██████ skin.<sup>31</sup>

*Officer ██████*

Officer ██████ gave an audio recorded statement on July 31, 2018.<sup>32</sup> Prior to the commencement of his statement, COPA provided Officer ██████ with an opportunity to review his testimony from ██████ criminal trial the arrest paperwork, and his responses to interrogatories that ██████ served on CPD in a civil suit.<sup>33</sup>

Officer ██████ described the incident as involving Officer ██████ repeated requests for ██████ to “move along,” followed by ██████ disobedience of those orders.<sup>34</sup> Officer ██████ stated that Officer ██████ walked toward ██████ and reached for his hand, and that ██████ snatched his hand away and pushed Officer ██████.<sup>35</sup> Officer ██████ stated that Officer ██████ then tried to assist Officer ██████ in getting ██████ under control, while at the same time, ██████ struggled and refused to be handcuffed.<sup>36</sup> Officer ██████ stated that he then told ██████ to “calm down,” to “give them your hands,” and to “relax.”<sup>37</sup> Officer ██████ stated that when ██████ continued to struggle and then pulled away from Officer ██████, he displayed his Taser and said to ██████, “Hey look, you either comply with these guys, or I’m going to have to tase you.”<sup>38</sup> Officer ██████ stated that ██████ continued to struggle, that he then shouted, “Taser, Taser, Taser,” prior to deployed it.<sup>39</sup> According to Officer ██████, ██████ then removed the Taser’s prongs from his body.<sup>40</sup> Officer ██████ stated that he deployed his Taser again, and that ██████ then removed the prongs again.<sup>41</sup> According to Officer ██████, ██████ then grabbed Officer ██████ wrist and stated, “I eat this shit.”<sup>42</sup> Officer ██████ stated that he continued to deploy his Taser upon ██████, utilizing drive stuns, until ██████ was handcuffed.<sup>43</sup> Officer ██████ acknowledged that he deployed his Taser at least seven times.<sup>44</sup> Officer ██████ stated that he had no memory of seeing a CPD supervisor at the scene.<sup>45</sup> He acknowledged that he himself did

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<sup>29</sup> *Id.*, p. 39, lines 10 – 19.

<sup>30</sup> *Id.*, p. 45, lines 11 - 15.

<sup>31</sup> *Id.*, p. 41, lines 4 – 19.

<sup>32</sup> Attachments 80 and 81 are audio recordings of Parts 1 and 2 (of 2) of that statement; Attachment 90 is a transcript.

<sup>33</sup> Attachment 43 is a copy of that transcript, which is summarized at Section V.A.8 above

<sup>34</sup> *Id.*, p. 23, lines 2 – 23.

<sup>35</sup> *Id.*, p. 23, lines 15 – 23.

<sup>36</sup> *Id.*, p. 25, line 6, through p. 26, line 20.

<sup>37</sup> *Id.*, p. 26, line 21, through p. 27, line 3; p. 44, lines 7 – 10; p. 45, line 21, through p. 46, line 3.

<sup>38</sup> *Id.*, p. 26, line 22, through p. 27, line 23.

<sup>39</sup> *Id.*, p. 27, lines 4 – 8; p. 46, lines 6 – 8.

<sup>40</sup> *Id.*, p. 27, line 9.

<sup>41</sup> *Id.*, p. 27, line 11, through p. 28, line 14.

<sup>42</sup> *Id.*, p. 30, lines 20 – 23; p. 49, lines 8 – 19; p. 50, line 22, through p. 51, line 1.

<sup>43</sup> *Id.*, p. 28, line 15, through p. 32, line 18; p. 47, line 23, through p. 50, line 4.

<sup>44</sup> *Id.*, p. 32, lines 33 – 35.

<sup>45</sup> *Id.*, p. 35, lines 5 – 12.

not call for a supervisor.<sup>46</sup> Officer ██████ stated that it did not occur to him to call for an ambulance for ██████ because ██████ did not seem to be in any distress.<sup>47</sup>

***Officer ██████***

Police Officer ██████ gave an audio recorded statement on July 31, 2018.<sup>48</sup> The following is a summary of her statement.

Officer ██████ stated that she observed a crowd that had gathered at the incident scene begin to disperse as soon as the involved members pulled up to the site.<sup>49</sup> Officer ██████ stated that she then got of the officers' vehicle and told those present, "Okay, let's go, let's go," following behind that crowd to ensure that it continued moving westbound on ██████.<sup>50</sup> When asked why she said, "Let's go, let's go," Officer ██████ stated, "Because, I observed a large crowd out loitering."<sup>51</sup> She also stated, "That particular block, we get a lot of complaints from the [funeral home owner]. We would get a lot of community concern complaints from them of the noise, the gambling, the drinking, things of that sort. So, for us, well, for me, it's known that, okay, the, the people that live there complain about the noise, from the folks that are loitering that don't live in the area."<sup>52</sup> Officer ██████ stated that she observed ██████ assume a fighting stance with his fists clenched and raised,<sup>53</sup> and that she then saw Officer ██████ grab ██████ wrist.<sup>54</sup> She stated that she saw ██████ pull away, and that Officer ██████ then joined Officer ██████ in struggling to gain control of ██████.<sup>55</sup> Officer ██████ stated that she then moved towards the struggle, but that she moved back to the west to control the crowd after she saw that Officers ██████ and ██████ had gained hold of ██████ arms.<sup>56</sup> Officer ██████ stated that she then made a radio call for assistance at Officer ██████ direction,<sup>57</sup> and that shortly thereafter assisting officers arrived to assist in handcuffing ██████.<sup>58</sup>

**a. Documentary Evidence**

***Original Case Incident Report<sup>59</sup>***

In the Original Case Incident Report ("OCIR") relating to the incident,<sup>60</sup> Officer ██████ described the incident in question as follows:

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<sup>46</sup> *Id.*, p. 35, lines 13 – 15.

<sup>47</sup> *Id.*, p. 35, lines 16 – 21.

<sup>48</sup> Attachment 82 is an audio recording of that statement; Attachment 87 is a transcript.

<sup>49</sup> *Id.*, p. 18, line 14, through p. 19, line 22.

<sup>50</sup> *Id.*, p. 18, lines 14 – 22.

<sup>51</sup> *Id.*, p. 20, lines 18 – 21.

<sup>52</sup> *Id.*, p. 21, lines 7 – 15.

<sup>53</sup> *Id.*, p. 24, line 14, through p. 25, line 4.

<sup>54</sup> *Id.*, p. 25, lines 14 – 17.

<sup>55</sup> *Id.*, p. 25, line 18, through p. 27, line 9.

<sup>56</sup> *Id.*, p. 27, line 4, through p. 28, line 4.

<sup>57</sup> *Id.*, p. 28, lines 2 – 11.

<sup>58</sup> *Id.*, p. 28, lines 13 – 17.

<sup>59</sup> The Arrest Report related to the incident describes the incident substantially the same as the described in the OCIR.

<sup>60</sup> Attachment 10.

[Reporting Officers] ... observed several males/females drinking/loitering at [REDACTED] which is a known narcotics area. R/Os gave above citizens an order to disperse. [REDACTED] refused to leave the scene after he was given 2 orders to disperse. R/Os exited the vehicle and approached [REDACTED]. At this time [REDACTED] was told twice more to disperse. [REDACTED] got off his bike after the last order to disperse, got into a fighting stance and yelled “bust a move!” R/Os being in fear or receiving a battery attempted to place [REDACTED] in custody. While trying to place [REDACTED] in handcuffs [REDACTED] began to actively resist by pushing P.O. [REDACTED] # [REDACTED], continuing to walk away from R/Os, and then stiffening his arms trying to defeat the arrest. P.O. [REDACTED] # [REDACTED] deployed Taser ... striking [REDACTED]. [REDACTED] was also dry [sic]<sup>61</sup> stunned by P.O. [REDACTED]. The Taser and dry [sic] stunning had no apparent effect. Eventually other police officers arrived on scene to help to place [REDACTED] in custody. [REDACTED] was taken to the ground and continued to kick his legs and stiffened his arms. [REDACTED] was controlled and transported to the 011<sup>th</sup> District for further processing.

The OCIR also lists each of the involved members and three other non-supervisory CPD members, apparently documenting their involvement in the incident as arresting officers. The OCIR does not reflect the presence of a supervisor or the presence of emergency medical personnel at the incident scene, nor does it document the making of any request for the same.

#### *Evidence Sync Device Report* <sup>62</sup>

An Evidence Sync Device Report shows that Officer [REDACTED] deployed a Taser during the incident, triggering the device on seven occasions over the course of a minute and eighteen seconds.

#### *Tactical Response Report* <sup>63</sup>

In a Tactical Response Report relating to the incident, Officer [REDACTED] reported the Taser deployment. In the report’s review section, Lt. [REDACTED] found, based on the information available to him, that Officer [REDACTED] actions were in compliance with CPD procedures and directives. Lt. [REDACTED] noted that [REDACTED] refused to be interviewed concerning the Taser deployment. Lt. [REDACTED] also wrote that “[t]he officers repeatedly asked the offender to disperse from an area and he repeatedly refused to comply. The officers went to take the offender into custody at which time he assumed a fighting stance against one of the officers placing that officer in fear of being battered by the offender.”

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<sup>61</sup>Apparently should be “drive.” A “drive stun” is a Taser deployment involving holding the device against a subject while applying energy. See Special Order S03-02-02, *Other Weapon Discharge Incidents* (Effective date: June 14, 2012; Rescinded October 30, 2014), Section IV.1.d(2)(a).

<sup>62</sup> Attachment 26.

<sup>63</sup> Attachment 6.

*Photographs*<sup>64 65</sup>

Arrest photographs depicting █████ arms and face show no apparent injuries. Additional Photographs appear to show a number of small, circular wounds to █████ chest and back, apparently resulting from Taser punctures.

*Medical Records*<sup>66</sup>

Medical Records of █████<sup>67</sup> show that █████ was examined on August 26, 2014. The records reveal neither any physical injury nor any complaint of injury.

**b. Digital Evidence***Office of Emergency Management Communications (“OEMC”) Audio*<sup>68</sup>

An audio recording of OEMC radio traffic relating to the incident shows that (1) at approximately 10:02 p.m. on the date of the incident, an officer assigned to Beat █████ (subsequently determined to be Officer █████) requested an assist car for a street stop at the intersection of █████; (2) seconds later, Beats █████ and █████ responded, informing OEMC that they would provide the requested assistance; (3) approximately sixty seconds later, Beat █████ radioed to “give a slowdown;” (4) after approximately another sixty seconds, Beat █████ radioed, “Get a wagon over here;” (5) almost two minutes later, Beat █████ radioed, “Can you get a rush on that wagon please?;” (6) at approximately 10:12 p.m., Beat █████ radioed, “Thanks for the awesome response – we’re going in;” and (7) immediately thereafter, Beat █████ (subsequently determined to be Officer █████) informed OEMC that he had deployed a Taser at the incident scene and that no ambulance was needed.

**V. 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.

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<sup>64</sup> Attachments 16 – 20.

<sup>65</sup> Attachment 56.

<sup>66</sup> Attachment 55.

<sup>67</sup> Attachment 55.

<sup>68</sup> Attachment 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 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.

## VI. ANALYSIS

### a. *Order to Disperse*

The Municipal Code of Chicago<sup>69</sup> provides that a person engages in disorderly conduct when that person knowingly:

Fails to obey a lawful order of dispersal by a peace officer who has identified himself as such, or is otherwise reasonably identifiable as such, issued under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are *likely to cause substantial harm (emphasis added)* [. . .]

As part of a group consuming alcohol on the sidewalk, ██████ refusal to follow the Officers' orders of dispersal was itself possibly an act of disorderly conduct.<sup>70</sup> For instance, during his interview Officer ██████ referenced past problems in the area and inferred a heightened likelihood of danger. Nevertheless, we find that the available evidence is inconclusive as to whether the officers had a reasonable belief that the group was committing acts likely to cause substantial harm.

Additionally, The Municipal Code of Chicago also provides that a person commits disorderly conduct when they "[appear] in any public place manifestly *under the influence of alcohol*, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property or annoy persons in his vicinity." Furthermore, a different section of The Municipal Code of Chicago also provides:

"It shall be unlawful for any person to drink any alcoholic liquor as defined by law on any public way [. . .]"<sup>71</sup>

In this case, ██████ was on a city sidewalk (a public way) with a group of individuals who were consuming alcohol beverages. However, it is unclear from the available evidence if ██████

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<sup>69</sup> MCC 8-40-010

<sup>70</sup> In violation of Chicago, Ill. Mun. Code 8-4-010 (d)

<sup>71</sup> MCC 8-4-030

was consuming alcohol along with the group, or if the officers reasonably believed [REDACTED] to be manifestly under the influence, both of which would have been illegal in this case.

Officers [REDACTED], [REDACTED], and [REDACTED] ordered [REDACTED] and the rest of the group to leave the area. We find that an order of dispersal by an officer directed towards a group of individuals unlawfully drinking alcohol on the sidewalk, or individuals that are manifestly under the influence of alcohol in public, would be a lawful order to discontinue such unlawful acts. Considering that we are unable to determine from the available evidence if [REDACTED] was consuming alcohol or was if he was intoxicated, or if any officer reasonable believe as such, we are unable to determine if the order to disperse was proper against [REDACTED].

For these reasons, COPA reached a finding of not sustained for allegation 1 against officers [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

**b. [REDACTED] Detainment**

The Supreme Court has held that a detainment is seizure under the 4<sup>th</sup> amendment.<sup>72</sup> A person is "seized" only when, by means of physical force or a show of authority, his freedom of movement is restrained.<sup>73</sup>

Prior to being approached, [REDACTED] was not physically restrained or restricted in his movement. Equally important, the officers gave [REDACTED] verbal commands to disperse, something we find to be the antithesis of detainment. When considering these factors, we find that [REDACTED] was not initially detained by the officers.

After [REDACTED] refused an order to leave the area the officers exited their vehicles and continued to order [REDACTED] to disperse. The involved members' descriptions of that enforcement conduct<sup>74</sup> involved their exit from their vehicle followed by their approach to [REDACTED]. Again, telling [REDACTED] to leave cannot logically be considered a seizure. Therefore, we find that [REDACTED] was not seized at this point.

During their interviews, multiple officers, including officer [REDACTED], told investigators that [REDACTED] took a fighting stance and acted aggressively towards Officer [REDACTED] upon Officer [REDACTED] approach, which is something a reasonable officer in Officer [REDACTED] position could have interpreted as an assault. It is at this point Officer [REDACTED], along with assisting officers, first detained [REDACTED] by grabbing him. This is also the point at which we find Officer [REDACTED] first had grounds to detain [REDACTED] for assault.

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<sup>72</sup> *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)

<sup>73</sup> *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980): "[A] person has been 'seized' within the meaning of the Fourth Amendment ... if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers... or the use of language or tone of voice indicating that compliance with the officer's request might be compelled."

<sup>74</sup> As described in Officer [REDACTED] reports, in their trial testimony, and in their statements.

For the above reasons, COPA reached a finding of exonerated for allegation 2 against the involved officers.

c. *Excessive Force*

Allegation 3 against the involved members is that they used excessive force in effecting [REDACTED] arrest. COPA finds that the investigation lacks clear and convincing evidence as to whether the officers' use of force against [REDACTED] was proper.

The evidence shows that [REDACTED] sustained no injury except for Taser wounds as a result of his arrest. In fact, taser download reports indicate that Officer [REDACTED] deployed his taser numerous times against [REDACTED], something Officer [REDACTED] agreed with during his interview. Another CPD directive then in effect does not prohibit an officer from using repeated and consecutive Taser deployments, including a drive stun, if necessary, to gain control of an individual.<sup>75</sup> In other words, Officer [REDACTED] repeated use of his taser against [REDACTED] could be permissible under CPD policy depending on [REDACTED] level of resistance. However, we are unable to determine [REDACTED] level of resistance. While there is ample evidence of the Officers' perceptions, we find that when considering the absence of [REDACTED] interview, along with the fact that there is no known video evidence, that there is insufficient evidence to determine [REDACTED] level of resistance, and therefore, whether the Officer's force use against [REDACTED] was proper. Accordingly, allegation 3 against the involved members is not sustained.

d. *Request for Medical Personnel*

The evidence demonstrates that Officer [REDACTED] failed to request supervisor and medical personnel to respond to the scene as alleged in Allegations 4 and 5.

An audio recording of OEMC radio traffic relating to the incident demonstrates that Officer [REDACTED] immediately informed OEMC that he had deployed a Taser at the incident scene. However, that recording also shows that Officer [REDACTED] informed OEMC that [REDACTED] did not require an ambulance, notwithstanding the directive's express provision requiring a Taser-deploying officer to request the assignment of emergency medical personnel by OEMC under the circumstances presented by this incident.<sup>76</sup> Additionally, that same audio recording includes no evidence showing that Officer [REDACTED] made a request for the presence of a supervisor at the scene as required by the same directive.<sup>77</sup> The OICR and Arrest Report contain no documentation showing the presence of a supervisor at the scene or showing that a request for a supervisor was made. Those same documents list a number of CPD members who were at the incident scene and who participated in [REDACTED] arrest, and none of those listed members was a

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<sup>75</sup> Special Order S03-02-02, Other Weapon Discharge Incidents (Effective date: June 14, 2012; Rescinded October 30, 2014), Section IV.A.1.d.

<sup>76</sup> See CPD Special Order S03-02-02, *Other Weapon Discharge Incidents* (Effective date: June 14, 2012; Rescinded October 30, 2014), Section IV.A.2 ("The member who field deployed the Taser will ... immediately, upon gaining control and restraining the subject ... request that OEMC assign emergency medical personnel when ... the Taser probes were discharges and penetrated a subject's skin" or when "an electrical current from the Taser was applied to the subject's body").

<sup>77</sup> See *Id.*, Section IV.A.3.a.1.b. ("A member who deploys or anticipates the deployment of a Taser will request that a supervisor respond to the scene.")

supervisor. Finally, during their statements, each of the involved members denied having any memory of seeing a supervisor at the incident scene. Under the circumstances, the absence of any evidence showing the presence of a supervisor or showing that Officer ██████ made a request for the presence of a supervisor as required by the applicable CPD directive then in effect is persuasive evidence that Officer ██████ likely made no such request. Accordingly, our finding that Officer ██████ failed to request a supervisor to the scene and failed to request the dispatch of an ambulance resulted in sustained findings for Allegations 4 and 5 against Officer ██████.

**VI. DISCIPLINARY RECOMMENDATIONS**

**a. Officer ██████**

**i. Complimentary and Disciplinary History:** Superintendents Honorable Mention, 2; Deployment Operations Center Award, 1; Emblem of Recognition – Physical Fitness, 2; Presidential Election Deployment Award 2008, 1; Honorable Mention, 79; Complementary Letter, 4; NATO Summit Service Award, 1; 2009 Crime Reduction Award, 1; Department Commendation, 1; and a 2004 Crime Reduction Award, 1. Officer ██████ has a single SPAR from April of 2019 related to improper indebtedness to the City of Chicago.

**ii. Recommended Penalty, by Allegation**

**Allegation No. 4:** At the same time and place, after you deployed a Taser, you failed to request that a supervisor respond to the scene. **Penalty:** Reprimand.

**Allegation No. 5:** At the same time and place, after you deployed a Taser, during which deployment an electrical current was applied to the body of Mr. ██████, you failed to request that OEMC assign medical personnel to the scene. **Penalty:** Reprimand.

**VII. CONCLUSION**

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

Member	Allegation	Finding/ Recommendation
Officer ██████	1. On August 25, 2014, at approximately 10:00 p.m., at ██████, you ordered Mr. ██████ to leave the vicinity without lawful authority.	Not Sustained

	<p>2 At the same time and place, you detained [REDACTED] without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].</p> <p>4. At the same time and place, after you deployed a Taser, you failed to request that a supervisor respond to the scene.</p> <p>5. At the same time and place, after you deployed a Taser, during which deployment an electrical current was applied to the body of Mr. [REDACTED], you failed to request that OEMC assign medical personnel to the scene.</p>	<p>Exonerated</p> <p>Not Sustained</p> <p>Sustained / Reprimand</p> <p>Sustained / Reprimand</p>
<p>Officer [REDACTED]</p>	<p>1. On August 25, 2014, at approximately 10:00 p.m., at [REDACTED], you ordered [REDACTED] to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained Mr. [REDACTED] without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].</p>	<p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<p>1. On August 25, 2014, at approximately 10:00 p.m., at [REDACTED], you ordered Mr. [REDACTED] to leave the vicinity without lawful authority.</p> <p>2 At the same time and place, you detained Mr. [REDACTED] without lawful authority.</p> <p>3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].</p>	<p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<p>1. On August 25, 2014, at approximately 10:00 p.m., at [REDACTED], you ordered Mr. [REDACTED] to leave the vicinity without lawful authority.</p>	<p>Not Sustained</p>

2 At the same time and place, you detained Mr. [REDACTED] without lawful authority.

Exonerated

3 At the same time and place, you used excessive force in effecting the arrest of Mr. [REDACTED].

Not Sustained

Approved:

[REDACTED]

August 28, 2019

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Andrea Kersten  
*Deputy Chief Investigator*

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Date

Appendix A

Assigned Investigative Staff

<b>Squad#:</b>	Squad █
<b>Investigator:</b>	██████████
<b>Supervising Investigator:</b>	██████████████████
<b>Deputy Chief Administrator:</b>	Andrea Kersten