

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	18 May 2019 / 12:55 p.m. / [REDACTED]
Date/Time of COPA Notification:	10 January 2020 / 04:10 p.m.
Involved Officer #1:	[REDACTED] ¹ Star # [REDACTED], Employee # [REDACTED], Appointed [REDACTED] 1992, Police Officer, Unit [REDACTED], Born [REDACTED] 1968, Female, White
Involved Officer #2:	[REDACTED] Star # [REDACTED] Employee # [REDACTED], Appointed [REDACTED] 2004, Police Officer, Unit [REDACTED], Born [REDACTED] 1977, Male, Hispanic
Involved Officer #3:	[REDACTED] Star # [REDACTED] Employee # [REDACTED], Appointed [REDACTED] 1999, Police Officer, Unit [REDACTED], Born [REDACTED] 1972, Male, Hispanic
Involved Individual #1:	[REDACTED] Born 1973, Female, White
Involved Individual #2	[REDACTED] Born 1969, Male, Black
Case Type:	First Amendment Violation, False Arrest, Racial Profiling

I. ALLEGATIONS

Officer	Allegation	Finding/ Recommendation
Officer [REDACTED]	It is alleged that, on or about 18 May 2019, at approximately 12:55 pm, at or near [REDACTED] Avenue, the accused committed misconduct in that: 1. she violated the complainant’s First Amendment rights when she removed someone else’s sign; and,	Unfounded

¹ The complainant originally named the third accused officer as Officer [REDACTED] (a male), but also described the officer as female. After reviewing the complainant’s statement and other evidence, COPA determined the target of the allegations was actually Officer [REDACTED]

	<p>2. she failed to assist the complainant’s family after her arrest.</p>	<p>Unfounded</p>
<p>Officer [REDACTED]</p>	<p>It is alleged that, on or about 18 May 2019, at approximately 12:55 pm, at or near [REDACTED] Avenue, the accused committed misconduct in that:</p> <ol style="list-style-type: none"> 1. he violated the complainant’s First Amendment rights when she removed someone else’s sign; 2. he failed to assist the complainant after an assault; 3. he failed to take the complainant’s report of her assault and her resultant injuries; 4. he subjected the complainant to racial profiling; 5. he threatened to arrest the complainant without justification; 6. he arrested the complainant without probable cause; 7. he failed to follow Departmental procedures when placing the complainant under arrest; 8. he failed to make proper arrest and case reports; 9. he used abusive and racist language; and, 10. he engaged in conduct that constitutes intentional infliction of emotional distress. 	<p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p> <p>Exonerated</p> <p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p> <p>Unfounded</p>
<p>Officer [REDACTED]</p>	<p>It is alleged that, on or about 18 May 2019, at approximately 12:55 pm, at or near [REDACTED] Avenue, the accused committed misconduct in that:</p> <ol style="list-style-type: none"> 1. he violated the complainant’s First Amendment rights when she removed someone else’s sign; 	<p>Unfounded</p>

	2. he failed to assist the complainant after an assault;	Unfounded
Officer [REDACTED] (continued)	3. he failed to take the complainant’s report of her assault and her resultant injuries; and,	Exonerated
	4. he subjected the complainant to racial profiling.	Exonerated

II. SUMMARY OF EVIDENCE²

The evidence shows that, on the date of the incident, the complainant, Dr. [REDACTED] was traveling in her personal vehicle with her husband and minor daughter. While stopped at an intersection, she observed a man ([REDACTED]) hang a sign on a lamppost. The sign read, “IF YOU ARE NOT HIRING OUR OWN AMERICANS THEN YOU ARE NOT HELPING!”³ Offended, [REDACTED] exited her vehicle and removed the sign. [REDACTED] approached her and attempted to retrieve the sign. A physical altercation ensued. [REDACTED] kicked [REDACTED] multiple times and cried out for help. Eventually, [REDACTED] retreated. Several witnesses on the scene corroborated the above occurred.

Dr. [REDACTED] told the officers [REDACTED] attacked her after she removed his sign from the lamppost. Officer [REDACTED] informed [REDACTED] that she “had no right to take down the sign in the first place.”⁴ [REDACTED] replied, “Look, this city is full of people from other countries.”⁵ Officer [REDACTED] interrupted, “And they’re Americans! You’re being racist, Ma’am, because you’re saying all Americans have to look a certain way!”⁶ Officer [REDACTED] added that, if [REDACTED] is ever offended by another sign, she should move along and avoid reading it. [REDACTED] argued with the officers over the meaning of the sign and the scope of free expression. Officer [REDACTED] redirected the conversation back to the incident, saying that he only wanted to explain to [REDACTED] how she might have avoided the conflict.⁷

[REDACTED] showed the officers the injury on her thumb and they asked if she needed an ambulance, to which she declined.⁸ [REDACTED] asked the officers if they were going to arrest [REDACTED] Officer [REDACTED] encouraged [REDACTED] to drop the matter, but [REDACTED] continued to demand that the officers

² COPA conducted a full and complete investigation of this matter, including interviews with 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 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.

³ Att. 14.

⁴ Att. 7.

⁵ *Id.*

⁶ *Id.*

⁷ See att. 14

⁸ Att. 7.

take action.⁹ Officer ██████ stated, ““You’re the instigator here, so if I end up arresting anybody today, it’s gonna be you.””¹⁰ ██████ was placed under arrest. Officer ██████ then spoke to ██████ again and encouraged him to drop the matter, but ██████ stated that he wanted to press charges.¹¹

Officer ██████ returned to his police vehicle and on the way to the station he informed ██████ that she would be charged with misdemeanor battery. Meanwhile, Officer ██████ and ██████ spoke to ██████ husband and minor daughter. Officer ██████ informed them that ██████ had been arrested and left the scene. Officer ██████ remained and provided the address of the police station and additional details about the arrest process.¹²

██████ accused the three officers of multiple acts of misconduct, including neglect of duty, racial profiling, and unlawful arrest.

III. ANALYSIS AND CONCLUSION

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.¹³ 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

⁹ See att. 14.

¹⁰ *Id.*

¹¹ *Id.*

¹² Att. 15.

¹³ 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).

offense.¹⁴ 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.”¹⁵

A. There is clear and convincing evidence that the accused officer(s) did not violate the complainant’s First Amendment rights.

██████████ claimed Officers ██████████ and ██████████ of violated her expressive rights. In support of this accusation, she pointed to several instances where all three officers implied, she was wrong to remove ██████████ sign. While it is true the officers gently rebuked ██████████ for removing the sign, their doing so does not constitute an encroachment of First Amendment rights.

B. There is clear and convincing evidence that the accused officer(s) did not fail to assist the complainant or her family.

██████████ alleged Officers ██████████ and ██████████ failed to render aid to her after she sustained injuries during an assault. In support of this accusation, ██████████ claimed the officers persistently failed to acknowledge or examine her injuries. On the contrary, ██████████ own statement acknowledges that the officers offered to call an ambulance for ██████████ but she refused treatment. The officers’ also documented ██████████ injuries in the arrest report.

██████████ also alleged that Officer ██████████ “failed to assist” because she informed ██████████ husband that ██████████ would be arrested without providing additional information. However, video evidence clearly establishes that Officer ██████████ provided thorough details about the arrest process to ██████████ husband while still on the scene.

C. There is clear and convincing evidence that the accused officer(s) did not fail to take the complainant’s report of an assault and resultant injuries.

For the same reasons already discussed above, the evidence firmly refutes ██████████ allegations that the officers failed to make proper reports. Both the arrest report and the case incident report document ██████████ claims of injuries. The documents also acknowledge ██████████ claim that ██████████ assaulted her.

D. There is clear and convincing evidence that the accused officer(s) did not subject the complainant to racial profiling.

██████████ complained that Officers ██████████ and ██████████ subjected her to racial profiling. In support of her claim, she pointed to comments by the officers about how ██████████ interpretation of ██████████ sign might reflect her own racial bias. Racial profiling occurs when officers use race or color to justify “routine or spontaneous law enforcement decisions.”¹⁶ The officers’ mere comments (however critical they may be) do not constitute a law enforcement decision. ██████████ complaint has therefore failed to allege racial profiling on its face.

¹⁴ See, e.g., *People v. Coan*, 2016 Ill. App 2d 151036 (2016).

¹⁵ *Id.* at ¶ 28.

¹⁶ General Order G02-04.

E. There is clear and convincing evidence that the accused officer(s) did not make unjustified threats of arrest to the complainant.

██████████ alleged that Officer ██████████ made unjustified threats of arrest against her. ██████████ did warn ██████████ that, in light of conflicting testimony he had received from disinterested witnesses, his investigation into her dispute with ██████████ might lead to her arrest. That observation does not constitute a threat.

F. There is clear and convincing evidence that the accused officer(s) had probable cause to arrest the complainant.

██████████ alleged that Officer ██████████ placed her under arrest without probable cause. However, there is ample evidence to support a firm and abiding belief that Officer ██████████ acted within the bounds of the law and departmental policy throughout the incident. With the assistance of his fellow officers, ██████████ undertook a thorough investigation. In this case, several witnesses contradicted ██████████ claims and explicitly identified her as the assailant in the incident. Furthermore, there were no *disinterested* witnesses who were willing to attest to ██████████ version of the events. ██████████ also stated that he wanted to press charges. Considering all these factors, it is clear that Officer ██████████ had probable cause to arrest ██████████

G. There is clear and convincing evidence that the accused officer(s) did not fail to follow departmental procedures during the complainant's arrest.

██████████ claimed that Officer ██████████ did not follow departmental procedures during her arrest. In support of the allegation, ██████████ stated that she did not learn she was under arrest until she asked the officer where he was taking her. However, the Department's field arrest procedures do not require officers to make a formal declaration that an investigatory detention has been elevated to an arrest. Instead, the policies provide only that officers must "transport an arrestee [] to [an] appropriate" CPD facility immediately after making an arrest.¹⁷ That is exactly what ██████████ did. Therefore, there is clear and convincing evidence that ██████████ followed the Department's arrest procedures.

H. There is clear and convincing evidence that the accused officer(s) did not fail to make proper arrest and case incident report.

██████████ also claimed that Officer ██████████ failed to make proper reports about the incident. As has already been discussed above, the deficiencies which ██████████ put forward in support of this actually are not actually present. For instance, she stated that Officer ██████████ omitted any reference to her injuries, but *both* reports acknowledge that ██████████ claimed to have been injured during the altercation with ██████████. And video from officer BWCs provides shows conclusively that ██████████ provided an honest and thorough (if still concise) transcription of the events in his paperwork.

¹⁷ General Order G06-01-01.

I. There is clear and convincing evidence that the accused officer(s) did not use abusive or racist language.

Officer ██████ alleged that Officer ██████ used abusive language to demean her ethnic or racial identity. In support of her claim, she pointed to a statement in which the officer argued that ██████ interpretation of the sign reflected her own racial bias. As has already been discussed, ██████ discussion of the sign and ██████ reaction to it was an attempt to deescalate the conflict with an appeal to reason and reflection. Video evidence makes clear that ██████ never used profanity and never demeaned anyone’s ethnic or racial identity.

J. There is clear and convincing evidence that the accused officer(s) did not engage in tortious conduct during the complainant’s arrest.

Finally, ██████ alleged that Officer ██████ actions towards her constitute intentional infliction of emotional distress (“IIED”). IIED is a type of tort and has nothing to do with CPD policy. Besides, even if, for the sake of argument, an IIED claim against a CPD officer automatically constitutes a claim of police misconduct, it is absolutely clear that no such claim can prevail here: *i.e.*, to satisfy the requirements of IIED, a complainant must show that the accused engaged in “conduct” that is “truly extreme and outrageous.”¹⁸ In this case, Officer ██████ consistently ensured his actions were within the bounds of law and policy throughout the course of ██████ arrest. Thus, it cannot be said anything he did was extreme or outrageous. For this reason, COPA finds the final allegation against Officer ██████ is unfounded.

For the reasons set forth above, **COPA finds allegation #6 against Officer ██████ is EXONERATED and all remaining allegations against the three accused officers are UNFOUNDED.**

Approved:



6-26-2020

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

¹⁸ *Schweih's v. Chase Home Finance*, 2016 IL 120041 ¶ 50 (2016).

Appendix A

Assigned Investigative Staff

Squad#:	█
Investigator:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	Angela Hearts-Glass