

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	4534 N Artesian Ave
Date/Time of COPA Notification:	February 23, 2018 ¹
Involved Officer #1:	Elliot Tupayachi, Star # 18875, Employee ID# [REDACTED], Date of Appointment: September 13, 1999; Rank: PO, Unit of Assignment: 019, DOB: [REDACTED] 1971; Male; Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1989; Female; Hispanic
Case Type:	Excessive Force; Verbal Abuse

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Elliot Tupayachi	1. On or about January 28, 2018 at approximately 5:00 AM, at or near the District 19 police station, Officer Tupayachi physically pushed [REDACTED] without cause.	Not Sustained
	2. On or about January 28, 2018 at approximately 5:00 AM, at or near the District 19 police station, Officer Tupayachi struck [REDACTED] in her face without cause.	Not Sustained
	3. On or about January 28, 2018 at approximately 5:00 AM, at or near the District 19 police station, Officer Tupayachi made derogatory remarks about [REDACTED] [REDACTED] weight	Not Sustained
	4. On or about January 28, 2018 at approximately 5:00 AM, at or near the District 19 police station, Officer Tupayachi	Not Sustained

¹ It should be noted that this case was closed on March 30, 2018 due to the complainant not giving a statement to COPA. See Att. 11. In her statement to COPA, [REDACTED] related that she canceled her statement to COPA because her criminal case was still pending. The case was reopened on May 25, 2018, when the complainant requested to provide a statement after her criminal case was resolved.

placed handcuffs to tightly on [REDACTED]
[REDACTED] wrists, causing injury

II. SUMMARY OF EVIDENCE²

On January 28, 2018, [REDACTED] was driving on Western avenue near Montrose, when she swerved to miss a pothole. [REDACTED] was subsequently pulled over by Officer Elliot Tupayachi. In [REDACTED] statement to COPA,³ she related that when Officer Tupayachi asked for her identification and insurance, she attempted to show him her insurance information on her phone. According to [REDACTED] he found this method unacceptable. Officer Tupayachi told her that her eyes were glassy, and her speech was not making sense. He then arrested her for driving under the influence of alcohol. Officer Tupayachi then called for two female officers to bring [REDACTED] to the police station. Unbeknownst to [REDACTED] at the time, her license was suspended for unpaid tickets. When [REDACTED] exited her vehicle, the officer handcuffed her. [REDACTED] complained that the handcuffs were too tight. [REDACTED] was taken to the station where she was given a breathalyzer test and a sobriety test by a different officer, now known as Officer Timothy Walter. According to [REDACTED] while she was in the holding room, Officer Tupayachi sat in the room with her while he filled out her processing paperwork. During this time, Officer Tupayachi made fun of her weight, asking her if she was “in the military, why [is she] so fat?” [REDACTED] also alleged that later, while she was still handcuffed Officer Tupayachi pushed her into a table and struck her across the face with a closed fist. [REDACTED] claimed two male officers witnessed this altercation. After an extensive search,⁴ COPA was unable to locate two male officers, matching the description given by [REDACTED] that were present in the station that evening. [REDACTED] stated she called her friend [REDACTED] from the station and told her that she was struck by Officer Tupayachi. COPA was unable to contact her.⁵ After she was released, [REDACTED] stated that her mother noticed a bruise on her eye, but neither [REDACTED] nor her mother took pictures of the injury. Despite repeated attempts by COPA to speak with her, [REDACTED] mother did not give a statement to COPA⁶.

Officer Tupayachi gave a statement to COPA on May 27, 2020.⁷ In his statement, Officer Tupayachi confirmed he pulled [REDACTED] over for erratic driving and arrested her for driving on a suspended license and driving under the influence of alcohol. During the arrest, [REDACTED] was upset at being arrested. Officer Tupayachi stated that it was his belief that she wanted special treatment due to her status as military personnel and was angry that she was not receiving that special treatment. Officer Tupayachi stated that she was transported to the district by two female officers. While at the district Officer Walter conducted her sobriety test. Officer Tupayachi stated that this was because he believed she would be more cooperative with him and as a non-arresting officer, and his observations during the test were less subject to bias. Officer Tupayachi stated that he and [REDACTED] were together in the processing room for about an hour or an hour and a half. [REDACTED] was handcuffed to a rail and Officer Tupayachi was finishing paperwork. Officer Tupayachi denied pushing or striking [REDACTED] He stated the only physical altercation occurred when [REDACTED] grabbed

²COPA 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.

³ Att. 13

⁴ Att. 41

⁵ Att. 41

⁶ Att. 41

⁷ Att. 37

something that was on the table where she was sitting. Officer Tupayachi grabbed her hand and removed the object from her hand. He stated that he did not push or strike her during this altercation. Officer Tupayachi also denied using insulting or derogatory language towards [REDACTED]. Officer Tupayachi did not recall [REDACTED] complaining about her handcuffs.

COPA also interviewed Officer Marie Freson⁸ and Officer Timothy Walter.⁹ Officer Freson is one of the female officers who transported [REDACTED] to the district station. Officer Freson did not recall [REDACTED] making any complaints or comments about Officer Tupayachi during her time with her but stated [REDACTED] was agitated on the ride to the station. Officer Freson recalled taking [REDACTED] to the restroom shortly after they arrived. Afterwards, she and her FTO, Officer Maricella Ready, left the station to go back on patrol. Officer Freson did not hear Officer Tupayachi make any remarks about [REDACTED] weight. Officer Freson did not witness any physical or verbal abuse of [REDACTED] by Officer Tupayachi. Officer Walter, who conducted [REDACTED] sobriety test, stated that he found [REDACTED] cooperative though she was upset at being arrested. During the sobriety test, Officer Walter performed three tests, the Horizontal Gaze Nystagmus test, the walk and turn test and the one leg stand test. After the test, Officer Walter said that he confirmed Officer Tupayachi's observation that she was intoxicated. [REDACTED] did not complain to Officer Walter of any abuse by Officer Tupayachi, and Officer Walter did not observe verbal or physical abuse directed at [REDACTED].

Security camera footage from the district station was not available to COPA, because by the time [REDACTED] gave COPA a statement, the retention period had passed. COPA was able to view the body-worn camera footage from Officer Tupayachi, Officer Freson and Officer Walter.¹⁰ No verbal or physical abuse by Officer Tupayachi or any other officer involved in [REDACTED] arrest was captured on the body-worn camera footage. It should be noted that while [REDACTED] was being searched by Officer Freson and Officer Ready, she complained that Officer Tupayachi sexually harassed her. Her entire encounter up to that point with Officer Tupayachi was captured on camera and no sexual harassment occurred. [REDACTED] did not complain of sexual harassment when she gave her statement to COPA.

COPA obtained the Arrest Report,¹¹ General Offense Case Report,¹² and Inventory Sheet¹³ documenting [REDACTED] arrest on the date of the incident. According to the reports, [REDACTED] was pulled over after Officer Tupayachi observed [REDACTED] driving left of center. Upon approaching her vehicle, Officer Tupayachi observed a strong odor of alcohol coming from her breath, bloodshot and glassy eyes, and slurred and mumbled speech. [REDACTED] provided her military identification to Officer Tupayachi. After Officer Tupayachi learned that her license was suspended, she was placed into custody. Officer Tupayachi also retrieved two knotted bags containing a powdery white substance of suspect cocaine from [REDACTED] purse. [REDACTED] was charged with Driving Under the Influence of Alcohol, Driving Left of Center, Driving on a Suspended License, Driving without Insurance, and Possession of a Controlled Substance. According to Court Documents and [REDACTED] statement to COPA, [REDACTED] plead and received supervision. The Possession of a Controlled Substance charge

⁸ Att. 33

⁹ Att. 34

¹⁰ Att. 38

¹¹ Att. 17

¹² Att. 20

¹³ Att. 15

was dismissed.¹⁴ COPA obtained a copy of the breathalyzer log from District 019 for January 28, 2018. The entry for ██████ reads “Mouth Alcohol” but does not indicate a BAC result, indicating a flawed test.

III. ANALYSIS AND CONCLUSION

COPA finds Allegation 1, that Officer Tupayachi pushed ██████ without cause, is **Not Sustained**. ██████ alleged that Officer Tupayachi physically pushed her while she was handcuffed in a processing room at the 019th District Station. Despite extensive investigation, COPA was unable to speak with any witness who could corroborate ██████ account of the incident or verify any kind of injury. There is no video evidence of misconduct by Officer Tupayachi, and Officer Tupayachi denied that he pushed her. For COPA to sustain an allegation, it must meet a preponderance of the evidence standard. Because COPA was not able find any evidence corroborating Ms. ██████ story, COPA finds that Allegation 1 is Not Sustained.

COPA finds Allegation 2, that Officer Tupayachi struck ██████ across the face without cause, is **Not Sustained**. ██████ alleged that Officer Tupayachi struck her with closed fist across the face while she was handcuffed in a processing room at the 019th District Station. Despite extensive investigation, COPA was unable to speak with any witness who could corroborate ██████ account of the incident,¹⁵ or verify her injury.¹⁶ While ██████ said she had an injury to the face, she neither sought medical treatment for the injury nor did she take any pictures of the injury. ██████ mugshot, included in her arrest report,¹⁷ shows her face after the strike is alleged to have occurred. The picture shows no visible injury on her face. Officer Tupayachi denies striking ██████ while she was in custody. For COPA to sustain an allegation, it must meet a preponderance of the evidence standard. This means that the evidence must show that it is more likely than not that the event occurred. Because COPA was not able find any evidence corroborating ██████ account, COPA cannot meet the required evidentiary standard. Therefore, COPA finds that Allegation 2 is Not Sustained.

COPA finds Allegation 3, that Officer Tupayachi made derogatory comments about ██████ weight, is **Not Sustained**. ██████ alleged that Officer Tupayachi made derogatory comments about her weight. Specifically, she stated that he asked, “if you are in the military, why are you so fat?” Once again, there is no corroborating evidence or witnesses to this alleged conduct. Officer Tupayachi’s body-worn camera footage does capture a discussion about the military, but no mention is made of ██████ weight. Officer Tupayachi notices her military ID and asks her about her service. Later, when he is trying to get her to exit her vehicle, he does make a somewhat sarcastic remark about how military personnel should know how to follow directions. This is in response to her failure to follow his directions. Once again, no mention is made of her weight. None of the other officers interviewed by COPA heard him make any sort of derogatory comments

¹⁴ Att. 40

¹⁵ Ms. ██████ stated that a two male officers, one Hispanic and one Caucasian, witnessed the hit. After checking the duty roster and GPS COPA investigators were unable to identify these officers.

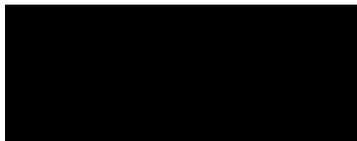
¹⁶ Ms. ██████ stated that her mother saw her soon after the incident and noticed a mark on her face. COPA reached out to her mother but she never returned any phone calls or responded to a letter sent by COPA.

¹⁷ Att. 17

to [REDACTED] while she was in custody. Because COPA was not able find any evidence corroborating [REDACTED] story, COPA finds that Allegation 3 is Not Sustained.

COPA finds Allegation 4, that Officer Tupayachi placed handcuffs too tightly on [REDACTED] causing injury, is **Not Sustained**. [REDACTED] alleged that Officer Tupayachi placed the handcuffs on her too tightly and that the handcuffs caused injury. Based on the footage retrieved from the responding officers' body-worn camera, Ms. [REDACTED] did complain at one point that the handcuffs were too tight. However, it was Officer Marie Freson who placed the handcuffs on her in that instance, not Officer Tupayachi. It is possible Ms. [REDACTED] made additional complaints off camera. [REDACTED] was not handcuffed during her field sobriety test at the District 019 station, so it is likely that it was Officer Tupayachi who handcuffed her to secure her for the rest of processing. However, there are no witnesses or outside evidence to corroborate her story or support serving other officers with allegations relating to the handcuffs. [REDACTED] claimed that she had bruising on her wrists, but she offered no photographic evidence or witness testimony to confirm she was bruised. Because COPA was not able find any evidence corroborating [REDACTED] story, COPA finds that Allegation 4 is Not Sustained.

Approved:



Andrea Kersten
Chief of Investigative Operations

August 28, 2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	9
Investigator:	Ryan McPhail
Supervising Investigator:	Sharday Jackson
Chief of Investigations:	Andrea Kersten