

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	March 17, 2019
Time of Incident:	5:22 PM
Location of Incident:	██████████ Ave. Chicago, IL
Date of COPA Notification:	April 23, 2019
Time of COPA Notification:	11:51 AM

On March 17, 2019 Officer John O’Brien conducted a traffic stop of a vehicle that was missing its front license plate. Upon curbing the vehicle at or near ██████████ Ave., Officer O’Brien approached the occupants. After a short conversation with the occupants, one occupant was handcuffed and escorted to a police vehicle. While this individual was being escorted, ██████████ who had previously been situated on the sidewalk, near the curbed vehicle, walked from the aforesaid sidewalk to the middle of the street, positioning herself inches away from Officer O’Brien. Upon noticing Ms. ██████████ inches behind him, Officer O’Brien turned around, ordered her to get back as he extended his left hand, and pushed Ms. ██████████ in the chest, with two of his fingers. Ms. ██████████ complied with this order and Officer O’Brien placed the previously handcuffed individual into the marked police vehicle.

II. INVOLVED PARTIES

Involved Officer #1:	John O’Brien, Star #: 8344, Date of Appointment: August 29, 2016, Police Officer, Unit of Assignment: 006, Date of Birth: ██████████ 1987, Male, White.
Involved Individual #1:	██████████ Date of Birth: ██████████ 1967, Female, Black.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer John O’Brien	1. On or about March 17, 2019, at approximately 5:22 PM at or near ██████████ Ave. Chicago, IL, Officer O’Brien choked ██████████ without justification, in violation of Rules 1, 2, 3, 6, 8, 9, and 10.	Unfounded

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 and the recommendation(s) set forth herein are the recommendation(s) of COPA.

	<p>2. On or about March 17, 2019, at approximately 5:22 PM at or near [REDACTED] Ave. Chicago, IL, Officer O'Brien pushed [REDACTED] without justification, in violation of Rules 1, 2, 3, 6, 8, 9, and 10.</p>	<p>Exonerated</p>
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IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
2. Rule 2: Any action or conduct which impedes the Department's efforts to achieves its policy and goals or brings discredit upon the Department.
3. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
4. Rule 6: Disobedience of an order or directive, whether written or oral.
5. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
6. Rule 9: Engaging in any unjustified verbal or physical altercation with any person while on or off duty.
7. Rule 10: Inattention to duty.

General Orders

1. Use of Force: G03-02
2. Force Options: G03-02-01

Federal Laws

1. United States Constitution Fourth Amendment

V. INVESTIGATION²

a. Interviews

On May 9, 2019 COPA interviewed ██████████ who provided the requisite affidavit⁴. On March 17, 2019, her daughter, her daughter's friend, and her son were in a vehicle⁵ that was stopped by the police. Her son was placed into the police vehicle, while her daughter and her daughter's friend remained in the vehicle. Ms. ██████████ then came out of her house to inquire as to what was happening. A police officer informed her there was a traffic stop.

Ms. ██████████ relocated to her daughter's vehicle and a police officer subsequently asked Ms. ██████████ daughter and her daughter's friend to exit the vehicle. The police officer asked for their identification which was subsequently tendered.

Ms. ██████████ daughter, who was a passenger in the vehicle, had relocated to behind the driver's side of the vehicle, when a police officer grabbed her and placed her in handcuffs. Ms. ██████████ daughter began to pull away from the officer, and Ms. ██████████ told her to stay calm. More officers arrive on the scene. Ms. ██████████ daughter was being placed into the police car when a police officer⁶ "came out of nowhere and grabbed [her] by [her] throat, with his right hand⁷, and started choking [her]."⁸

Ms. ██████████ attempted to move the officer's hand from her throat while stating that she could not breathe.⁹ Ms. ██████████ said the officer was choking her so hard, that she had to try to pry the officer's fingers off her neck.¹⁰ She asked the officer why he was choking her, as he was holding her throat.¹¹ The officer, after being asked twice why he was choking her, told her to get on to the curb.¹² The officer remained stationary and held her throat for five (5) minutes.¹³

When the police officer let her go, she asked the other police officers if they had seen this officer choke her. She then proceeded to twice ask the officer that had choked her, why had he choked.¹⁴ The officer did not reply and just stood there.¹⁵

Ms. ██████████ then called 911, asked for a "white shirt", and told the 911 operator that an officer had choked her, and requested a paramedic.¹⁶ The paramedics eventually arrived, she informed them that an officer had choked her, and after a brief examination, the paramedics told

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 Attachment 24.

⁴ Attachment 19.

⁵ Grey Honda Civic. See Attachment 24 at 23:00.

⁶ She described the officer as a white male, tall, with a hat, and a vest. See *Id.* at 15:10. The officer did not say anything to her prior to choking her. *Id.* at 16:37.

⁷ Attachment 24 at 12:45.

⁸ *Id.* at 8:25.

⁹ *Id.* at 8:35.

¹⁰ *Id.* at 13:02.

¹¹ *Id.* at 8:40.

¹² *Id.* at 8:44, 16:43.

¹³ *Id.* at 18:19, 19:25.

¹⁴ *Id.* at 9:10. See Also *Id.* at 9:22. Ms. ██████████ relayed that he had choked her so hard that she could barely catch her breathe.

¹⁵ *Id.* at 9:14.

¹⁶ *Id.* at 11:20.

her she needed to go to the hospital as her heart rate was high.¹⁷ See signed a release refusing treatment.

On June 3, 2019 COPA interviewed accused officer John O'Brien.¹⁸ On March 17, 2019 Officer O'Brien was working beat X602 with his partner, Officer Rafael Altamirano. At or around 5:22 PM, Officer O'Brien observed a silver vehicle that was missing a front license plate and shortly thereafter curbed the vehicle at [REDACTED] Ave. The vehicle stopped and two black females, including one wearing a pink shirt¹⁹, exited the vehicle. Neither individual claimed responsibility for driving. The officers suspected Ms. [REDACTED] was driving and ran both Ms. [REDACTED] and the other individual's identification through LEADS. While their information was being run through LEADS, Ms. [REDACTED] and the other individual re-entered and remained in the vehicle. Ms. [REDACTED] driver's license came back as suspended. Once learning that the driver's license was suspended, Officer O'Brien returned to the vehicle, asked Ms. [REDACTED] to step out, and informed her she was going to be handcuffed.

As she was being handcuffed, approximately five (5) people, three (3) or four (4) black males, and one (1) black female²⁰ were in the street.²¹ The black males were two (2) to three (3) feet away, upon the initial handcuffing of Ms. [REDACTED].²² Officer O'Brien does not recall how close Ms. [REDACTED] was at the time of the initial handcuffing.²³ Ms. [REDACTED] began to move forward as Officer O'Brien tried to put Ms. [REDACTED] into a police vehicle.²⁴ Ms. [REDACTED] approached his backside, within twelve (12) inches, and he advised her to get back, so as to keep his zone of safety.²⁵ He then turned and extended his left arm out and said get back.²⁶ Two of his fingers touched Ms. [REDACTED] jacket, in the upper chest area, six(6) inches below the neck area.²⁷ The contact on her person lasted "not even one second."²⁸ Officer O'Brien stated the physical contact "wasn't a push."²⁹ He did not recall what Ms. [REDACTED] said after the physical contact.³⁰ Officer O'Brien stated he did not make any other physical contact with Ms. [REDACTED].³¹

b. Digital Evidence

COPA obtained the **body worn camera videos from numerous officers**³² involved in the incident.³³ Officer Altamirano's body worn camera video did not show the physical contact

¹⁷ *Id.* at 12:00, 12:10, 25:22.

¹⁸ Attachment 25.

¹⁹ Ms. [REDACTED] See *Id.* at 10:10.

²⁰ Later determined to be [REDACTED]

²¹ *Id.* at 9:38.

²² *Id.* at 10:10.

²³ *Id.*

²⁴ *Id.* at 10:30.

²⁵ *Id.* at 10:46.

²⁶ *Id.* at 13:22.

²⁷ *Id.* at 13:38 – 1410.

²⁸ *Id.* at 14:16.

²⁹ *Id.* at 14:20.

³⁰ *Id.* at 14:50.

³¹ *Id.* at 22:50.

³² Officer Rafael Altamirano. Officer Marco Alvarez. Officer Jose Hernandez. Officer Fatima Jacome. Officer John O'Brien. Officer Anthony Rojas.

³³ Attachments 10-15.

between Officer O'Brien and Ms. [REDACTED] as it was obscured by another officer, however, Officer O'Brien can be heard stating "Back Up, Back Up."³⁴

Officer Alvarez's body worn camera video showed Ms. [REDACTED] walking towards Officer O'Brien.³⁵ Officer O'Brien can be heard stating, "Back Up, Back Up."³⁶ Ms. [REDACTED] was heard stating, "don't put your hand on me. I'm going to get your star number and report your ass. I'm her ... mother."³⁷ Other officers are then heard stating to Ms. [REDACTED] to get back and to get on the sidewalk. Ms. [REDACTED] continued to state "don't you put your hand on me" as she's walking back to the sidewalk.³⁸ Officer O'Brien was observed approaching Ms. [REDACTED] while she was situated on the sidewalk, and told her, again, to back up.³⁹

Officer Hernandez's body worn camera video depicted the same or substantially the same body worn camera video as Officer Alvarez's body worn camera video, however, the video also included a partially obscured push of Ms. [REDACTED] by Officer O'Brien.⁴⁰ The video depicted Ms. [REDACTED] staggering backwards as Officer O'Brien's hand was positioned at the top of Ms. [REDACTED] chest.⁴¹ Officer O'Brien was stating, with his finger pointed at Ms. [REDACTED] "Back up, Back up."⁴²

Officer Jacome's body worn camera video began by showing Officer Jacome walking towards the location where Officer O'Brien and Ms. [REDACTED] were situated.⁴³ As she approached, Ms. [REDACTED] also approached Officer O'Brien, who's back was turned to Ms. [REDACTED]⁴⁴ Ms. [REDACTED] left hand was outstretched in front of her.⁴⁵ Ms. [REDACTED] arrived to approximately six (6) inches behind and to the left of Officer O'Brien.⁴⁶ Officer O'Brien turned his attention to the approaching Ms. [REDACTED] Officer O'Brien rotated his body and raised his bent left arm to be even with the chest of Ms. [REDACTED] and stated "hey."⁴⁷ Officer O'Brien then stated "Back up", while he made physical contact with his left open hand to the upper portion of Ms. [REDACTED] jacket.⁴⁸ Officer O'Brien then returned his attention to Ms. [REDACTED] daughter and placed her in to the police vehicle. Officer O'Brien told Ms. [REDACTED] to back up, again. The remaining portions of Officer Jacome's body worn camera video contained the same or substantially the same depictions of other officers' body worn camera videos.

Officer Rojas body worn camera video contained the same or substantially the same depictions as Officer Altamirano's body worn camera video.⁴⁹

³⁴ Attachment 11 at 10:54.

³⁵ Attachment 14 at :39.

³⁶ *Id.* at :45.

³⁷ *Id.* at :54.

³⁸ *Id.* at 1:06.

³⁹ *Id.*

⁴⁰ Attachment 15 at :48.

⁴¹ *Id.* at :50.

⁴² *Id.* at :52.

⁴³ Attachment 12.

⁴⁴ *Id.* at :38.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at :39

⁴⁸ *Id.*

⁴⁹ Attachment 13.

COPA obtained Officer O'Brien's body worn camera video depicting his encounter with Ms. ██████⁵⁰ Officer O'Brien was observed handcuffing an individual behind a vehicle. During the handcuffing, Ms. ██████ was observed on the sidewalk situated near the individual being handcuffed. Ms. ██████ began to walk towards Officer O'Brien. As Officer O'Brien was escorting the detainee, Officer O'Brien made a sudden movement to his left and said, "Back up, Back up."⁵¹ Ms. ██████ appeared briefly in Officer O'Brien's body worn camera video after he stated, "Back up."⁵² The video then showed that Officer O'Brien return his attention to the detainee and placing her in the police vehicle. After placing her in the police vehicle he told Ms. ██████ to get back.⁵³

COPA obtained the In-Car Camera video from Beat 602.⁵⁴ The video depicted Officer O'Brien handcuffing an individual behind a vehicle. Ms. ██████ was then observed walking towards and behind Officer O'Brien with her left arm extended, as Officer O'Brien was escorting a handcuffed individual to a marked police vehicle.⁵⁵ As he was escorting this individual, Officer O'Brien turned around and placed in left hand, on the upper portion of Ms. ██████ chest and pushed her.⁵⁶ Officer O'Brien then applied force with fingers, on his left hand, to Ms. ██████



ICC – Beat 602 Video: Officer O'Brien is in a police vest. Ms. ██████ is in a red jacket.

⁵⁰ Attachment 10.

⁵¹ *Id.* at 11:08.

⁵² *Id.* at 11:09.

⁵³ *Id.* at 11:24.

⁵⁴ Attachment 36.

⁵⁵ *Id.* at 11:54.

⁵⁶ *Id.* at 11:57.

The push lasted less than a second. After the push, Officer O'Brien then pointed his finger at Ms. ██████ told Ms. ██████ to back up, and returned his attention to the individual he was placing into the police vehicle. The remainder of the video contained the same or substantially the same depictions of other officers' body worn camera videos.

The body worn camera videos and the in-car camera video do not depict any officer wrapping their hands around Ms. ██████ neck.

c. Documentary Evidence

COPA obtained the **A&As for the third watch for the 006 police district, for March 17, 2019.**⁵⁷ The A&As indicated that Officer Rafael Altamirano and Officer John O'Brien were working Beat X602.

COPA obtained the **Event Query Report for Event #: 1907611465.**⁵⁸ The report indicated that a caller, ██████ stated that an officer on scene had choked her. She requested an EMS and a Sergeant.

COPA obtained the **Event Query Report for Event #: 1907611355.**⁵⁹ The report indicated that a traffic stop occurred at ██████ Ave. by Beat X602.

COPA obtained the **Original Case Incident Report, RD# JC189430.**⁶⁰ The report indicated that the responding officers,⁶¹ while performing a traffic stop at ██████ Ave., attempted to detain a subject, into a marked patrol car, when an unknown female⁶² began interfering with the officers' investigation. Ms. ██████ came into close proximity to the officers, approximately 12 (twelve) inches. Officer O'Brien repeatedly asked Ms. ██████ to back up. She did not comply. When she did not back up Officer O'Brien extended his left arm with an open hand and touched his finger tips to Ms. ██████ upper chest area. Officer O'Brien indicated that he did this to create distance between Ms. ██████ and himself, for the purpose of officer safety. Officer O'Brien indicated that he completed this report because Ms. ██████ indicated that "he [had] choked [her]."

COPA obtained the **Tactical Response Report authored by Officer John O'Brien pertaining to this incident.**⁶³ The report contained the same or substantially the same details as the aforementioned original case incident report authored by Officer O'Brien. Additional details reflected in this report include a denotation that force mitigation efforts were deployed, in the form of member presence, zone of safety, verbal direction / control techniques, and additional unit members. Officer O'Brien's response was without weapons and was an extended arm with an open hand. The report reflected that Ms. ██████ alleged an injury due to Officer O'Brien use of force.

⁵⁷ Attachment 5.

⁵⁸ Attachment 3.

⁵⁹ Attachment 6.

⁶⁰ Attachment 4.

⁶¹ Including Officer John O'Brien.

⁶² ██████

⁶³ Attachment 9.

The reviewing Sergeant, Sgt. Tiffany Santiago, noted on the Tactical Response Report, that the injury sustained was an unintentional act by the member. Lt. Christoph Kapa noted that Ms. ██████ was not arrested nor around when the supervisor arrived on scene. Lt. Kapa noted that he reviewed body worn camera videos of officers on scene and that that Officer O'Brien used his arm to create a safety zone from Ms. ██████ who had walked up behind him, while he placed a detainee into a squad car. Ultimately, Lt. Kapa concluded that from the officer's point of view, Officer O'Brien's action were within the department policy and procedures.

COPA obtained the **Chicago Fire Department Ambulance Run report, Incident Number: 190761492**.⁶⁴ The report indicated that when the paramedics arrived, they found a visibly upset female⁶⁵, who complained of throat pain. Ms. ██████ stated she was choked by an on-duty Chicago Police Officer using his hand for an unknown duration. There were no visible marks or blood on Ms. ██████. The Chicago Police were not on scene upon the paramedics' arrival. Ms. ██████ signed a refusal of treatment and transport.

VI. 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.

⁶⁴ Attachment 33. The Ambulance Run Report indicated that ██████ ██████ was the treated individual. COPA determined this was a scrivener error.

⁶⁵ ██████

VII. ANALYSIS

Officer O’Brien did not choke ██████████ Body Worn Camera Video and In-Car Camera Video clearly show that Officer O’Brien did not choke Ms. ██████████ Rather the videos show Officer O’Brien applied two fingers upon the upper chest of Ms. ██████████ Based on the evidence, it is clear and convincing that the fact, as alleged, that Officer O’Brien choked ██████████ is false. Therefore, COPA recommends a finding of **UNFOUNDED** with respect to this allegation.

Officer O’Brien was justified when he pushed ██████████ The Chicago Police Department General Order: G03-02-01, “Force Options” classifies an individual who does not comply with a police order as a resister. The order defines a passive resister “a person who fails to comply (non-movement) with verbal or direction.”⁶⁶ The order also delineates the type of force that can be exhibited upon a passive resister. Officers are also allowed to utilize “Compliance Techniques [which] are designed to amplify nonimpact pressure and increase potential for controlling a subject.”⁶⁷

In-Car Camera video from Beat x602 coupled with body worn camera video from officers on scene, clearly showed Ms. ██████████ approaching Officer O’Brien from behind. She arrives to within approximately six (6) inches of Officer O’Brien’s backside when Officer O’Brien diverted his attention, from the detainee he was controlling, to Ms. ██████████ He ordered Ms. ██████████ to step back. She did not immediately comply, thus rendering her a passive resister. Officer O’Brien was justified in telling Ms. ██████████ to step back due to her close proximity to Officer O’Brien. Officer O’Brien then applied a two-finger push to the chest of Ms. ██████████ to create a zone of safety. Officer O’Brien was justified in applying force to Ms. ██████████ in the form of the two-finger push, a compliance technique, under the General Order, to increase the potential for controlling Ms. ██████████ After the push, Ms. ██████████ complied with Officer O’Brien verbal commands. Based on the evidence, it is clear and convincing that Officer O’Brien used an objectively reasonable, necessary, and proportional use of force against Ms. ██████████ and therefore, COPA recommends a finding of **EXONERATED** with respect to this allegation.

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer John O’Brien	1. On or about March 17, 2019, at approximately 5:22 PM at or near ██████████ Ave. Chicago, IL, Officer O’Brien choked ██████████ without justification, in violation of Rules 1, 2, 3, 6, 8, 9, and 10.	Unfounded

⁶⁶ See General Order G03-02-01, IV B(1).

⁶⁷ See General Order G03-02-01, IV B(1)b.

2. On or about March 17, 2019, at approximately 5:22 PM at or near [REDACTED] Ave. Chicago, IL, Officer O'Brien pushed [REDACTED] without justification, in violation of Rules 1, 2, 3, 6, 8, 9, and 10.

Exonerated

Approved:



Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

3-15-2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Jason Lee
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass