

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	January 29, 2019 / 6:25 p.m. / 6720 W. Belmont Avenue
Date/Time of COPA Notification:	January 30, 2019 / 8:20 p.m.
Involved Officer #1:	MESSINO, William; star # 18980; employee ID# [REDACTED]; Date of Appointment: October 28, 2002; Police Officer; Unit of Assignment: 016 th District; Date of Birth: [REDACTED], 1977; Male; White.
Involved Officer #2:	PAPASTEFAN, William; star # 9236; employee ID# [REDACTED]; Date of Appointment: September 30, 2002; Field Training Officer; ¹ Unit of Assignment: 016 th District; Date of Birth: [REDACTED], 1974; Male; White.
Involved Officer #3:	DEL NODAL, Peter; star # 8584; employee ID# [REDACTED]; Date of Appointment: September 30, 2002; Police Officer; Unit of Assignment: 016 th District; ² Date of Birth: [REDACTED], 1962; Male; Hispanic.
Involved Officer #4:	GORZELANY, Greg; star # 11422; employee ID# [REDACTED]; Date of Appointment: January 27, 2003; Police Officer; Unit of Assignment: 016 th District; ³ Date of Birth: [REDACTED], 1974; Male; White.
Involved Individual #1:	[REDACTED]; Date of Birth: [REDACTED], 1983; Male; Hispanic.
Case Type:	Proper Care; Failure to Turn on Body-Worn Camera

I. ALLEGATIONS⁴

Officer	Allegation	Finding/ Recommendation
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¹ FTO Papastefan held the rank of Police Officer at the time of the incident. Henceforth, he will be referred to as “FTO.”

² Officer Del Nodal was assigned to the 025th District at the time of the incident.

³ Officer Gorzelany was assigned to the 025th District at the time of the incident.

⁴ Although [REDACTED] alleged that the arresting officers poured a chemical on his hands out of a bottle, the video recordings from the officers’ body-worn cameras demonstrate that no such action occurred and the officers were not asked to address this allegation.

Police Officer William Messino	1. Failed to provide for the safety and security of ██████████, a person in his custody, in violation of General Order G06-01-02.	Sustained / 4 day suspension
Field Training Officer William Papastefan	1. Failed to provide for the safety and security of ██████████, a person in his custody, in violation of General Order G06-01-02.	Sustained / 4 day suspension
Police Officer Peter Del Nodal	1. Failed to provide for the safety and security of ██████████, a person in his custody, in violation of General Order G06-01-02. 2. Failed to activate his body worn camera, in violation of Special Order S03-14, during the arrest of ██████████.	Sustained / 4 day suspension Sustained / 4 day suspension
Police Officer Greg Gorzelany	1. Failed to provide for the safety and security of ██████████, a person in his custody, in violation of General Order G06-01-02. 2. Failed to activate his body worn camera, in violation of Special Order S03-14, during the arrest of ██████████.	Sustained / 4 day suspension Sustained / 4 day suspension

II. SUMMARY OF EVIDENCE⁵

██████████ was arrested and charged with Possession of a Controlled Substance, Disorderly Conduct, Obstruction of Traffic, and Resisting Arrest. In his statement to COPA, ██████████ stated that he had parked his vehicle on Belmont Avenue and walked across the street toward a liquor store.⁶ As he was crossing the street, a driver almost struck ██████████ with his vehicle. Because the battery of his cell phone had died due to the extreme cold, ██████████ unsuccessfully attempted to get the attention of other drivers so he can use their phone to call the police. ██████████ tried to block the way to a female driver who then struck him on the leg and drove away. He knocked on the windows of the liquor store, but the employees locked the doors.⁷ ██████████ stated that he believed somebody called the police, so he stayed on the scene and waited. ██████████ was still in the middle of the street when at least four uniformed officers arrived on the scene and began to wrestle him to the ground. The officers told ██████████ to stop resisting, but ██████████ stated that he was not resisting and was offering his hands. The officers placed their knees on his back and head.⁸ The officers handcuffed ██████████ and then discharged OC spray into his eyes. ██████████ stated that as he was sitting on the ground, one of the officers grabbed him by the back of his sweater and pulled him to the concrete sidewalk, instead of standing him up. ██████████ requested a sergeant. The officers then

⁵COPA 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 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.

⁶ Att. # 25, 29.

⁷ ██████████ did not know why the employees locked the doors.

⁸ ██████████ did not know which officer placed his knee on ██████████' head.

escorted ██████ to a police vehicle. ██████ felt a warm, “liquid substance” on his hands and asked the officers what they were doing to his hands.⁹ In response, the officers threw ██████ face down to the ground. At that point, ██████ also felt a spray on “my butt, my ass.”¹⁰ ██████ stated that he was in a lot of pain and felt like passing out. A wagon arrived and the officers threw ██████ inside. ██████ was transported to the 016th District Station and was placed inside a cell. He had blisters on his hands and requested medical attention. An unknown male sergeant told ██████ that the arresting officers would transport him to the hospital. ██████ refused to go with them so the officers called for an ambulance that transported ██████ to Community First Hospital. An unknown doctor told him that his injuries were similar to a first-degree burn and were due to a chemical and not frostbite.¹¹ Hospital personnel recommended he seek treatment at a special burn unit upon his release.¹²

According to Department reports,¹³ Officers Messino and Papastefan responded to a call of a disturbance at the above address and observed ██████ standing in the middle of Belmont Avenue, obstructing the flow of traffic. ██████ failed to comply to the officers’ verbal commands, stiffened and pulled away as the officers attempted to place him in custody. Officer Messino deployed OC spray, Officer Papastefan delivered open hand strikes to gain compliance, and both officers performed an emergency takedown. The owner of the liquor store signed a complaint for disorderly conduct after describing ██████ as blocking the store’s entrance and banging on the store’s window and the hoods of nearby parked and moving vehicles. ██████ was then placed under arrest and transported to the 016th District Station for processing, where a custodial search revealed suspect cocaine in his pocket.

Body-worn camera (BWC) recordings¹⁴ the officers’ struggle to take ██████ into custody and place him inside a police vehicle for transportation.¹⁵ Throughout the encounter, ██████ does not follow the officers’ directions, pulls away from them, asks for a sergeant, and repeatedly falls to the ground as they try to place him inside a police SUV and a squadrol. While trying to handcuff ██████, Officer Messino discharges OC spray at him, but ██████ wiped the liquid from his face and continued to be uncooperative. Other officers on the scene try to talk to ██████ to make him relax. He does not appear to be fighting with the officers, merely resisting their efforts to handcuff him. The officers are eventually able to get ██████ in handcuffs while he was on the ground. He refuses to get to his feet or into the vehicle. Officers request a squadrol on the scene and move ██████ toward the curb. ██████ sits on the snow-covered ground with Officers Del Nodal and Gorzelany next to him. ██████ continuously moves his legs while the officers tell him to remain seated. When

⁹ Att. #29, Page 8, Line 1.

¹⁰ Att. #29, Page 17, Line 20. ██████ described the spray as the same substance that had been poured on his hands earlier.

¹¹ Medical records from Community First Medical Center reveal that ██████ was treated for burns to his hands and left flank region. He did not have a coat when he was at the hospital and his sweater and pants were wet from the snow. ██████ reported that it felt like water was poured onto his hands and back while he was placed in handcuffs but denied that any battery acids or chemicals were splashed on his hands. See Att. #33.

¹² ██████ was admitted at University of Chicago Hospital on January 31, 2019 for frostbite to his hands and left buttock. See Att. #69.

¹³ Att. #6, 7, 54, 55

¹⁴ Att. #15

¹⁵ FTO Papastefan and Officer Messino’s BWCs fell off their vests during the struggle, causing some of the interaction to be captured only audibly. It appears that the officers inadvertently exchanged cameras as they put them back on before switching back.

█████ says he can't feel his hands, Officer Del Nodal asks if █████ will get in the police vehicle, which █████ agrees to do. Officers help him to his feet and walk him to the vehicle, where he again struggles and refuses to go inside. A squadrol arrives and the officers walk █████ to it. He again refuses to get inside and drops to the ground before officers are able to place him inside the squadrol.

The involved officers provided separate statements¹⁶ to COPA that are consistent with the BWC recordings and the related CPD reports. They described █████ as appearing to be intoxicated or on drugs and said that he would not cooperate with them at any point during the incident. When FTO Papastefan and Officer Messino arrived on scene, █████ was standing in traffic. FTO Papastefan described █████ as wearing only a sweater and pants, despite the extremely cold temperatures brought on by the polar vortex. █████ pulled away from the officers, who slipped because of the snow on the ground. Officer Messino performed an emergency takedown and discharged OC spray to gain control of █████ after the officers' open hand strikes did not gain compliance. After █████ was successfully handcuffed and sitting on the ground, Officer Del Nodal stood next to him and held his hand on █████' shoulder so █████ would not get up and hurt himself. FTO Papastefan described the snow and slush on the ground and noted that █████' hands were submerged in the snow. The officers struggled to put █████ in a police vehicle and eventually called for a squadrol to transport him. While at the 16th District station, █████ requested medical treatment but would not get in a police vehicle to go to the hospital. █████ complained of frostbite to his hands, which FTO Papastefan noted were red. The officers called an ambulance to bring █████ for treatment.

Officers Del Nodal and Gorzelany acknowledged their failure to activate their BWCs when they arrived on scene. Regarding the allegation that they failed to provide for █████' safety, the officers provided different defenses. FTO Papastefan and Officer Messino said the officers did their best under the circumstances. Officer Messino noted █████' own actions prolonged the encounter through his actions of resisting them. Officer Gorzelany said he did not consider █████ to be in his custody because he was merely assisting FTO Papastefan and Officer Messino. Officer Del Nodal claimed he cared for █████ by preventing him from falling over or hurting himself, and that he kept █████ seated because he was worried █████ would keep struggling if he got to his feet. He also that █████ "pretty much chose his spot, his location."¹⁷

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

¹⁶ Att. #32, 38, 39-40, 46-47, 49, 51, 53. Transcripts for accused officers are Att. #56-59.

¹⁷ Att. #56, Page 19, Lines 12-13.

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

COPA finds that Allegation #1 against FTO Papastefan and Officers Messino, Del Nodal and Gorzelany that they failed to provide for the safety and security of ██████████, a person in their custody, in violation of General Order G06-01-02, is Sustained. General Order G06-01-02, II states, "Department members are responsible for the safety and security of persons in their custody. A person taken into Department custody will be searched prior to transport and restrained in such a manner as to prevent escape and to provide for the safety of the public, the person in custody, and the officers involved." Police officers responded to calls of a disturbance about a man who appeared to act erratically and may have been under the influence. Upon arrival, the officers observed ██████████, who was only dressed in a sweatshirt and jeans in subzero temperatures, obstructing the flow of traffic. Based on the video recordings, Department reports and the officers' statements, ██████████ failed to comply with the officers' verbal commands and became an active resister. As a result, Officer Messino and FTO Papastefan properly used force to gain control of ██████████. ██████████ continued to resist the officers by not getting in a police vehicle after he was handcuffed. The officers pulled him to the side of the street as they waited for a squadrol. According to the video recordings and the officers' statements, ██████████ kicked his legs and attempted to stand up and the officers held him down in a sitting position. In his statement to COPA, FTO Papastefan specified that there was snow and slush on the ground and ██████████' handcuffed hands were submerged in the snow. However, the officers did not make any attempt to place ██████████ in a different position where he would have not been exposed to the snow as much. By the time additional officers arrived to place ██████████ inside a police vehicle, ██████████ was complaining that he could not feel his hands. Medical records indicate that Flores sustained burns to his hands and his lower back. Although ██████████ was acting irrationally and refusing to get inside the police vehicle, the officers failed to exercise sufficient care to prevent him from sustaining frostbite. After the first attempt to place him inside the police vehicle, ██████████ was placed sitting down by the side of the street where snow had accumulated, instead of the sidewalk which had been cleared of snow. Then, the officers did not lift him off the ground and place him against any vehicle that were parked which would have reduced ██████████' exposure to the snow to the ground.

Based on the totality of the circumstances, there is sufficient evidence to prove that the four accused officers failed to provide safety and security to ██████████ while he was in their custody.

COPA finds that Allegation #2 against Officers Del Nodal and Gorzelany that they failed to activate their body worn cameras, in violation of Special Order S03-14, is Sustained. Special Order S03-14, III, A, 2 states, “The Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. If circumstances prevent activating the BWC at the beginning of an incident, the member will activate the BWC as soon as practical.” In his statement to COPA, Officer Del Nodal stated that he observed FTO Papastefan and Officer Messino struggle with ██████████ on the ground and did not think to turn on his BWC at that moment. In his statement to COPA, Officer Gorzelany related that he believed that he turned it on as he was exiting his vehicle to assist FTO Papastefan and Officer Messino, but later realized that he had not. Based on the two officers’ statements, none of the circumstances that they encountered prevented them from activating their cameras. Officer Del Nodal attributed the failure to his surprise at seeing his colleagues in a struggle with a suspect and his partner was mistakenly under the impression that he had successfully activated the BWC. Based on the totality of the evidence, there is sufficient evidence to prove the above allegation against the two officers.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer William Messino

i. Complimentary and Disciplinary History

Officer Messino has been a member of the Chicago Police Department since October 28, 2002. In that time, he has received 40 Honorable Mentions and 3 Complimentary Letters. In the last five years, he has received a Reprimand for failure to perform assigned tasks.

ii. Recommended Penalty, by Allegation

For the allegation that Officer Messino failed to provide for the safety and security of ██████████ ██████████, COPA recommends a 4 day suspension. While ██████████ failed to cooperate with officers attempts to help him stand and get into a vehicle, none of the officers felt it necessary to forcibly remove ██████████ from the snow despite his complaints about his hands. Given the conditions of the day and the specific complaints by ██████████ these officers should have taken action to protect ██████████. However, COPA strongly considers ██████████’ own actions including his inability to follow direction, his resistance to officers’ attempts and his clear intoxication as mitigating. These officers made numerous attempts to have ██████████ stand and enter a squad, under normal conditions their actions would not have been misconduct. However, these were not normal conditions, the officers should have acted and therefore COPA recommends the 4 day suspension for Officer Messino.

b. Field Training Officer William Papastefan

i. Complimentary and Disciplinary History

Officer Papastefan has been a member of the Chicago Police Department since September 30, 2002. In that time, he has received 53 Honorable Mentions, 5 Complimentary Letters, and 2 Department Commendations. In the last five years, he has not received any disciplinary history.

ii. Recommended Penalty, by Allegation

For the allegation that Officer Papastefan failed to provide for the safety and security of [REDACTED], COPA recommends a suspension of 4 day. While [REDACTED] failed to cooperate with officers attempts to help him stand and get into a vehicle, none of the officers felt it necessary to forcibly remove [REDACTED] from the snow despite his complaints about his hands. Given the conditions of the day and the specific complaints by [REDACTED] these officers should have taken action to protect [REDACTED]. However, COPA strongly considers [REDACTED]' own actions including his inability to follow direction, his resistance to officers' attempts and his clear intoxication as mitigating. These officers made numerous attempts to have [REDACTED] stand and enter a squad, under normal conditions their actions would not have been misconduct. As articulated above, the conditions were far from normal and as such the officers were obligated to do more. COPA recommends a suspension of 4 days for Officer Papastefan.

c. Officer Peter Del Nodal

i. Complimentary and Disciplinary History

Officer Del Nodal has been a member of the Chicago Police Department since September 30, 2002. In that time, he has received 48 Honorable Mentions, 10 Complimentary Letters, and 1 Department Commendation. In the last five years, he has not received any disciplinary history.

ii. Recommended Penalty, by Allegation

For the allegations that Officer Del Nodal failed to provide for the safety and security of [REDACTED] and failed to activate his body worn camera, COPA recommends a suspension of 4 days. While [REDACTED] failed to cooperate with officers attempts to help him stand and get into a vehicle, none of the officers felt it necessary to forcibly remove [REDACTED] from the snow despite his complaints about his hands. Given the conditions of the day and the specific complaints by [REDACTED] these officers should have taken action to protect [REDACTED]. However, COPA strongly considers [REDACTED]' own actions including his inability to follow direction, his resistance to officers' attempts and his clear intoxication as mitigating. These officers made numerous attempts to have [REDACTED] stand and enter a squad, under normal conditions their actions would not have been misconduct. As articulated above, the conditions were far from normal and as such the officers were obligated to do more. Additionally, the timely activation of BWC is so central to the department's mission of creating trust between community and the department that a suspension is warranted. COPA recommends a suspension of 4 days for Officer Del Nodal.

d. Officer Greg Gorzelany

i. Complimentary and Disciplinary History

Officer Gorzelany has been a member of the Chicago Police Department since January 27, 2004. In that time, he has received 29 Honorable Mentions and 5 Complimentary Letters. In the last five years, he has not received any disciplinary history.

ii. Recommended Penalty, by Allegation

For the allegations that Officer Gorzelany failed to provide for the safety and security of [REDACTED] and failed to activate his body worn camera, COPA recommends a suspension of 4 days. While [REDACTED] failed to cooperate with officers attempts to help him stand and get into a vehicle, none of the officers felt it necessary to forcibly remove [REDACTED] from the snow despite his complaints about his hands. Given the conditions of the day and the specific complaints by [REDACTED] these officers should have taken action to protect [REDACTED]. However, COPA strongly considers [REDACTED]' own actions including his inability to follow direction, his resistance to officers' attempts and his clear intoxication as mitigating. These officers made numerous attempts to have [REDACTED] stand and enter a squad, under normal conditions their actions would not have been misconduct. As articulated above, the conditions were far from normal and as such the officers were obligated to do more. Additionally, the timely activation of BWC is so central to the department's mission of creating trust between community and the department that a suspension is warranted. COPA recommends a suspension of 4 days for Officer Gorzelany.



James Murphy-Aguilu
Deputy Chief Administrator – Chief Investigator

12/7/20

Date

Appendix A

Assigned Investigative Staff

Squad#:	1
Investigator:	Thomas Kalantzis
Supervising Investigator:	Shannon Hayes
Deputy Chief Administrator:	James Murphy-Aguilu