

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	January 2, 2020
Time of Incident:	5:00 p.m.
Location of Incident:	6156 West Grand Avenue, Chicago, Illinois 60639
Date of COPA Notification:	January 17, 2020
Time of COPA Notification:	2:05 p.m.

On January 17, 2020, Mr. [REDACTED] filed a complaint with the Civilian Office of Police Accountability (COPA) alleging that on January 2, 2020, Officer Roberto Garduno forcefully grabbed Mr. [REDACTED] while he was walking towards the podium during a Chicago Police Department (CPD) press conference regarding the officer-involved shooting of Mr. [REDACTED]'s brother earlier in the day.

**II. INVOLVED PARTIES**

Involved Officer #1:	Roberto Garduno, Star #9138, Employee ID [REDACTED], Date of Appointment: June 27, 2016, Police Officer, Unit 010/102, Date of Birth: [REDACTED] 1988, Male, Hispanic
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED], 1980, Male, Hispanic

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer Garduno	1. It is alleged that on or about January 2, 2020, at approximately 5:00 pm at or near 6156 West Grand Avenue, P.O. Garduno star #9138 committed misconduct through the following acts or omissions, by forcefully grabbing [REDACTED] without justification.	Exonerated

**IV. APPLICABLE RULES AND LAWS**

Rules
1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
General Orders

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1. G03-02: Use of Force (effective October 16, 2017 – February 28, 2020)

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**V. INVESTIGATION<sup>1</sup>**

**a. Interviews**

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In an interview<sup>2</sup> with COPA on January 17, 2020, Mr. ██████ provided the following information. On January 2, 2020, Mr. ██████ attended a press conference regarding his brother, who was fatally shot during a police-involved shooting near Grand Avenue and McVicker Avenue. While the police were giving their press conference, Mr. ██████ began asking questions. Mr. ██████ was not satisfied with the answers to his questions and thought he was being ignored, so one of the officers told him he would speak with him after the press conference was over. However, as the police were leaving the podium area, Mr. ██████ asked if he could speak while the media was still present and made his way toward the podium.

As Mr. ██████ approached the podium, he felt someone holding him back, as if to prevent him from speaking. Initially, Mr. ██████ thought the person holding him was his wife because she knew he was not in the right mindset to speak. When Mr. ██████ realized it was an officer, now identified as Officer Garduno, Mr. ██████ told the officer not to touch him, slapped the officer's hand, and began speaking to the media. Mr. ██████ told COPA he sustained injuries to his neck and back during the incident but did not seek medical treatment.

**Officer Roberto Garduno**

In an interview<sup>3</sup> with COPA on August 20, 2020, Officer Garduno provided the following information. Officer Garduno stated on January 2, 2020, he was assigned to the press conference regarding the police-involved shooting that occurred earlier that day. Officer Garduno's duties included informing the assembled media the start time of the press conference and where to stage, as well as ensuring a secured perimeter. Officer Garduno was aware of media coverage of the incident and stated he watched the video of the press conference multiple times.

As Deputy Chief Cato began the press conference, Officer Garduno observed an upset Mr. ██████ amongst the assembled media, making allegations of police misconduct. Officer Garduno noted Mr. ██████ using vulgar language while advancing towards the podium. Officer Garduno then repositioned himself so that he was between Mr. ██████ and Deputy Chief Cato. As Mr. ██████ made his way past some of the media and moved towards the podium, Officer Garduno followed Mr. ██████ to escort him away from the microphones. Officer Garduno put his hand on Mr. ██████'s

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<sup>1</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>2</sup> See Attachment 1.

<sup>3</sup> See Attachment 14.

shoulder to guide him away from the podium, but the officer could not recall his exact hand placement.<sup>4</sup>

After being told to let Mr. [REDACTED] speak, Officer Garduno walked away from Mr. [REDACTED], but Mr. [REDACTED] followed the officer. Officer Garduno turned around and extended his arms to create distance between himself and Mr. [REDACTED]. Mr. [REDACTED] then returned to the podium and began speaking to the media.

### **b. Digital Evidence**

COPA reviewed video footage<sup>5</sup> of the police press conference. As Deputy Chief Cato begins to speak, Mr. [REDACTED] can be heard shouting questions off camera. Mr. [REDACTED] and other individuals interrupt the press conference to the point where it is cut short, leading to the incident between Officer Garduno and Mr. [REDACTED].

Initially, neither Officer Garduno nor Mr. [REDACTED] are visible in the footage. However, as Mr. [REDACTED] begins to shout questions, the video captures Officer Garduno moving from left to right, presumably towards Mr. [REDACTED]. Mr. [REDACTED] can still be heard yelling off camera as Deputy Chief Cato answers questions from the media. Deputy Chief Cato then walks away from the podium as the yelling continues. The camera pans towards Mr. [REDACTED], who is shouting profanities<sup>6</sup> and verbally engaging with CPD members while Officer Garduno looks on.

A CPD public information officer asks Mr. [REDACTED] to wait until the press conference is over, but Mr. [REDACTED] walks past him and makes his way towards the podium. Officer Garduno tries to intercede by briefly placing his left hand on Mr. [REDACTED]'s left arm, between the shoulder and the elbow. Officer Garduno quickly removes his left hand and places his right hand just below Mr. [REDACTED]'s right shoulder blade. The public information officer instructs Officer Garduno to let Mr. [REDACTED] go, and Officer Garduno turns and begins to walk away. Mr. [REDACTED] takes a couple of steps towards Officer Garduno, yelling "don't touch me"<sup>7</sup> multiple times. As Mr. [REDACTED] gets closer, Officer Garduno turns around and extends his arm, creating distance between himself and Mr. [REDACTED]. Mr. [REDACTED] swipes at Officer Garduno's arms before going back to the podium, where he questions the police narrative while answering questions from members of the media.

## **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;

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<sup>4</sup> When asked if it would help refresh his recollection, Officer Garduno declined to watch footage of the incident but conceded it accurately depicts his actions.

<sup>5</sup> See Attachment 8.

<sup>6</sup> The video captures Mr. [REDACTED] calling CPD members "stupid motherfuckers" and "stupid assholes," among other profanities. Attachment 8 at 3:04 minutes.

<sup>7</sup> Attachment 8 at 3:19 minutes.

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.

**VII. ANALYSIS**

COPA finds **Allegation #1** against Officer Garduno is **EXONERATED**. After reviewing digital evidence of the police press conference and interviewing both Officer Garduno and Mr. [REDACTED], COPA finds there is clear and convincing evidence that Officer Garduno briefly made contact with Mr. [REDACTED] but did not use force to the extent Mr. [REDACTED] alleged in his complaint to COPA

The mood at the press conference was tense as CPD members provided the media an update on the events that led to the police-involved shooting of Mr. [REDACTED]’s brother. Mr. [REDACTED] admitted he shouted questions during the press conference and approached the podium despite being instructed to wait until it was over. Given the totality of the circumstances, Officer Garduno’s brief attempt to use his hands to prevent Mr. [REDACTED] from going to the podium did not constitute misconduct. Officer Garduno’s contact did not rise to the level of a reportable use of force and was not substantial enough to cause injury. Mr. [REDACTED] did not show any signs of injury during the incident and revealed in his COPA interview that he did not seek medical treatment after the incident. As such, the allegation against Officer Garduno is Exonerated.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding
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Officer Garduno	1. It is alleged that on or about January 2, 2020, at approximately 5:00 pm at or near 6156 West Grand Avenue, P.O. Garduno star #9138 committed misconduct through the following acts or omissions, by forcefully grabbing [REDACTED] without justification.	Exonerated
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Approved:



3/30/2021

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	6
<b>Investigator:</b>	Orlando Ortiz
<b>Supervising Investigator:</b>	Steffany Hreno
<b>Deputy Chief Administrator:</b>	Matthew Haynam