

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	December 6, 2019, 1:16 p.m., 3151 W Harrison Street, Chicago, IL
Date/Time of COPA Notification:	December 6, 2019, 4:27 p.m.
Involved Officer #1:	Joseph Cappello IV, Star #10626, Employee ID# [REDACTED], Date of Appointment: 27-Oct-2014, Police Officer, Unit of Assignment: 011, DOB: [REDACTED]-1988, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED]-2002, Female, Black
Case Type:	Improper Search

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Joseph Cappello	1. It is alleged by [REDACTED] that on December 6, 2019, at the 11 th District, located at 3151 W Harrison Street, Chicago, IL, Officer Cappello conducted an improper search by placing his hands inside her pants and touching her pubic hair without justification in violation of Rule 6 and Special Order 06-04.	Sustained / 30- day Suspension
	2. It is alleged by [REDACTED] that on December 6, 2019, at the 11 th District, located at 3151 W Harrison Street, Chicago, IL Officer Cappello grabbed her jacket without justification, and caused the jacket to rip in violation of Rule 8.	Exonerated

II. SUMMARY OF EVIDENCE¹

On December 6, 2019 officers were reviewing surveillance cameras located on the 600 block of North Trumbull and observed a black female wearing a yellow coat engaged in what appeared to be narcotics transactions. Officers responded to the location and stopped [REDACTED] [REDACTED] (hereafter [REDACTED]) Responding Officers placed [REDACTED] in custody and waited for another squad to arrive to transport her to the police station. Upon arrival at the district, while still handcuffed, Officer Cappello collected [REDACTED] property. Next, Officer Cappello used

¹COPA 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.

the back of his hand to check [REDACTED] front right pocket. [REDACTED] alleged that Officer Cappello placed his hands inside her pants and touched her pubic hair. [REDACTED] then became angry and pulled away from Officer Cappello. Officer Cappello grabbed [REDACTED] jacket which caused it to rip. Furthermore, [REDACTED] spit on the side of Officer Cappello's face as he walked away. [REDACTED] allegations were documented in an **Initiation Report**² which was submitted to COPA.

COPA obtained a statement from [REDACTED] on December 23, 2019 at approximately 1:25 p.m. at residence located at [REDACTED], Chicago, Illinois. [REDACTED] stated she is in the 11th grade and attends North Lawndale College Prep high school. [REDACTED] stated on the day of the incident she was standing on Homan when the officer, now known as Officer Cappello approached her in an aggressive manner. When Officer Cappello asked her age, she told him she was 17 years old. Officer Cappello then corrected [REDACTED] and told her she was 18 years of age. It should be noted that [REDACTED] was 17 years old at the time of the incident and at the time of her statement to COPA.⁴ Officer Cappello then advised [REDACTED] that she was under arrest for soliciting. [REDACTED] stated a transport vehicle arrived and she was taken to the station. After exiting the transport vehicle at the district, Officer Cappello asked if she was carrying any narcotics and [REDACTED] advised she did not have anything in her possession.

After arriving at the police station, Officer Cappello began searching [REDACTED] Officer Cappello placed his hand under [REDACTED] belt and touched her "vagina hairs,"⁵ causing her to go "crazy"⁶ and spit on him. [REDACTED] stated there was a lady (now known as [REDACTED], also in custody) who stated, "you know you wasn't supposed to be doing that anyway."⁷ She stated that she hopped on to the bench and more officers entered the room. Officer Cappello excited, and she never saw him again.

COPA obtained a statement from **Officer Bieniasz**⁸ on January 21, 2020 at approximately 2:52 p.m., on the 4th floor of COPA offices located at 1615 W. Chicago Ave, Chicago, Illinois. Officer Bieniasz stated on the date of the incident he was responsible for enforcement. He and several other officers went to the location to arrest [REDACTED] After the arrest, Officer Bieniasz returned to the district and was standing in the hallway when he heard a commotion in the processing room. Officer Bieniasz stated [REDACTED] was upset about being arrested. Officer Bieniasz stated that he observed Officer Cappello "patting down the jacket for weapons."⁹ As Officer Bieniasz entered the room, he observed [REDACTED] spit in Officer Cappello's face. Officer Bieniasz stated he entered the room as [REDACTED] was yelling that "he had touched her vagina. Pussy."¹⁰ Officer Bieniasz stated that he and Officer Donnelly were able to get [REDACTED] to calm down. Officer Bieniasz was familiar with [REDACTED] from a previous arrest, and he did not

² See Att. 1

³ See Att. 8

⁴ See Att. 61. [REDACTED] was accompanied by a legal guardian at the time of her statement to COPA.

⁵ *Id.* at 3:05

⁶ *Id.* at 3:10

⁷ *Id.* at 3:25

⁸ Officer Bieniasz appeared with his attorney, [REDACTED], who was present during the interview. Officer Bieniasz's interview is incorporated as Att. 16.

⁹ *Id.* at 8:27

¹⁰ *Id.* at 9:41

recall her being irate or violent. Female officers came and conducted a search and narcotics were recovered and turned over to Officer Bieniasz.

COPA obtained a statement from **Officer Donnelly**¹¹ on January 28, 2020 at approximately 11:11 a.m., on the 4th floor of COPA offices located at 1615 W. Chicago Ave, Chicago Illinois.¹² Officer Donnelly described [REDACTED] being “loud”¹³ and not the “easiest to deal with.”¹⁴ Officer Donnelly stated he ran into the processing room when he heard commotion. Upon entering the room, he observed [REDACTED] standing on the processing bench. [REDACTED] anger was only directed at Officer Cappello. Officer Donnelly had a good rapport with [REDACTED] and was able to get her to calm down. To the best of his recollection, [REDACTED] was handcuffed behind throughout the incident.¹⁵

COPA obtained a statement from **Officer Cappello**¹⁶ on June 12, 2020 at approximately 2:55 p.m., on the 5th floor conference room, at the COPA offices located at 1615 W Chicago Ave, Chicago, Illinois. On the date of the incident, Officer Cappello was working enforcement regarding narcotics sales. Officer Cappello was provided a description of [REDACTED] and went to the location where he took her into custody. At the time of the incident, Officer Cappello believed that [REDACTED] was 18 years of age, and therefore, an adult. After arriving at the district, Officer Cappello escorted [REDACTED] to the processing room. [REDACTED] remained handcuffed, and Officer Cappello collected her purse and asked [REDACTED] if she had anything “on her,” that could hurt him or another officer and [REDACTED] responded, “no.”¹⁷ Officer Cappello then advised [REDACTED] that he would “check.”¹⁸ Officer Cappello stated he used the back of his hand by her front waistband, near her right front pocket. [REDACTED] then through a “temper tantrum”¹⁹ and began jumping up and down on the benches and running around the processing room. Officer Cappello went on to say, “as soon as I felt that object I pretty much sure of what it was.”²⁰ He suspected [REDACTED] to be in possession of narcotics as he felt a hard object. Officer Cappello described [REDACTED] as a threat due to her behavior. He was familiar with [REDACTED] because he frequently researched CLEAR during his tour of duty and remembered seeing her name. However, he did not recall previously arresting [REDACTED]. The incident ended with [REDACTED] spitting on his face and Officer Cappello exiting the processing room.

According to the **Case Report**,²¹ officers were monitoring POD cameras #7566 and #4060W and observed [REDACTED] and [REDACTED] (hereafter [REDACTED] and [REDACTED] engaging in narcotics transactions. Officers were also positioned near the location and heard both [REDACTED]

¹¹ Officer Donnelly appeared with his attorney, [REDACTED], who was present during the interview. Officer Donnelly’s interview is incorporated at Att. 68.

¹² See Att. 68

¹³ *Id.* at 10:15

¹⁴ *Id.* at 10:20

¹⁵ *Id.* at 21:22

¹⁶ Officer Cappello appeared with his attorney, [REDACTED], who was present during the interview. Officer Cappello’s interview is incorporated at Att. 60.

¹⁷ *Id.* at 9:11

¹⁸ *Id.* at 9:13

¹⁹ *Id.* at 9:42

²⁰ *Id.* at 10:25

²¹ See Att. 3

and ██████ yelling “blows,” which is the street terminology for heroin. Upon arrival, both ██████ and ██████ were placed in custody and transported to the 11th District. Upon arrival, Officer Cappello collected ██████ property. Officer Cappello removed a black glove from ██████ left jacket pocket. The case report further states that Officer Cappello “felt an object,” after he placed the back of his right hand on the front ██████ front right pocket. ██████ became irate and pulled away from Officer Cappello causing her jacket to rip. ██████ then spit along the right side of Officer Cappello’s face. Officer Bernadette and Officer Santana conducted a custodial search of ██████ and discovered two bags of heroin in the waistband of her pants.

COPA obtained **Body Worn Camera**²² (BWC) which depicts Officer Cappello talking to a female, black, yellow coat, red crossbody purse, and black jeans, now known as ██████. During the recording Officer Hernandez asks ██████ if she has an ID on her person, and ██████ replies, “no sir.”²³ Officer Hernandez then asks ██████ her age, to which she replies she is 17. Officer Hernandez asks her if she is sure and she states yes.

Additionally, Officer Cappello and ██████ discuss why she was arrested as a group of people walk up the sidewalk towards them. One of the male subjects in the group advises Officer Cappello that ██████ is his sister. Officer Cappello then replies, “I don’t care. She’s eighteen.”²⁴ Further into the recording ██████ asks for a phone to call her mother, and Officer Cappello responds, “No. You’re an adult.”²⁵ The two of them engage in a back and forth discussion and ██████ advises Officer Cappello that she is 17 years old. Officer Cappello insists that ██████ is 18 years of age.

COPA obtained the **TRR**²⁶ completed by Officer Cappello. The TRR lists ██████ as the subject. According to the TRR, ██████ did not follow verbal direction, used verbal threats, pulled away and physically attacked Officer Cappello by spitting on him. Additionally, the narrative states ██████ “became irate and began to use abusive language when she pulled away as P.O. Cappello was holding onto her jacket causing a large rip then letting go.”²⁷

COPA conducted a **Canvass**²⁸ of the 3900 block of West Van Buren in Chicago, Illinois on January 7, 2020 in search of witness, ██████ (hereafter ██████). While in route to the last known address for ██████ COPA Investigators spotted a female, black walking westbound on West Van Buren matching ██████ description. ██████ refused to provide a recorded statement to COPA. However, she stated that on December 6, 2019 she was at the 11th District waiting to be processed along with a young light skinned girl between 14-16 years of age. ██████ went on to say that the girl experienced an “illegal search.” She observed a male, white officer with a beard, wearing plain clothes and a skull cap, place his hands inside of the minor’s pants in search of contraband. ██████ stated the female was wearing tight pants, so

²² See Att. 46, 47 & 48

²³ See Att. 48 *Id.* at 2:09

²⁴ See Att. 47 *Id.* at 3:52

²⁵ *Id.* at 4:52

²⁶ See Att. 66

²⁷ *Id.* at page 2

²⁸ See Att. 62

the officer had to pull her pants at the waist and go inside in a downward motion. ██████████ stated that during the search the female continuously yelled, and the female spat at the officer.

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
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 is has found to be more probably true than not). If the evidence gathered in an investigation establishes that it 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 the proposition ... is true” *Id.* at 28

IV. ANALYSIS AND CONCLUSION

COPA finds **Allegation #1** that on December 6, 2019, at the 11th District, located at 3151 W Harrison Street, Chicago, IL, Officer Cappello conducted an improper search by placing his hands inside ██████████ pants and touching her pubic hair without justification is **SUSTAINED**. ██████████ alleged that after arriving at the police station, Officer Cappello began searching her, placed his hand under her belt, touched her “vagina hairs,” During his statement to COPA, Officer Cappello admitted that he felt an object when he used the back of his right hand to

check [REDACTED] front right pocket.²⁹ The Initiation Report, Case Report and Arrest Report state that Officers Bernadette and Santana recovered two baggies of what was suspected to be heroin from [REDACTED] waistband. Officers Bieniasz and Donnelly did not fully observe the search and only entered the room once [REDACTED] began yelling and complaining of the search. However, [REDACTED] was in the room and corroborated [REDACTED] story by stating that [REDACTED] experienced an “illegal search,”³⁰ and that the male, white officer pulled [REDACTED] pants at the waist and went inside in a downward motion. [REDACTED] immediate outcry overheard by Officers Bieniasz and Donnelly combined with the statement of [REDACTED] make it more likely than not that Officer Cappello did place his hand inside her waistband and touched her pubic hair. It should be noted that COPA does not find and has no evidence to show that his actions were sexual in nature. However, per Special Order 06-04 V(C)(7(a) Processing of Juveniles and Minors under Department Control, “the juvenile will be searched and accompanied into the lockup by a sworn member of the same sex as the juvenile arrestee.”³¹ Officer Donnelly’s mistaken belief of [REDACTED] age is a mitigating factor but does not effect COPAs findings. For these reasons, COPA finds the allegation is **SUSTAINED** based on a preponderance of the evidence presented.

COPA finds **Allegation #2** that on December 6, 2019, at the 11th District, located at 3151 W Harrison Street, Chicago, IL Officer Cappello grabbed her jacket without justification, and caused the jacket to rip is **EXONERATED**. The **TRR**³² stated [REDACTED] pulled away, did not follow verbal direction and verbally threatened Officer Cappello, therefore his actions taken to gain control of [REDACTED] would have been justified. Additionally, in her statement to COPA, [REDACTED] admitted to going “crazy,”³³ by jumping on the processing bench and spitting on Officer Cappello. Moreover, the witness, [REDACTED] also described [REDACTED] as being irate and stated that she spat at Officer Cappello.³⁴ This conduct was further witnessed by Officers Bieniasz and Donnelly. For these reasons, COPA finds the allegation is **EXONERATED**, as the conduct described in the allegation occurred, but it was lawful and proper.

I. RECOMMENDED DISCIPLINE FOR SUSTAINED FINDINGS

a. Officer Joseph Cappello

- i. **Complimentary History:**³⁵ 1 Crime Reduction Award, 8 Department Commendations, 130 Honorable Mentions, 1 Military Service Award, 2 Police Officer of the Month Awards, 1 Recognition/Outside Governmental Agency Award, 3 Traffic Stop of the Month Awards

²⁹ See Att. 60

³⁰ See Att. 15

³¹ See Att. 65 *Id.* at page 7

³² See Att. 66

³³ See Att. 8 *Id.* at 3:10

³⁴ See Att. 15

³⁵ See Att. 69

ii. Disciplinary History:³⁶ 1 Spar 2020 Preventable Accident

b. Recommended Penalty by Allegation

i. Allegation No. 1: 30-day Suspension

Officer Cappello mistakenly believed [REDACTED] was 18-years-old at the time of this incident. Although this belief appears to have been a genuine mistake, Officer Cappello should have taken better care to obtain her correct age prior to the search, as he knew her age was in dispute. Therefore, COPA recommends a 30-day suspension for this incident and training.

Approved:

[REDACTED]

Andrea Kersten
Chief of Investigative Operations

1/22/2021

Date

³⁶ See Att. 70

Appendix A

Assigned Investigative Staff

Squad#:	9
Investigator:	Shakira Nubern
Supervising Investigator:	Sharday Jackson
Chief of Investigative Operations:	Andrea Kersten