

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

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|-----------------------------------|--|
| Date / Time of Incident: | February 20, 2020, approximately 8:26 p.m. |
| Location of Incident: | At or near 931 West 88th Street, Chicago, Illinois |
| Date / Time of COPA Notification: | February 25, 2020, approximately 12:31 a.m. ¹ |

██████████ complained to COPA about a traffic stop conducted by two CPD officers, alleging that one of the officers told him that he sounded “dumb” and that he was “making no sense.” COPA accessed and viewed body-worn camera video footage depicting the traffic stop. That footage showed that CPD Officer Christian Herrera did in fact make those statements to ██████████ during the stop. COPA accordingly interviewed Officer Herrera, who then acknowledged that he made the statements at issue, although he denied that he had intended to be discourteous to ██████████ in doing so. COPA has rejected Officer Herrera’s claim of innocent intent, and we have determined that Officer Herrera’s actions violated a CPD rule prohibiting conduct that brings discredit to the CPD and a CPD rule prohibiting disrespect.

II. INVOLVED PARTIES

| | |
|-------------------------|---|
| Involved Officer #1: | Christian Herrera, Star #12602, Employee ID# ██████████; Date of Appointment: March 16, 2017; Rank: Police Officer; Unit of Assignment: 022, DOB: ██████████ 1994; M/HISP |
| Involved Officer #2: | Marco A. Vasquez, Star #19384, Employee ID# ██████████, Date of Appointment: December 12, 2016; Rank: Police Officer; Unit of Assignment: 008; DOB: ██████████ 1988, M/HISP |
| Involved Individual #1: | ██████████ DOB: ██████████, 1990, M/BLK |

III. ALLEGATIONS

| Officer | Allegation | Finding / Recommendation |
|-----------------|---|--------------------------|
| Officer Herrera | On February 16, 2020, at approximately 8:26 p.m., at or near 931 West 88th Street, Chicago, Illinois, Officer Christian Herrera committed misconduct through the following acts and/or omissions: Officer Herrera showed discourtesy and/or disrespect toward ██████████ ██████████ and/or maltreated ██████████ in that, among other things, he stated to ██████████ words to the effect of “You sound dumb,” and/or “You’re making no sense.” | Sustained / Reprimand |

¹ COPA was first notified of the incident by way of a complaint submitted through our website. See Attachment #1.

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2, CPD Rules of Conduct (prohibiting conduct which impedes the CPD's efforts to achieve its policy and goals or brings discredit upon the CPD.)
2. Rule 8, CPD Rules of Conduct (prohibiting disrespect to or maltreatment of any person)

V. INVESTIGATION²

Summary of the Alleged Misconduct under Investigation

The alleged misconduct under investigation took place during a traffic stop made by CPD Officers Christian Herrera and Marco A. Vasquez at or near 931 West 88th Street in Chicago at about 8:26 p.m. on February 16, 2020. COPA was first notified of that alleged misconduct on February 25, 2020 by way of a website complaint submitted by ██████████ in which ██████████ identified one of the officers by Star #12602, alleging that the officer had stated to ██████████ words to the effect of “you sound dumb” and “you’re making no sense.”³

COPA's Steps to Identify the Officers Involved

Using information collected by the CPD, COPA ascertained that CPD Officer Herrera, Star #12602, had reported making a traffic stop of ██████████ at the time and place in question while assigned to Beat 2222.⁴ Using CPD attendance records, COPA ascertained that Officer Herrera was then partnered with Officer Vasquez.⁵

Body-worn Camera Footage

COPA accessed and reviewed body-worn camera video footage recorded by Officers Herrera and Vasquez during the stop.⁶ That footage shows the stop begin at approximately 8:26:56 p.m. with Officer Herrera approaching the driver side of ██████████ car, and with Vasquez approaching the passenger side; the windows of ██████████ car are shown to be tinted.⁷ The footage then shows that a discussion then ensued between ██████████ and Officer Herrera, with each person speaking

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 See Attachment #1, which is an image of ██████████ website submission. COPA subsequently interviewed ██████████ on February 27, 2020. Attachment #10 is an audio recording of that interview. ██████████ then gave an account that was substantially similar to that which he had provided in his web submission, repeating his allegation that one of the officers involved in the complained-of traffic stop had stated words to the effect that ██████████ sounded “dumb” and that ██████████ “wasn’t making any sense.” ██████████ then supplied COPA with a sworn affidavit attesting to the truth of his account. See Attachment #11.

⁴ See Attachment #3.

⁵ See Attachment #4.

⁶ That footage may be found at Attachments ## 5 and 6, respectively.

⁷ See Attachments ## 5 and 6, at T02:26:56z of each. (Body-worn camera footage recorded by CPD officers is time-marked using Greenwich Mean Time or “Zulu” time.)

fairly softly and with neither using a raised voice.⁸ Officer Herrera's verbal exchange with ██████████ cannot be well-heard when viewing the footage recorded by Officer Vasquez.⁹ The footage recorded by Officer Herrera shows the following, in summary:

- ██████████ complains that "you guys" had stopped him only thirty minutes before, to which Officer Herrera responds by stating, "I didn't pull you over, did I?"¹⁰
- A few moments later, Officer Herrera asks ██████████ why he had been stopped earlier, to which ██████████ responds, "Just for driving." Officer Herrera then says, "You don't get pulled over just for driving; why were you pulled over?" ██████████ then hands Officer Herrera a document, saying, "Driving while Black. Here's the insurance." Officer Herrera then says, "You sound dumb right now."¹¹
- Officer Herrera begins to tell ██████████ why he pulled him over, but ██████████ interrupts, stating to Officer Herrera, among other things, "I have to get back to work, so go and do your job, sir," rolling his driver-side window partially upward as he does so. Officer Herrera then says, "I am doing my job," and he directs ██████████ to keep his windows down, stating, "I'm talking to you."¹²
- ██████████ then says, "What are you still talking to me for?" Officer Herrera responds by saying, "Well, part of my job is to explain to you why you were pulled over during this traffic stop. Do you want me to do my job? Let me do that for you." ██████████ then says words to the effect that he doesn't care about that, to which Officer Herrera responds, "Well, do you want me to do my job or not? First you tell me to do my job, now you tell me not. You're making no sense right now."¹³

Officer Herrera then directs ██████████ to step out of the car, and ██████████ complies.¹⁴ Officer Herrera then tells ██████████ that he is going to measure the tint of his vehicle, and he does so.¹⁵ Officer Herrera then asks ██████████ if he would like to see the measurement that he had taken, and ██████████ declines.¹⁶ Officer Herrera then returns to his CPD vehicle, he enters information into a computer, and he writes a citation, which he delivers to ██████████ upon returning to ██████████

⁸ See Attachments ## 5 and 6, at T02:27:05z and immediately following, of each.

⁹ See Attachment #6 at T02:27:05z and immediately following. For this reason, COPA has concluded that Officer Vasquez should not be held to account for failing to intervene in or failing to report the verbal exchange.

¹⁰ See Attachment #5 at T02:27:22z - T02:27:59z.

¹¹ See *id.* at T02:28:12z - at T02:28:22z. The statement "You sound dumb right now" cannot be heard when viewing Officer Vasquez's footage. See Attachment #6 at T02:28:12z - at T02:28:22z.

¹² See Attachment #5 at T02:28:29z - T02:28:43z.

¹³ See *id.* at T02:28:44z - T02:28:59z.

¹⁴ See *id.* at T02:29:07z - T02:29:13z.

¹⁵ See *id.* at T02:29:14 - T02:30:14z. The Chicago Municipal Code prohibits the roadway operation of a motor vehicle having tinted film on side windows that are immediately adjacent to either side of the vehicle's operator. See MCC, §9-76-220.

¹⁶ See Attachment #5, at T02:30:15z and immediately following.

vehicle, telling ██████ that the charge is for driving with tinted windows.¹⁷ The stop concludes at approximately 8:37:55 p.m., having lasted approximately eleven minutes in duration.¹⁸

Interview of Officer Christian Herrera

COPA interviewed Officer Herrera on August 5, 2021.¹⁹ Prior to starting that interview, COPA permitted Officer Herrera to view the body-worn camera video footage that he had recorded at the time in question.²⁰ During that interview, Officer Herrera acknowledged that he had stated to ██████ words to the effect of “You sound dumb,” and “You’re making no sense” during the course of the traffic stop under review.²¹ However, Officer Herrera denied that it had been discourteous or disrespectful of him to have said such things during the stop.²² Officer Herrera then claimed that “[t]he message I was trying to relate to him was that the idea he was trying to relate to me was not making sense to me.”²³ Officer Herrera further stated that he had maintained a professional demeanor, that he had not raised his voice, and that he had not intended to disrespect or maltreat ██████²⁴ After taking a break called for by his attorney, Officer Herrera resumed the interview by allowing that his “choice of words ... could’ve been better,” and that he understood why ██████ might have felt insulted by the words that he had used.²⁵

VI. LEGAL STANDARD

For each allegation, COPA must make one of the following findings: (1) *Sustained* – where it is determined that the allegation is supported by a preponderance of the evidence; (2) *Not Sustained* – where it is determined that there is insufficient evidence to prove the allegation by a preponderance of the evidence; (3) *Unfounded* – where it is determined by clear and convincing evidence that the 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 that the conduct was lawful and proper. For purposes of COPA’s investigations, a “preponderance of evidence” is evidence indicating that it is more likely than not that the alleged misconduct occurred. *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 establishes that it is likely that the alleged misconduct occurred, even by a narrow margin, then the preponderance of the evidence standard is met. “evidence” is 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 allegation is true. *See id.* at ¶ 28.

¹⁷ *See id.* at T02:30:26z - T02:37:54z. Attachment #9 is an image of that citation, which ██████ provided to COPA; it lists MCC §9-76-220 (driving with tinted windows) as the charged violation.

¹⁸ *See id.* at T02:37:54z.

¹⁹ Attachment #16 is an audio recording of that statement; Attachment #17 is a transcription.

²⁰ *See* Attachment #17, p. 5, line 22, through p. 6, line 14.

²¹ *See id.*, p. 15, lines 9 - 19.

²² *See id.*, p. 15, line 20, through p. 16, line 4.

²³ *See id.*, p. 16, lines 11 - 13.

²⁴ *See id.*, p. 16, lines 14 - 17.

²⁵ *See id.*, p. 16, line 19, through p. 17, line 20.

VII. ANALYSIS

Credibility Assessment

COPA has assessed the credibility and reliability of Officer Herrera’s statement to the effect that he intended no disrespect to ██████████. In doing so, we have considered the video footage, which shows the context and tone of the officer’s use of the allegedly offending statements. That footage shows that Officer Herrera did not raise his voice during the stop, as Officer Herrera pointed out during his interview. However, the footage shows that Officer Herrera used the word “dumb” in response to ██████████’ protestation that he had previously been stopped unlawfully. The footage also show that Officer Herrera’s statement to the effect that ██████████ was making no sense was not likely a sincere expression of an inability to understand – that statement came immediately after the officer had said words to the effect of, “Well, do you want me to do my job or not?” and “First you tell me to do my job, now you tell me not.” After considering the allegedly offensive statements’ context and tone, COPA has determined that Officer Herrera’s claim that he meant no disrespect in making the statements is neither credible nor reliable.

Further Analysis

Rule 2 of the CPD’s Rule of Conduct prohibits action or conduct which impedes the CPD’s efforts to achieve its policy and goals or brings discredit upon the CPD. It prohibits unlawful acts and acts, which although not unlawful in themselves, would degrade or bring disrespect upon the member or the CPD.²⁶ Rule 8 of the CPD’s Rule of Conduct prohibits disrespect to any person.²⁷ Video evidence depicting the tone and context of the statements at issue shows that Officer Hererra likely intended disrespect when he made the statements. It is self-evident that telling a civilian that he sounds “dumb” is not only disrespectful, but also that such conduct brings discredit to the CPD. The sole allegation of misconduct at issue is therefore supported by a preponderance of the evidence, and it is accordingly SUSTAINED.

VIII. FINDINGS

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

| Officer | Allegation | Finding |
|-----------------|--|-----------|
| Officer Herrera | On February 16, 2020, at approximately 8:26 p.m., at or near 931 West 88th Street, Chicago, Illinois, Officer Christian Herrera committed misconduct through the following acts and/or omissions: Officer Herrera showed discourtesy and/or disrespect toward ██████████ and/or maltreated ██████████ in that, among other things, he stated to ██████████ words to the effect of “You sound dumb,” and/or “You’re making no sense,” in violation of Rule 8 of the CPD Rules of Conduct. | Sustained |

²⁶ See Rules and Regulations of the Chicago Police Department, at V.2.

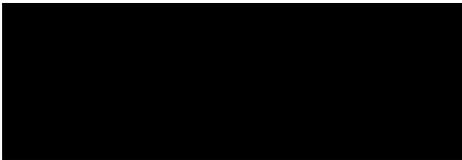
²⁷ See *id.*, at V.8.

IX. DISCIPLINARY AND REMEDIAL RECOMMENDATIONS

Officer Herrera has once before been a subject of a disciplinary investigations resulting in a sustained finding.²⁸ More specifically, on or about September 5, 2020, CPD’s Bureau of Internal Affairs determined that Officer Herrera had violated a CPD directive respecting vehicle towing operations by failing to remove and inventory certain personal property found within a vehicle to be towed.²⁹ Officer Herrera has received two Department Commendations, seventeen Honorable Mentions, and several other awards.³⁰

It is self-evident that Officer Herrera’s offense had the consequence of diminishing the CPD’s credit. Officer Herrera aggravated that offense during his COPA interview by denying the obvious - that he had been discourteous and disrespectful to ██████████ - only grudgingly later to acknowledge, after a break called by his attorney, that he could have chosen his words more carefully. COPA recommends that Officer Herrera should be reprimanded, and further, that he should receive counseling and/or additional training with respect to courtesy, respectfulness, and professionalism.

Approved:



9/22/2021

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

²⁸ See Attachment #18 (Officer Herrera’s Disciplinary and Complimentary History).

²⁹ See *id.*

³⁰ See *id.*

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|----------------|
| Squad#: | 2 |
| Investigator: | Francis Tighe |
| Supervising Investigator: | Robert Coleman |
| Deputy Chief Administrator: | Matthew Haynam |