

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 31, 2019
Time of Incident:	9:00 pm
Location of Incident:	8900 South Commercial Avenue
Date of COPA Notification:	August 8, 2019
Time of COPA Notification:	10:50 am

On May 31, 2019, Officer Louis Garcia (Officer Garcia) and Officer Manuel Giron (Officer Giron), while on routine patrol, observed [REDACTED] ([REDACTED] standing in the middle of the road, impeding traffic. Officer Garcia handcuffed [REDACTED] and with the assistance of Officer Giron, escorted [REDACTED] to the rear of the police vehicle. As Officer Garcia attempted to place [REDACTED] into the back seat a struggle ensued, which culminated in Officer Garcia choking [REDACTED] as he lay handcuffed in the back seat of the police vehicle.

While transporting [REDACTED] to the District Station,<sup>1</sup> the officers reported [REDACTED] attempted to bite Officer Garcia. Officer Garcia elbowed [REDACTED] in the mouth causing a laceration. At the District Station, Sergeant Kevin Rake (Sgt. Rake) and Lieutenant Charles Daly (Lt. Daly) spoke to the officers, reviewed Officer Giron’s body worn camera, and spoke to [REDACTED] was taken to the hospital for treatment.

COPA received an Initiation Report, dated August 8, 2019, from Captain Eve Gushes of the Force Review Unit, alleging the use of excessive force and the failure to report misconduct. Following an investigation, the Civilian Office of Police Accountability (COPA) finds the involved officers engaged in various acts of misconduct and has Sustained allegations for each officer. COPA also referred this matter to the Cook County State’s Attorney’s Office (CCSAO) for criminal review, but they declined to file charges.<sup>2</sup>

II. INVOLVED PARTIES

Involved Lieutenant #1:	Charles Daly, star #494, employee ID# [REDACTED] Date of Appointment: August 1, 1994, Lieutenant, Unit 015, DOB: [REDACTED], 1970, Male, White
Involved Sergeant #1:	Kevin Rake, star #2015, employee ID# [REDACTED] Date of Appointment: October 25, 2004, Sergeant, Unit 004, DOB: [REDACTED] 1977, Male, White
Involved Officer #1:	Louis Garcia, star #16093, employee ID# [REDACTED] Date of Appointment: April 28, 2003, PO, Unit 004/376,

<sup>1</sup> Chicago Police Department (CPD).

<sup>2</sup> CCSAO received the Department records relative to this incident, including the BWC recording which captured Officer Garcia choking [REDACTED] Attachments 24 and 5.

Involved Officer #2: DOB: [REDACTED] 1979, Male, Spanish  
 Manuel Giron, star #11959, employee ID#[REDACTED]  
 Date of Appointment: May 19, 2008, PO, Unit 004,  
 DOB: [REDACTED] 1972, Male, Spanish

Involved Individual #1: [REDACTED] DOB: [REDACTED] 1970, Male, White Hispanic

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Louis Garcia	It is alleged that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Louis Garcia committed misconduct through the following acts or omissions, by:	
	1. stopping [REDACTED] without justification;	Exonerated
	2. choking [REDACTED] without justification; and	Sustained/ Separation
	3. interrupting the transport of [REDACTED] to the District Station without justification.	Exonerated
	It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Louis Garcia, committed misconduct through the following acts or omissions, by:	
	1. failing to record the incident on body worn camera;	Sustained/ Separation
	2. failing to have [REDACTED] transported to the District Station in a properly equipped Department vehicle;	Sustained/ Separation
	3. failing to secure [REDACTED] by means of a seat belt;	Sustained / Separation

	<p>4. failing to accurately complete a Tactical Response Report after a use of force incident;</p> <p>5. using force as punishment or retaliation;</p> <p>6. failing to provide medical aid to [REDACTED] and [REDACTED];</p> <p>7. acting unprofessional during the stop.</p>	<p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Not Sustained</p> <p>Sustained / Separation</p>
<p>Officer Manuel Giron</p>	<p>It is alleged by Captain Eve Gushes, star #23, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by</p> <p>1. failing to report that Officer Louis Garcia used excessive force.</p> <p>It is alleged by [REDACTED] that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by:</p> <p>1. stopping [REDACTED] without justification;</p> <p>2. striking [REDACTED] on or about the head or face area with a closed hand without justification; and</p> <p>3. interrupting the transport of [REDACTED] to the District Station without justification.</p> <p>It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by:</p> <p>1. searching [REDACTED] without justification;</p>	<p>Sustained / Separation</p> <p>Exonerated</p> <p>Unfounded</p> <p>Exonerated</p> <p>Sustained / Separation</p>

	<p>2. failing to record the incident in its entirety on body worn camera;</p> <p>3. failing to have [REDACTED] transported to the District Station in a properly equipped Department vehicle;</p> <p>4. failing to secure [REDACTED] by means of a seat belt; and</p> <p>5. failing to complete a Tactical Response Report after a use of force incident.</p>	<p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Unfounded</p>
Sergeant Kevin Rake	<p>It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm or thereafter at or near 2255 East 103rd Street, Sergeant Kevin Rake, star #2015 committed misconduct through the following acts or omissions, by:</p> <p>1. failing to report that Officer Louis Garcia used excessive force; and</p> <p>2. failing to comply with General Order G03-02-02 V.</p>	<p>Sustained / Separation</p> <p>Sustained / Separation</p>
Lieutenant Charles Daly	<p>It is alleged by Captain Eve Gushes, star #23, that on or about May 31, 2019 at approximately 9:00 p.m. at or near 2255 East 103rd Street, Lieutenant Charles Daly, star #494 committed misconduct through the following acts or omissions, by</p> <p>1. failing to report that Officer Louis Garcia used excessive force.</p> <p>It is alleged by COPA by and through Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 2255 East 103rd Street, Lieutenant Charles Daly, star #494 committed misconduct through the following acts or omissions, by</p> <p>1. failing to comply with General Order G03-02-02 V.</p>	<p>Sustained / Separation</p> <p>Sustained / Separation</p>

**IV. APPLICABLE RULES AND LAWS**

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**Rules**

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1. Rule 1: Violation of any law or ordinance.
2. Rule 2: Any action or conduct which impedes the Department's efforts to achieve 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.
3. Rule 6: Disobedience of an order or directive, whether written or oral.
4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
5. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
6. Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

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**General Orders**

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1. G01-01 Vision, Mission Statement, and Core Values
2. G03-02 Use of Force (effective October 16, 2017 through February 28, 2020)
3. G03-02-01 Force Options (effective October 16, 2017 through February 28, 2020)
4. G03-02-02 Incidents Requiring the Completion of a Tactical Response Report (effective October 16, 2017 through February 28, 2020)
5. G06-01-01 Field Arrest Procedures
6. G06-01-02 Restraining Arrestees

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**Special Orders**

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1. S04-13-09 Investigatory Stop System
2. S03-14 Body Worn Cameras

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**Uniform and Equipment Specifications**

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1. U02-01-08 Vehicles Equipped with Protective Dividers, Effective February 7, 1985 through June 25, 2019

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**Federal Laws**

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1. United States Constitution, Amendment IV: Prohibits search and seizure without probable cause.<sup>3</sup>

## V. INVESTIGATION<sup>4</sup>

### a. Interviews

In an **interview with COPA**, on October 7, 2019, ██████████ (██████████) stated on May 31, 2019, he was sitting and drinking at a bus stop. At one point, he flipped off a Chicago police officer that drove by. The officer did not react to him. ██████████ finished his beer and started walking toward the liquor store, across the street, to buy another drink. Plainclothes officers, now known as Officer Garcia and Officer Giron, called ██████████ over to their unmarked car and asked him why he flipped off their boss. ██████████ denied the action because he did not realize Officer Garcia witnessed him do it. Officer Garcia told ██████████ he was going to jail. ██████████ refused. Officer Garcia choked ██████████ while Officer Giron punched ██████████ in the face multiple times. One of the officers tossed him into the backseat of their vehicle.

██████████ was upset, and because there was no partition in the vehicle, he yelled nonsense into Officer Garcia's ear. ██████████ denied spitting on or touching Officer Garcia or Officer Giron. Officer Garcia elbowed ██████████ in the mouth, which bled profusely and required stitches. ██████████ upset, told Officer Garcia he had AIDS, even though he did not. Officer Garcia pulled the police vehicle over on what he described as a back road and pulled ██████████ out of the vehicle. ██████████ believed the officers were going to threaten him or beat him up, so he told them to remove his handcuffs and fight. The officers told him, "be cool, man,"<sup>5</sup> and neither officer removed ██████████ handcuffs nor touched him. Even though ██████████ said he wanted to go to the hospital, the officers took him to District 004 police station.

At the police station, ██████████ attempted to show other officers in lockup his injuries caused by Officer Garcia but was taken to a holding room. After being interviewed and waiting for two to three hours in the holding room, different officers took him in an ambulance to the hospital for treatment.<sup>6</sup>

In an **interview with COPA**, on January 13, 2020, **Officer Manuel Giron #11959 (Officer Giron)** stated on the date and time of the incident, he and his partner, Officer Garcia, were on routine patrol. Officer Giron observed a man, now known as ██████████ in the middle of the street at 89th and Commercial, impeding traffic<sup>7</sup> and giving the middle finger to cars. When ██████████ saw the officers, he started to walk away. The officers called him over to talk. Officer Giron could smell alcohol on ██████████ breath and asked for his identification (ID). ██████████ did not provide his ID, so Officer Giron searched ██████████ pockets for his ID. At this time, ██████████ was under arrest for reckless conduct, standing in the middle of the street. Officer Giron ran ██████████ name inside the police vehicle. A short time later, Officer Giron observed ██████████ become irate,

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<sup>3</sup> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>4</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>5</sup> Attachment 40, page 21 lines 6-7.

<sup>6</sup> Attachments 35, 40.

<sup>7</sup> Officer Giron stated cars were swerving to go around ██████████ which drew their attention to ██████████

described as getting loud and yelling. Officer Garcia placed [REDACTED] in handcuffs.<sup>8</sup> Officer Giron exited the vehicle to assist Officer Garcia. [REDACTED] pulled away as the officers escorted him to the vehicle. The officers gripped [REDACTED] arm tighter and escorted him to the vehicle. As Officer Garcia opened the rear vehicle door, [REDACTED] pulled away, faced Officer Garcia, and started arguing.<sup>9</sup> Officer Garcia told [REDACTED] to get into the vehicle, and Officer Giron went around to the other side of the vehicle to pull [REDACTED] into the vehicle.

When Officer Giron opened the vehicle door, he observed [REDACTED] lying on his back, struggling, moving back and forth, and attempting to kick Officer Garcia. Officer Garcia lost his balance and landed on top of [REDACTED]. Officer Garcia tried to hold [REDACTED] down, by placing his hands on [REDACTED] chest. Officer Giron indicated that Officer Garcia's hands moved up toward [REDACTED] neck while [REDACTED] moved around, but he denied Officer Garcia choked [REDACTED]. Officer Garcia repositioned and placed his forearm across [REDACTED] stomach and chest area. At this time, Officer Giron did not give any verbal commands to [REDACTED] and he could not recall whether Officer Garcia did. Officer Giron held [REDACTED] inside the vehicle, while Officer Garcia stepped back and outside the vehicle.

After reviewing his body worn camera (BWC) video, Officer Giron described [REDACTED] as handcuffed and lying on his back in the vehicle, while Officer Garcia had his body weight on top of [REDACTED]. Officer Garcia's left arm was across [REDACTED] chest, just below [REDACTED] neck, and his hands were at the top of [REDACTED] neck area, as [REDACTED] was trying to scream, "nigger lover."<sup>10</sup> Officer Giron admitted [REDACTED] struggled to speak because Officer Garcia's body weight was on [REDACTED] upper body. However, Officer Giron stated [REDACTED] was not being choked because he could talk. Officer Giron related a choked person cannot breathe or talk.

Once inside the car, [REDACTED] yelled, "nigger lover"<sup>11</sup> multiple times. Officer Giron explained he did not secure [REDACTED] in a seat belt because he did not want to further aggravate [REDACTED] and risk getting spit on or struck, and because he thought they could safely drive to the station. Officer Giron did not call for a squadrol or vehicle with a protective divider because [REDACTED] was already inside Officer Giron's vehicle, and in the officer's experience, individuals typically calm down at this point. Officer Giron related he has transported multiple individuals in his vehicle, without a protective divider, because it can take thirty minutes to wait for a transport. Officer Giron admitted Officer Garcia never suggested they call for a transport vehicle.<sup>12</sup>

As the officers transported [REDACTED] sat back and continued to yell, "nigger lover." Officer Giron ignored him, but when he did not hear [REDACTED] yelling anymore, he turned to see [REDACTED] attempting to bite Officer Garcia.<sup>13</sup> Officer Giron believed Officer Garcia felt [REDACTED] coming at him, because Officer Garcia moved to the left and struck [REDACTED] in the mouth with his elbow. [REDACTED] then sat back with his head down, and Officer Garcia kept driving.

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<sup>8</sup> At this point, Officer Giron did not know why Officer Garcia placed [REDACTED] in handcuffs. At the police station, Officer Garcia told Officer Giron he had arrested [REDACTED] before and knew [REDACTED] becomes irate and aggressive.

<sup>9</sup> Officer Giron did not know what [REDACTED] was saying.

<sup>10</sup> Attachment 43, page 70 line 6.

<sup>11</sup> Attachment 43, page 29 line 16.

<sup>12</sup> Officer Giron is aware Department policy requires him to call for a squadrol or vehicle with a protective divider. Uniform and Property U02-01-08. In practice, Officer Giron calls for a transport vehicle when he has multiple arrestees.

<sup>13</sup> Officer Giron described [REDACTED] with his mouth open, moved toward Officer Garcia's right shoulder.

At some point, [REDACTED] spit blood in the officers' direction, hitting the PDT<sup>14</sup> on the center console. Officer Giron observed blood coming out of [REDACTED] mouth, and the officers decided to stop<sup>15</sup> to determine whether [REDACTED] required medical attention. [REDACTED] exited the vehicle so the officers could check him out. The officers observed a cut on [REDACTED] lip, which they determined was not major. [REDACTED] did not ask to go to the hospital or complain of any pain; the officers continued to the police station. Officer Giron did not call for a transport vehicle at this time, because he did not want [REDACTED] to be trouble for anyone else. [REDACTED] calmed down and was transported to the station without further incident.

At the station, [REDACTED] was compliant, and the officers escorted him to the back for processing. Officer Giron notified Sgt. Rake about Officer Garcia's elbow strike, which required a tactical response report (TRR). Sgt. Rake decided to call an ambulance for [REDACTED] because although the cut was not bleeding, they could see the cut was deeper and required stitches.

When asked why his BWC turned off, Officer Giron stated he did not know; he opined that it may have happened during the struggle to get [REDACTED] into the backseat. After reviewing the video, Officer Giron believed his BWC shut off at the conclusion of the incident, when [REDACTED] was sitting in the back seat with the doors closed. Officer Giron noted, just prior to his BWC deactivating, that Officer Garcia asked if Officer Giron's BWC was on. Officer Giron checked<sup>16</sup> the camera and must have turned it off when he believed he was turning it on. Officer Giron believed his BWC was still recording during this incident, but he stated he always turns his camera off while transporting an individual.

Officer Giron denied all the allegations against him. Specifically, Officer Giron did not see Officer Garcia choke [REDACTED] and none of his superiors said Officer Garcia choked [REDACTED] after they watched the video with Officer Giron. Officer Giron did not believe he needed to complete a TRR, and neither Sgt. Rake nor Lt. Daly told him to complete a TRR. Lt. Daly, as part of completing Officer Garcia's TRR, spoke to [REDACTED] who admitted he attempted to bite Officer Garcia in the neck area.<sup>17</sup>

**The Cook County State's Attorney Office (CCSAO) Investigations Bureau Investigative Report**<sup>18</sup> documents an interview on November 8, 2019, when **Officer Manuel Giron** provided a statement consistent with his COPA statement, with the following additional details. At the police station, Officer Garcia told Officer Giron that [REDACTED] tried to kick Officer Garcia when he pushed [REDACTED] into the vehicle, and Officer Garcia applied an elbow strike after he felt [REDACTED] on his right shoulder and saw [REDACTED] mouth open. Officer Giron did not recall removing Officer Garcia's hands from [REDACTED] chest and neck area while in the backseat. Officer Giron nodded affirmatively when the investigator asked if Officer Giron recalled, after watching the BWC video, that Officer Garcia's two hands were closer to [REDACTED] neck than [REDACTED] chest.<sup>19</sup>

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<sup>14</sup> The portable data terminal (PDT) is computer inside the vehicle.

<sup>15</sup> Officer Giron stated the officers stopped in a public park area at 87th and Lake Shore Drive.

<sup>16</sup> Officer Giron did not look down to see if the light was green or red, and he did not pay attention to whether the camera was beeping.

<sup>17</sup> Attachment 42, 43.

<sup>18</sup> This is a summary of CCSAO's written report, as the agency apparently did not record either the audio or video of Officer Giron's interview.

<sup>19</sup> Attachment 67.

In an **interview with COPA**, on February 6, 2020, **Sergeant Kevin Rake #2015 (Sgt. Rake)** stated on the date and time of the incident, he received a phone call from Officer Garcia or Officer Giron, relating the officers were at District 004 Police Station and needed to complete a TRR. Sgt. Rake told the officers they should have notified him before transporting ██████ so he could have responded to the scene.<sup>20</sup>

At the station, the officers related to Sgt. Rake the same information as in Officer Garcia's TRR. Sgt. Rake, Lt. Daly, and the officers watched Officer Giron's BWC video. Sgt. Rake told Officer Garcia to complete a TRR for the elbow strike, but Sgt. Rake did not believe Officer Garcia needed to complete a TRR for his actions observed on Officer Giron's BWC video. Sgt. Rake verbally admonished Officer Garcia for not recording the incident on his BWC. Sgt. Rake spoke to Officer Giron about terminating his BWC early, but did not admonish him. Sgt. Rake admitted both officers should have recorded transporting ██████ to the police station.

When Sgt. Rake first saw ██████ he was in the holding room. ██████ was drunk, smelled of alcohol, was belligerent, yelling, and screaming, and he had a small cut on his lip. Sgt. Rake or Lt. Daly decided to send ██████ to the hospital because he was intoxicated, and to get his lip checked. At the time of the incident, Sgt. Rake was not aware that ██████ spit blood, that the officers interrupted transport, that ██████ exited the vehicle during that stop, or that Officer Garcia knew ██████ from a prior arrest. Sgt. Rake stated, based on that information, the officers should have called for a transport vehicle, but he was not sure they should have called for medical assistance.

After reviewing Officer Giron's BWC video, Sgt. Rake described the officers' actions in the video. Sgt. Rake said the officers attempted to place ██████ who was handcuffed behind his back, into the vehicle's back seat. ██████ kicked Officer Garcia's feet causing Officer Garcia to fall and land on top of ██████. Officer Garcia was controlling ██████ by placing Officer Garcia's arm across the upper part of ██████ chest. Sgt. Rake believed Officer Garcia's hands were by ██████ collarbone, holding ██████ down. Sgt. Rake denied ██████ was gasping for breath or struggling to breathe; he believed ██████ was preparing to spit. ██████ was not complying with the officers' commands. After watching the BWC video again, Sgt. Rake admitted he did not hear the officers provide any commands. When asked how ██████ was supposed to know what to do to stop Officer Garcia from using the control tactics, Sgt. Rake responded, "I'm not really sure."<sup>21</sup> Sgt. Rake believed Officer Garcia's use of force was within policy; specifically, Officer Garcia did not use excessive force. Sgt. Rake denied the allegations against him.

After reviewing Officer Garcia's TRR, Sgt. Rake admitted the Original Case Report included a more detailed narrative of the incident than the TRR, but Sgt. Rake believed the TRR's narrative was fine. The TRR's narrative says Officer Garcia used control holds. Sgt. Rake believed that documented Officer Garcia using his hands to hold ██████ down. Sgt. Rake admitted the control technique employed by Officer Garcia was not checked on the TRR, indicating the box

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<sup>20</sup> Sgt. Rake explained, when he is notified of a use of force incident requiring a TRR, he goes to scene to find out what happened, if the officers are still there, or to the station. After the officers explain what happened, and he agrees a TRR is necessary, the officer completes the TRR. Sgt. Rake reviews for inaccuracies, confirms completeness, and determines whether the force complies with Department policy.

<sup>21</sup> Attachment 63, page 58, line 23.

“other” should have been checked under control tactics. Sgt. Rake said the unchecked box was a mistake, but he did not believe it was misconduct.<sup>22</sup>

In an interview with COPA, on February 6, 2020, Lieutenant Charles Daly #494 (Lt. Daly) stated, on May 31, 2019, he reviewed and approved Officer Garcia’s TRR and [REDACTED] arrest report. As part of the TRR, Lt. Daly spoke to the officers, who related the same information as in the TRR; he watched Officer Giron’s BWC video and spoke to [REDACTED] who acted belligerent by yelling, screaming, and cursing. Lt. Daly stated [REDACTED] admitted that “he tried to bite the mother fucker.”<sup>23</sup> Lt. Daly noted, in the TRR, [REDACTED] had a fat lip, but [REDACTED] was taken to the hospital due to high level of intoxication, not for the fat lip.

Lt. Daly stated [REDACTED] attempted to spit on the officers before they placed him in the vehicle. [REDACTED] also flailed his legs. Lt. Daly was not certain whether [REDACTED] intentionally kicked at the officers, but he concluded that Officer Garcia responded with necessary force. Officer Garcia used his hands to keep [REDACTED] shoulder straight and to control [REDACTED] body in the back seat. After reviewing Officer Giron’s BWC video, Lt. Daly described Officer Garcia as placing his hands on [REDACTED] collarbone and shoulder area. Lt. Daly stated [REDACTED] was not struggling to breathe, “he keeps pretty much the same vulgar, raspy voice when he’s getting – when he’s outside of the car, when he’s in the back seat, and when he’s back sitting up straight.”<sup>24</sup> Lt. Daly later added that [REDACTED] sounded as though he was attempting to spit.

After reviewing Officer Giron’s BWC video and still frame images taken from the BWC video, Lt. Daly denied Officer Garcia used a chokehold<sup>25</sup> against [REDACTED] and disagreed with Captain Gushes’ Initiation Report. He stated Officer Garcia’s hands were on [REDACTED] chest, hip/midsection area, shoulder, and near the neck/collarbone area, but never directly on [REDACTED] neck.

After reviewing Officer Garcia’s TRR, Lt. Daly admitted the control holds Officer Garcia used should have been documented in the TRR, and he acknowledged the relevant box was not checked and the narrative did not specifically describe the control holds. Lt. Daly admitted it was his responsibility to ensure the TRR was complete, but he attributed the failure to human error, not misconduct.

Lt. Daly stated Officer Garcia was admonished for not activating his BWC, and Officer Giron recorded the incident appropriately. After reviewing Officer Giron’s BWC video, Lt. Daly stated he could not tell that [REDACTED] was not sitting in the car facing front when the video ends, and Lt. Daly added, the officer should not have deactivated his camera until that point. Lt. Daly was not sure Department policy required the officers to record [REDACTED] transport. If it did, the officers should have received an admonishment for their failure to record. Lt. Daly stated he did not know why the officers did not wait for a transport vehicle, nor did he ask them. He was not aware the officers interrupted transport, how long they stopped, or what occurred during the stop. Lt. Daly assumed the officers would have stopped when [REDACTED] attempted to bite Officer Garcia.

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<sup>22</sup> Attachments 57, 63.

<sup>23</sup> Attachment 62, page 16 lines 12-13.

<sup>24</sup> Attachment 62, page 45 lines 3-6.

<sup>25</sup> Lt. Daly stated a chokehold is not part of the Department’s Use of Force model. Attachment 62, page 63 lines 7-10.

Lt. Daly denied the allegations against him, stating there was no misconduct. Lt. Daly believed Officer Garcia's use of force complied with Department policy.<sup>26</sup>

In an interview with COPA, on June 5, 2020, Officer Garcia<sup>27</sup> stated while on routine patrol he observed ██████ walking in the middle of the street, in traffic, giving the middle finger to a marked squad car.<sup>28</sup> Officer Garcia decided to arrest ██████ and instructed ██████ to move to the sidewalk, which ██████ did. When Officer Garcia exited his vehicle, he recognized ██████ from a previous arrest, when ██████ was combative and fought with officers. While Officer Giron ran ██████ name inside their vehicle, Officer Garcia stayed outside and spoke with ██████<sup>29</sup> After ██████ was handcuffed, he continued to scream at Officer Garcia. Officer Garcia was not sure what ██████ said, but it included "fuck you."<sup>30</sup> Officer Garcia responded by screaming back.<sup>31</sup> Officer Garcia walked ██████ to the rear of the police vehicle.<sup>32</sup> ██████ resisted by pulling away from Officer Garcia. Officer Garcia escorted ██████ to the vehicle without providing verbal commands. When attempting to place ██████ into the backseat, ██████ kicked Officer Garcia in the shin, and the two fell into the backseat, where Officer Garcia was on top of ██████. At the time, ██████ was being verbally abusive. Officer Garcia responded with "an unwelcomed comment,"<sup>33</sup> which he admitted was not an attempt at de-escalation.

In the backseat, Officer Garcia held ██████ down until Officer Giron came around to assist. At this time, ██████ was yelling profanities and kicking Officer Garcia.<sup>34</sup> Officer Garcia was more concerned ██████ was going to attack Officer Garcia, by spitting, biting or a headbutt.<sup>35</sup> Officer Garcia did not provide verbal commands,<sup>36</sup> but asked questions, such as "I'm a nigger lover?"<sup>37</sup> Officer Garcia believed that asking questions could defer further attack. Officer Garcia placed his hands near ██████ neck area, more on the clavicle, while his arm was extended across ██████ chest, pushing ██████ down, while Officer Garcia leaned back to avoid attack. Officer Garcia admitted it was possible his hand went on ██████ neck, but he denied choking ██████

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<sup>26</sup> Attachments 51, 62.

<sup>27</sup> Officer Garcia initially provided information based on his independent recollection, then provided further detail after reviewing Officer Giron's BWC video.

<sup>28</sup> Officer Garcia stated cars moved slowly around ██████ just as Officer Garcia did.

<sup>29</sup> Officer Garcia did not recall what was said, but he described ██████ as intoxicated, slurred speech, agitated, and upset by the stop. Officer Garcia stated ██████ was not yet in handcuffs because Officer Garcia still had discretion to give ██████ a citation.

<sup>30</sup> Attachment 73, page 62 lines 12-20.

<sup>31</sup> Officer Garcia screamed because ██████ was screaming at him. While Officer Garcia denied screaming at every individual that screams at him, he did not provide a reason why he screamed at ██████ in this situation.

<sup>32</sup> Officer Garcia attempted to de-escalate the situation by placing ██████ into the police vehicle. Officer Garcia did not use verbal de-escalation.

<sup>33</sup> Attachment 73, page 67 line 8. ██████ was yelling, "nigger lover." Officer Garcia responded, something to the effect, "who the fuck do you think you are?"

<sup>34</sup> Officer Garcia classified ██████ as an assailant because he was kicking, battering Officer Garcia.

<sup>35</sup> At this time, ██████ did not spit, bite, or headbutt Officer Garcia, and ██████ did not spit, prior to entering the vehicle.

<sup>36</sup> Officer Garcia did not provide verbal commands because he did not want to give ██████ any ideas, such as spitting. In Officer Garcia's experience, individuals sometimes respond to verbal commands by increasing their behavior, such as kicking more, instead of complying.

<sup>37</sup> Attachment 73, page 68 lines 8-10.

Officer Garcia stated he never intended to cut off [REDACTED] airway and [REDACTED] airway was not obstructed.<sup>38</sup>

When confronted with the Initiation Report, where Captain Gushes notes [REDACTED] appears to be making gurgling noises and struggling to breathe,<sup>39</sup> Officer Garcia denied [REDACTED] was struggling to breathe. Officer Garcia admitted the noises could be consistent with loss of breath, but he did not hear [REDACTED] gasp for air, and he believed [REDACTED] was preparing to spit.

Officer Garcia was able to get off [REDACTED] and exit the vehicle with Officer Giron's assistance. [REDACTED] behavior did not change, and he followed Officer Garcia's order to sit up. Officer Garcia admitted he did not put [REDACTED] in a seatbelt, because he did not want to have further contact with [REDACTED]. Officer Garcia decided to transport [REDACTED] to the police station, because he felt it was impractical to wait for a transport vehicle. He admitted he never requested a transport vehicle.

During transport, [REDACTED] continued to yell profanities and racial slurs and attempted to bite Officer Garcia. Officer Garcia responded with an elbow strike. Officer Giron attempted to move [REDACTED] away from the officers. Officer Garcia decided to stop and check whether [REDACTED] needed medical attention after [REDACTED] spit blood. He observed a small laceration to [REDACTED] mouth and drops of blood on his shirt. Officer Garcia did not observe any missing teeth or any jaw issues. Officer Garcia did not call for an ambulance or a transport vehicle, and he transported [REDACTED] to the police station without further incident.

At the station, Officer Garcia notified Sgt. Rake of the situation and started his paperwork. After Sgt. Rake checked [REDACTED] injury, he told the officers to request an ambulance. Regarding his TRR, Officer Garcia believed he had completed it accurately, but admitted, he could have checked the "other" box under control tactics, and his narrative did not specify all his actions. Officer Garcia completed the TRR due to his use of an elbow strike and only included the interaction in the backseat as information that led up to the elbow strike. Officer Garcia indicated the actions he took in the backseat did not require the completion of a TRR. [REDACTED] did not complain of abuse and it did not result in physical injury. Additionally, Sgt. Rake approved the report, and his case report included the details.

Officer Garcia denied the allegations against him, except he admitted he did not record the incident on his BWC.<sup>40</sup> Specifically, Officer Garcia denied using force as punishment, indicating he did not intend to hurt [REDACTED]. Officer Garcia stated he could have used strikes, punches, or dry stuns,<sup>41</sup> but instead used the lesser force of controlling, holding [REDACTED] down. Officer Garcia acknowledged his actions had the potential of restricting [REDACTED] airway, but explained that is

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<sup>38</sup> Officer Garcia stated he was controlling [REDACTED] not choking him. His hands moved toward [REDACTED] neck area due to [REDACTED] actions moving them. After reading General Order G03-02-01, Officer Garcia pointed out "holding and control techniques involving contact with the neck, but which are not intended to reduce the intake of air are not defined as chokeholds."

<sup>39</sup> Attachment 1, page 1.

<sup>40</sup> Officer Garcia stated Sgt. Rake admonished him on the date of the incident, and instructed him when to activate his BWC. Officer Garcia has since looked at the related order on his own, but has not received any further training.

<sup>41</sup> An officer may use a Taser to dry stun an active resister. G03-02-01 IV.B.2.c.(5)(c).

why he moved his hands around; if he heard ██████ gasp for air or not talk, he would interpret that as ██████ being choked,<sup>42</sup> and he would stop immediately.<sup>43</sup>

The Cook County State's Attorney Office Investigations Bureau Investigative Report documents an interview, on December 10, 2019, when **Officer Garcia**<sup>44</sup> provided a statement consistent with his COPA statement, with the following additional details. Officer Garcia stated he previously arrested ██████ in 2007 for battery and resisting. He believed the charges were dismissed in court and he did not believe ██████ filed a civil suit against him. Officer Garcia stated he has previously observed ██████ hanging out and drinking with other individuals near the liquor store at 89th Street and Commercial Avenue.

Officer Garcia knew from prior experience that ██████ becomes combative and verbally abusive when intoxicated. As a result, when ██████ started to get upset, Officer Garcia placed him in handcuffs to "deescalate the incident."<sup>45</sup> Officer Garcia decided to arrest ██████ for public intoxication and impeding traffic and began to escort ██████ to the passenger side of the police vehicle. Officer Garcia held ██████ down in the backseat in an attempt to prevent ██████ from kicking him in the groin area, biting his arms, or spitting on him. Officer Garcia asked ██████ several times why ██████ was calling him a "nigger lover"<sup>46</sup> because both Officer Garcia and Officer Giron are Hispanic and there were no African Americans in the area.

When asked to clarify how he held ██████ down in the backseat, Officer Garcia stated he held ██████ in the neck region with both his hands, trying to push on ██████ chest. Officer Garcia was not choking ██████ or trying to hold ██████ by the neck, so he intentionally bent his left arm and slid it across ██████ chest. Officer Garcia admitted his arm may have slid close to ██████ neck. Officer Garcia added, while ██████ was making unusual sounds with this voice, Officer Garcia did not intend to cut off ██████ airway.<sup>47</sup>

#### b. Digital Evidence

Officer Garcia did not activate his **Body Worn Camera (BWC)**. However, Officer Giron did record a portion of the incident on his BWC. Officer Giron's BWC video shows Officer Garcia question ██████ through the driver's side window about the gang sign ██████ reportedly flashed at a squad car. ██████ denies the action. Officer Garcia tells him to walk to the front of the vehicle, and both officers follow. Officer Giron, without saying anything to ██████ searches ██████ and retrieves ██████ ID, while Officer Garcia asks ██████ for his age and identifying information. Officer Giron returns to the police vehicle and appears to run ██████ information on the officers' portable data terminal (PDT). At the same time, Officer Garcia continues to speak with ██████. Although the video does not capture the conversation, it shows Officer Garcia placing ██████ into handcuffs, and the two men arguing. Officer Garcia points to his vest, yells louder, takes hold of ██████ and walks out of view of the camera. Officer Giron exits the vehicle and walks toward Officer Garcia, who now appears to be pulling ██████ away from a tree on the sidewalk. ██████ resists moving and yells for the officers to let him go. Officer Giron tells ██████ to move; he is under arrest. The officers escort ██████ to the vehicle, seemingly without issue. As they approach

<sup>42</sup> Officer Garcia indicated a chokehold can only be used as deadly force. Attachment 73, page 81 lines 13-16.

<sup>43</sup> Attachments 71, 73.

<sup>44</sup> Officer Garcia reviewed Officer Giron's BWC before providing his statement.

<sup>45</sup> Attachment 68, page 3.

<sup>46</sup> *Id.*

<sup>47</sup> Attachment 68.

the rear of the vehicle, Officer Garcia says, "...talking shit. Who the fuck you talking to?"<sup>48</sup> [REDACTED] starts screaming, "Hey. Fucking nigger lover."<sup>49</sup> At this point, Officer Garcia leans inside the rear passenger side door. Officer Giron runs around the rear of the vehicle and opens the rear driver's side door.

[REDACTED] with his hands handcuffed behind his back, lies on his back in the rear seat, while Officer Garcia leans over him and asks, "...the fuck you talking to?"<sup>50</sup> Officer Garcia places both of his hands around the front of [REDACTED] neck area as he repeatedly asks [REDACTED] "I'm a what lover?" (See Figure 1.) [REDACTED] makes gurgling noises and appears to be struggling to breathe.<sup>51</sup> Officer Garcia moves his right hand under [REDACTED] body but continues to hold his left forearm and hand against [REDACTED] neck. (See Figure 2.) He again asks, "I'm a what lover?" [REDACTED] gasps as he struggles to say, "fucking nigger..."<sup>52</sup> The video captures Officer Garcia with one or both hands on [REDACTED] neck for a total of 16 seconds.

At that point, Officer Giron appears to grab Officer Garcia's left hand, (see Figure 3), and Officer Garcia moves his hand onto [REDACTED] chest and uses it to push himself off [REDACTED] and out of the back seat. The officers then attempt to sit [REDACTED] in an upright position. [REDACTED] yells for them to turn on their cameras, and Officer Garcia responds, "You're on."<sup>53</sup> [REDACTED] continues to move around in the back seat, facing out the passenger side rear door, as Officer Giron brings his hand toward his vest and deactivates his BWC. There is no video of [REDACTED] transport to the police station.<sup>54</sup>

Officer Anthony Barracca's BWC shows [REDACTED] being transported to the hospital in an ambulance. The Emergency Medical Technician states the cut on [REDACTED] mouth is superficial, but will require stitches.<sup>55</sup>

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<sup>48</sup> Attachment 16 at 2:58-3:00.

<sup>49</sup> *Id.* at 3:01-3:03.

<sup>50</sup> *Id.* at 3:08-3:10.

<sup>51</sup> *Id.* at 3:08-3:12.

<sup>52</sup> *Id.* at 3:12-3:23.

<sup>53</sup> *Id.* at 3:34-3:35.

<sup>54</sup> Attachment 16.

<sup>55</sup> Attachment 44.



Figure 1. Screenshot from Officer Giron's BWC showing both of Officer Garcia's hands on the front of [REDACTED] neck area.



Figure 2. Screenshot from Officer Giron's BWC showing Officer Garcia holding his left hand on [REDACTED] neck area as he moves his right arm under [REDACTED] body.



Figure 3. Screenshot from Officer Giron's BWC showing Officer Giron grab his partner's left hand, which Officer Garcia is continuing to hold against [REDACTED] neck.

### c. Physical Evidence

**Chicago Fire Department Records** document Emergency Medical Services (EMS) arrived at District 004 and EMS crew performed a physical exam of [REDACTED] was alert, agitated and uncooperative. EMS crew transported [REDACTED] to Trinity Hospital without incident. According to the report, [REDACTED] was involved in a violent altercation and suffered a laceration to his right upper lip, which was repaired with stitches.<sup>56</sup>

### d. Documentary Evidence

In her **Initiation Report**, dated August 8, 2019, Captain Eve Gushes, star #23, (Captain Gushes) documents that Officer Garcia's TRR was "automatically 'flagged for review' due to Officer Garcia reporting the utilization of an elbow strike."<sup>57</sup> Captain Gushes alleges Officer Louis Garcia used excessive force and Officer Giron and Lt. Daly failed to report Officer Garcia's use of excessive force. Specifically, Captain Gushes reports viewing, on Officer Giron's BWC, "Officer Garcia's hands and arms...on or near [REDACTED] neck area while Officer Garcia repeatedly states 'I'm a what lover?'" At the 3:10 minute mark, [REDACTED] can be heard making gurgling noises and appears to be struggling to breathe.<sup>58</sup> Officer Garcia's hands appear to be on or near [REDACTED] neck area, and, at the 3:21 minute mark, [REDACTED] appears "to struggle to breathe and gasps 'Fucking nigger lover.'"<sup>59</sup> Captain Gushes notes that Officer Garcia's TRR indicates he used control holds to place [REDACTED] into the squad car, and the Original Case Incident Report

<sup>56</sup> Attachment 6, pages 4-8.

<sup>57</sup> Attachment 1, page 1.

<sup>58</sup> Attachment 1, page 1.

<sup>59</sup> Attachment 1, page 2.

further details that Officer Garcia laid his arms across ██████ to gain control. Finally, Captain Gushes documents that Officer Giron deactivated his BWC while the officers were still engaged in law-enforcement related activity. There is no record of Officer Garcia activating his BWC, and there is no audio or video that captured the reported “elbow strike.”<sup>60</sup>

According to **Department Reports**, on May 31, 2019, ██████ (██████) was standing in the middle of the street impeding traffic, while yelling and cursing. Officers placed ██████ into custody. While escorting ██████ to the squad car, ██████ became irate and pulled away. ██████ would not get into the squad car, kicking at officers as they attempted to place him inside. Officer Garcia laid his arms across ██████ chest to gain control. During transport, ██████ became irate toward the officers, leaned over, and yelled, “Nigger lover.” ██████ then jabbed his chin into Officer Garcia’s right shoulder, and he attempted to bite Officer Garcia’s ear/shoulder area. Officer Garcia, believing he was going to receive a battery, responded with an elbow strike. ██████ sat back, yelling and cursing, but the officers transported him to District 004 without further incident. He was charged with resisting or obstructing a police officer, obstruction of traffic by a non-motorist, and battery.<sup>61</sup> Upon entry into District 004, Officer Garcia observed a laceration on ██████ lip and blood on his face.<sup>62</sup> Paramedics transported ██████ to Trinity Hospital, where he received medical treatment.<sup>63</sup>

According to the **Tactical Response Report (TRR)** completed by Officer Garcia, ██████ resisted when he was being placed into the squad car for transport. Officer Garcia used member presence, verbal direction/control techniques, and moved to avoid attack. ██████ did not follow verbal directions, pulled away, and physically attacked Officer Garcia using knee/leg strike and mouth/teeth/spit. ██████ while in transport, yelled and cursed. He leaned forward and jabbed his chin on Officer Garcia’s right shoulder and attempted to bite Officer Garcia in his ear/shoulder area. Officer Garcia responded with an elbow strike to ██████ sat back in the squad car without any further incident. Officer Garcia did not describe holding ██████ down in the back seat nor did he document using a chokehold. Sgt. Rake indicated Officer Garcia’s narrative was accurate and according to Department policies and orders. Lt. Daly found Officer Garcia’s actions were within Department policy and directives.<sup>64</sup>

## VI. LEGAL STANDARD

### a. Use of Deadly Force – Generally

One of the main issues in evaluating a use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.<sup>65</sup> Factors to be considered in assessing the reasonableness of force include, but are not limited to, (1) whether the subject was posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; and (3) the subject’s proximity

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<sup>60</sup> Attachment 1.

<sup>61</sup> ██████ pleaded guilty to resisting a police officer, and the battery charge was dismissed.

<sup>62</sup> Photographs taken in lockup, on June 1, 2019, show injury to ██████ right upper lip and blood on his shirt. Attachment 70.

<sup>63</sup> Attachments 2-3.

<sup>64</sup> Attachment 4.

<sup>65</sup> General Order G03-02 (III)(B)(1).

or access to weapons; (4) the severity of the crime at issue; (5) whether the subject is actively resisting arrest or attempting to evade arrest by flight.<sup>66</sup>

Department policy dictates that “[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.”<sup>67</sup> Thus, a Department member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.<sup>68</sup> “A threat is imminent when it is objectively reasonable to believe that:

- a. the subject’s actions are likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. the subject has the means or instruments to cause death or great bodily harm; and
- c. the subject has the opportunity and ability to cause death or great bodily harm.”<sup>69</sup>

Department policy recognizes that Department members must “make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”<sup>70</sup>

### **b. Standard of Proof**

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 reviewed complied with 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

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<sup>66</sup> *Id.*; *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>67</sup> General Order G03-02 (III)(C)(3).

<sup>68</sup> *Id.*

<sup>69</sup> General Order G03-02 (III)(C)(2).

<sup>70</sup> General Order G03-02 (II)(D).

investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, 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. LEGAL ANALYSIS

As an initial matter, COPA notes that Mr. ██████ has significant credibility issues, as demonstrated by his behavior on scene, apparent intoxication, and contradictions between his statement to COPA and the evidence captured on video. Nonetheless, COPA's findings of fact outlined below are largely based upon other indisputable evidence, such as BWC footage.

### a. Officer Garcia and Officer Giron were justified in stopping ██████

An officer "may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions."<sup>71</sup> Here, the officers assert that vehicles had to move around ██████ as he stood in the street, giving the middle finger to vehicles. ██████ denied standing in the street, but he did admit to displaying his middle finger at vehicles, as well as crossing the street to get more alcohol after publically consuming a prior beverage. There are no independent witnesses or video that show whether ██████ was in the street obstructing traffic, but based on his own admission, ██████ committed several offenses for which he could be detained. Therefore, this allegation is **Exonerated**.

### b. Officer Giron searched ██████ without justification.

During an investigatory stop, an individual is not required to provide an officer with identification, and an officer may only perform a protective pat-down search when there is reasonable articulable suspicion the individual is armed and dangerous.<sup>72</sup> When an individual is under arrest, an officer will conduct a custodial search, including searching inside pockets. Here, while Officer Giron and Officer Garcia contend ██████ was under arrest before Officer Giron searched ██████ Officer Garcia admitted he did not initially handcuff ██████ because it was within his discretion to release ██████ with a citation. Additionally, Officer Giron's BWC video shows that he immediately searched ██████ retrieved his ID, and ran a routine name check. During that time, the situation escalated between Officer Garcia and ██████ and the officers arrested ██████ Therefore, a preponderance of the evidence demonstrates ██████ was detained, but not under arrest, at the time Officer Giron searched ██████ and therefore, this allegation is **Sustained**.

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<sup>71</sup> The S04-13-09 (V)(A)

<sup>72</sup> Special Order S04-13-09

- c. **Officer Giron did not strike [REDACTED] on or about the head or face area with a closed hand, and did not fail to complete a Tactical Response Report after a use of force incident.**

[REDACTED] alleged Officer Giron punched him in the head, multiple times, before he was placed inside the squad vehicle. There are no independent witnesses to corroborate this allegation, and Officer Giron's BWC shows he did not punch [REDACTED] in the head at any time before [REDACTED] entered the officers' vehicle. Additionally, the BWC shows Officer Giron did not punch [REDACTED] about the head during the struggle in the back seat. Since the evidence clearly shows Officer Giron did not punch [REDACTED] in the head, Officer Giron was not required to complete a TRR, and these allegations are **Unfounded**.

- d. **Officer Garcia choked [REDACTED] without justification.**

As previously mentioned, the primary question when reviewing use of force incidents is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer;<sup>73</sup> and an officer may only use deadly force as a last resort to protect against an *imminent threat*.<sup>74</sup> Furthermore, “[c]hokeholds or other maneuvers for applying direct pressure on a windpipe or airway are only justified as a use of deadly force.”<sup>75</sup> Chokeholds are where direct pressure is applied to an individual's trachea or airway with the intention of reducing the intake of air.<sup>76</sup> “Holding and control techniques involving contact with the neck, but which are not intended to reduce the intake of air are not defined as chokeholds.”<sup>77</sup>

It is undisputed that [REDACTED] did not pose an imminent threat of death or great bodily harm. Officer Garcia did not fear for his life, and therefore he was not allowed to use deadly force against [REDACTED]. Additionally, it is undisputed that Officer Garcia did not provide [REDACTED] with any verbal commands in an attempt to gain compliance. Officer Garcia admitted his hands may have gone on [REDACTED] neck, however, he denied choking [REDACTED] and indicated he did not intend to restrict [REDACTED] air intake. Although Officer Garcia acknowledged his actions could restrict [REDACTED] airway, he did not believe [REDACTED] airway was ever obstructed. Officer Giron's BWC clearly shows Officer Garcia's hands around [REDACTED] neck and that the pressure applied by Officer Garcia restricted [REDACTED] airway where he made gurgling noises and struggled to speak. Although Officer Garcia stated his intent was to control [REDACTED] from potentially spitting or biting him while he was on top of [REDACTED] he admitted he never provided any directives or commands to [REDACTED] and [REDACTED] made no such threats. More importantly, this tactic could not have furthered his attempt to prevent harm by [REDACTED] because instead of creating distance, he places himself directly on top of and in front of [REDACTED]. Lastly, Officer Garcia was visibly upset at [REDACTED] language and continued to ask him, “Who the fuck you talking to?” and “I'm a what lover?” while leaning over him. At this exact moment Officer Garcia's hands or arm “slips” near the neck of [REDACTED] and [REDACTED] is audibly struggling to breathe and respond. Although Officer Garcia portrayed these incidents as merely coincidental, COPA has determined they were intentional and retaliatory when viewed in light of his clear anger toward [REDACTED]. Additionally, Officer Garcia's failure to report

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<sup>73</sup> G03-02 (III)(B)(1)

<sup>74</sup> "General Order G03-02 (III)(C)

<sup>75</sup> G03-02-01 (IV)(C)(2)(d)

<sup>76</sup> General Order G03-02-01 (IV)(C)(2)(d)(1)

<sup>77</sup> G03-02-01 (IV)(C)(2)(d)(2)

and/or document what he claims was a permissible tactic suggests that he was aware of his intentionality and misconduct.

Based on the foregoing, a preponderance of the evidence demonstrates Officer Garcia choked [REDACTED] and the use of force was not objectively reasonable under the totality of the circumstances. Therefore, this allegation is **Sustained**.

**e. Officer Garcia used force as punishment or retaliation.**

Pursuant to General Order G-03-02, officers are prohibited from using force to punish or retaliate against an individual for insulting the officer.<sup>78</sup> Here, Officer Garcia choked [REDACTED] who was confined in the backseat of a police vehicle while handcuffed behind his back. Instead of providing verbal commands for [REDACTED] to comply,<sup>79</sup> Officer Garcia angrily repeated, "I'm a what lover?" While Officer Garcia argued he did not intend to hurt [REDACTED] and only wanted to control [REDACTED] a preponderance of the evidence demonstrates Officer Garcia used force to punish [REDACTED] for calling him a "nigger lover." As detailed above, Officer Garcia's use of a chokehold was excessive under the circumstances. Furthermore, a chokehold was not needed to control [REDACTED] as he was already handcuffed in the back seat of the squad vehicle, and was otherwise generally compliant with the officers' orders. Accordingly, this allegation is **Sustained**.

**f. Officer Garcia failed to accurately complete a Tactical Response Report after a use of force incident.**

An officer is responsible for truthfully and accurately reporting a use of force incident and describing the specific facts and circumstances of the incident that explain the officer's decision to use a particular use of force. The report must explain the reasonableness, necessity, and proportionality of the force used.<sup>80</sup> In the "Narrative" section of the TRR, the officer will describe with specificity, "the subject's action or other circumstances necessitating the force used, and the involved member's response, including force mitigation efforts and specific types and amount of force used."<sup>81</sup> Officer Garcia's TRR did not mention or describe choking [REDACTED] but he stated Sgt. Rake approved it without question. Therefore, because Officer Garcia's TRR did not reflect his use of force in the backseat or what necessitated the force, this allegation is **Sustained**.

**g. Officer Garcia and Officer Giron failed to secure [REDACTED] by means of a seat belt, and/or failed to have [REDACTED] transported to the District Station in a properly equipped Department vehicle.**

Under Uniform and Property Order U02-01-08, an arrestee restrained by handcuffs is to be secured with a seat belt during transport.<sup>82</sup> If an officer believes his personal safety would be jeopardized in securing an arrestee with a seat belt, the arrestee will be transported by squadrol, unless circumstances would make this unreasonable or impractical.<sup>83</sup> Officer Giron admitted [REDACTED] was handcuffed, and indicated that he did not place a seat belt on [REDACTED] because Officers Giron and Garcia feared for their safety and wanted to avoid further aggravating [REDACTED]

<sup>78</sup> G03-02 (III)(B)(5)(c)

<sup>79</sup> Officer Garcia admitted [REDACTED] complied with the verbal commands he did provide.

<sup>80</sup> General Order G03-02-02 (II)(A) & (B)

<sup>81</sup> G03-02-02 (IV)(B)(1)(c)(1)

<sup>82</sup> U02-01-08 (III)(B)(5)

<sup>83</sup> *Id.*

However, Officers Giron and Garcia failed to secure [REDACTED] with a seat belt, and also failed to call for squadrol transport. Additionally, neither officer provided a justification for their failure to request a squadrol. Consequently, based on the evidence and Officer Giron's own admissions, these allegations are **Sustained**.

**h. It was reasonable for Officer Garcia and Officer Giron to interrupt the transport of [REDACTED] to the District Station.**

Pursuant to General Order G06-01-02, "[d]epartment members will not interrupt an arrestee transport without exigent circumstances requiring immediate action by the members and minimal risk to the arrestee."<sup>84</sup> It is undisputed the officers stopped their vehicle after [REDACTED] was injured. The officers stated they wanted to inspect [REDACTED] injury to determine whether he needed immediate medical attention. While it is unclear what occurred during the stop, it was clearly reasonable for them to stop to assess the situation. Therefore, this allegation is **Exonerated**.

**i. Officer Garcia failed to provide medical aid to [REDACTED]**

Whenever an individual is injured, complains of injury, or requests medical attention, an officer will, as soon as practical, request the appropriate medical aid or, consistent with the officer's training, administer medical aid.<sup>85</sup> It is undisputed [REDACTED] was injured and bleeding from the mouth after Officer Garcia elbowed him. While the officers asserted [REDACTED] did not request medical attention or complain of pain, [REDACTED] stated he did request to go to the hospital. While Officer Garcia stated he did call an ambulance after ordered by Sgt. Rake, he admitted he did not call for an ambulance while stopped during transport, he did not drive [REDACTED] to the hospital, and he did not render first aid to [REDACTED] when he observed [REDACTED] injury. However, it is unclear what medical aid Officer Garcia could have provided during transport. It is also unclear how severe or obvious the need for such aid would be for [REDACTED] who was not complaining of injury or obviously injured to an extent that would have required immediate attention. As a result of these uncertainties, there is insufficient evidence to prove that Officer Garcia's delayed call for an ambulance was in violation of Department policy, and this allegation is **Not Sustained**.

**j. Officer Garcia acted unprofessionally during the stop.**

General Order G01-01 delineates CPD's Mission Statement and Core Values, which include professionalism and integrity, and requires all officers to act and respond to chronic crime and disorder in ways that are consistent with the Mission Statement and Core Values.<sup>86</sup> As indicated in this report, Officer Garcia reacted aggressively toward [REDACTED] by screaming at [REDACTED] and using profanity, he did not attempt to de-escalate the situation, and he used excessive force against [REDACTED] as punishment. Therefore, Officer Garcia acted unprofessionally, and this allegation is **Sustained**.

**k. Officer Giron failed to report that Officer Louis Garcia used excessive force.**

When an officer observes misconduct, he will immediately notify a supervisory member and prepare a written report to his unit commanding officer, containing the information received,

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<sup>84</sup> General Order G06-01-02 (V)(C)(2)

<sup>85</sup> General Order G03-02 (IV)(A)

<sup>86</sup> General Order G01-01

observations made, and any action taken.<sup>87</sup> While Officer Giron maintained Officer Garcia did not choke ██████ as discussed above, it is clear Officer Garcia choked ██████ when ██████ did not pose a deadly threat. Officer Giron's BWC clearly depicts ██████ struggling to breathe with audible gurgling, and Officer Giron was well-aware that ██████ was secured in the backseat of their squad at that time. Officer Giron also stated he notified Sgt. Rake of the incident and both Sgt. Rake and Lt. Daly reviewed his BWC. However, Officer Giron did not complete or provide any written report describing his observations and what actions he took in accordance with policy and procedure. Therefore, this allegation is **Sustained**.

**l. Officer Garcia failed to record the incident on body worn camera.**

COPA finds the allegation that Officer Garcia failed to record the incident on body worn camera is **Sustained**. Special Order S03-14 requires officers to activate their BWC recording at the beginning of an incident, and continue for all law enforcement-related activities, which include but are not limited to: investigatory stops, arrests, and arrestee transports.<sup>88</sup> If circumstances prevent activating the BWC at the beginning of the incident, the member will activate the BWC as soon as practical.<sup>89</sup> Officer Garcia admitted he forgot to activate his BWC, and Sgt. Rake admonished him for it. Therefore, this allegation is **Sustained**.

**m. Officer Giron failed to record the incident in its entirety on body worn camera.**

As previously mentioned, officers are required to record the entire incident for all law-enforcement-related activities, which specifically include but are not limited to arrests and arrestee transports.<sup>90</sup> Officer Giron deactivated his BWC prior to the point when ██████ should have been secured in the back seat of the police vehicle. Officer Giron alleged he turned off his BWC accidentally. However, he deactivated the camera *after* Officer Garcia told him it was recording, and ██████ asked the officers to record the incident. Additionally, Officer Giron also admitted he never activates his BWC during arrestee transports, strongly suggesting that his deactivation of this BWC was actually intentional and his usual procedure. Therefore, Officer Giron failed to record the incident in its entirety, and this allegation is **Sustained**.

**n. Sgt. Rake failed to report that Officer Louis Garcia used excessive force.**

When a supervisor observes misconduct, they must initiate an investigation.<sup>91</sup> Additionally, when an allegation of misconduct occurs, the supervisor will notify COPA and prepare a written report.<sup>92</sup> As discussed above, it is clear Officer Garcia used excessive force when he choked ██████ who did not pose a deadly threat, and it was captured on Officer Giron's BWC. Sgt. Rake admitted he watched the BWC on the date of the incident. Sgt. Rake denied Officer Garcia choked ██████ but he admitted Officer Garcia used force against ██████ and he could not describe how ██████ was resisting because Officer Garcia did not provide any verbal commands. As articulated above, COPA finds that the force used was excessive, and that the BWC viewed by Sgt. Rake unambiguously demonstrates this fact. Therefore, Sgt. Rake should have

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<sup>87</sup> General Order G08-01-02 (II)(B)(1)

<sup>88</sup> Special Order S03-14 (III)(A)(2)

<sup>89</sup> *Id.*

<sup>90</sup> Special Order S03-14 (III)(A)(2)

<sup>91</sup> G08-01-02 (II)(B)(2)

<sup>92</sup> G08-01-02 (II)(B)(3)

notified COPA and completed an Initiation Report. Clearly Sgt. Rake failed to report Officer Garcia’s use of excessive force, and this allegation is **Sustained**.

**o. Lt. Daly failed to report that Officer Louis Garcia used excessive force.**

When a supervisor observes misconduct, they will initiate an investigation, notify COPA, and prepare a written report.<sup>93</sup> Lt. Daly admitted he watched the BWC and spoke to Officer Garcia before he approved Officer Garcia’s actions as within Department policy. However, Lt. Daly insisted Officer Garcia’s hands were not on [REDACTED] neck during the incident. In contrast, even Officer Garcia admitted his hands/arm slid to [REDACTED] neck, and the officer acknowledged the action had the potential to cut off [REDACTED] airway and that [REDACTED] gurgling noises could be consistent with loss of breath. Although Lt. Daly stated Officer Garcia used necessary force, as discussed above, it is clear Officer Garcia used excessive force when he choked [REDACTED] who did not pose a deadly threat. Lt. Daly did not notify COPA of the incident and he did not complete an Initiation Report. Therefore, Lt. Daly failed to report Officer Garcia used excessive force, and this allegation is **Sustained**.

**p. Sgt. Rake and Lt. Daly failed to adequately review and resolve Officer Garcia’s incomplete TRR (Tactical Response Report), in violation of General Order G03-02-02 V.**

The reviewing supervisor will review the officer’s TRR for incompleteness or insufficiencies and, if any, return the TRR to the officer and discuss.<sup>94</sup> Sgt. Rake and Lt. Daly admitted the control technique employed by Officer Garcia<sup>95</sup> was not checked on the TRR, but they attributed the omission to a mistake, not misconduct. Additionally, Sgt. Rake and Lt. Daly admitted the Case Report included more details regarding Officer Garcia’s use of force, but they believed the TRR narrative was sufficient. As discussed above, Officer Garcia failed to accurately complete his TRR. Sgt. Rake and Lt. Daly failed to return the TRR to Officer Garcia to cure. Therefore, Sgt. Rake and Lt. Daly failed to comply with General Order G03-02-02 V, and this allegation is **Sustained**.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer Louis Garcia	It is alleged that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Louis Garcia committed misconduct through the following acts or omissions, by:	

<sup>93</sup> G08-01-02 (II)(B)(2) & (3)

<sup>94</sup> General Order G03-02-02 (V)(A)(10)(c)

<sup>95</sup> Sgt. Rake stated the “other” box should have been checked, and Lt. Daly admitted what type of control holds should have been included in the narrative.

	<p>1. stopping [REDACTED] without justification;</p> <p>2. choking [REDACTED] without justification; and</p> <p>3. interrupting the transport of [REDACTED] to the District Station without justification.</p> <p>It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Louis Garcia, committed misconduct through the following acts or omissions, by:</p> <p>1. failing to record the incident on body worn camera;</p> <p>2. failing to have [REDACTED] transported to the District Station in a properly equipped Department vehicle;</p> <p>3. failing to secure [REDACTED] by means of a seat belt;</p> <p>4. failing to accurately complete a Tactical Response Report after a use of force incident;</p> <p>5. using force as punishment or retaliation;</p> <p>6. failing to provide medical aid to [REDACTED] and [REDACTED];</p> <p>7. acting unprofessional during the stop.</p>	<p>Exonerated</p> <p>Sustained/ Separation</p> <p>Exonerated</p> <p>Sustained/ Separation</p> <p>Sustained/ Separation</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Not Sustained</p> <p>Sustained / Separation</p>
Officer Manuel Giron	<p>It is alleged by Captain Eve Gushes, star #23, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by</p> <p>1. failing to report that Officer Louis Garcia used excessive force.</p>	<p>Sustained / Separation</p>

	<p>It is alleged by [REDACTED] that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. stopping [REDACTED] without justification;</li> <li>2. striking [REDACTED] on or about the head or face area with a closed hand without justification; and</li> <li>3. interrupting the transport of [REDACTED] to the District Station without justification.</li> </ol> <p>It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 9700 S Commercial Avenue, Officer Manuel Giron, star #11959 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. searching [REDACTED] without justification;</li> <li>2. failing to record the incident in its entirety on body worn camera;</li> <li>3. failing to have [REDACTED] transported to the District Station in a properly equipped Department vehicle;</li> <li>4. failing to secure [REDACTED] by means of a seat belt; and</li> <li>5. failing to complete a Tactical Response Report after a use of force incident.</li> </ol>	<p>Exonerated</p> <p>Unfounded</p> <p>Exonerated</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Sustained / Separation</p> <p>Unfounded</p>
<p>Sergeant Kevin Rake</p>	<p>It is alleged by Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm or thereafter at or near 2255 East 103rd Street, Sergeant Kevin Rake, star #2015 committed misconduct through the following acts or omissions, by:</p>	

	1. failing to report that Officer Louis Garcia used excessive force; and	Sustained / Separation
	2. failing to comply with General Order G03-02-02 V.	Sustained / Separation
Lieutenant Charles Daly	It is alleged by Captain Eve Gushes, star #23, that on or about May 31, 2019 at approximately 9:00 p.m. at or near 2255 East 103rd Street, Lieutenant Charles Daly, star #494 committed misconduct through the following acts or omissions, by	
	1. failing to report that Officer Louis Garcia used excessive force.	Sustained / Separation
	It is alleged by COPA by and through Deputy Chief Angela Hearts-Glass, that on or about May 31, 2019 at approximately 9:00 pm at or near 2255 East 103rd Street, Lieutenant Charles Daly, star #494 committed misconduct through the following acts or omissions, by	
	1. failing to comply with General Order G03-02-02 V.	Sustained / Separation

**IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. Officer Louis Garcia**

COPA has reviewed and considered Officer Garcia’s complimentary, disciplinary and training history when recommending discipline.

Officer Garcia admitted he reacted inappropriately to [REDACTED] did not attempt to deescalate the situation, and placed his hands on [REDACTED] neck. Officer Garcia believed he did not choke [REDACTED] because he did not intend to restrict [REDACTED] airway. However, the evidence shows he choked [REDACTED] for prolonged amount of time when [REDACTED] was handcuffed and did not pose an imminent threat. Officer Garcia clearly choked [REDACTED] out of anger and as retaliation for words [REDACTED] said to him. While Officer Garcia indicated this was abnormal behavior for him, he could not explain why he reacted so aggressively. As a result, COPA recommends Officer Garcia be separated from the Chicago Police Department. There is simply no way to train Officer Garcia to avoid this same overreaction and inappropriate use of force, which had the potential for deadly consequences.

**b. Officer Manuel Giron**

COPA has reviewed and considered Officer Giron's complimentary, disciplinary and training history when recommending discipline.

Officer Giron acknowledged that [REDACTED] had difficulty speaking because Officer Garcia's body weight was on [REDACTED] chest, and that Officer Garcia's hands were near [REDACTED] neck area. However, Officer Giron denied Officer Garcia choked [REDACTED]. According to Officer Giron, [REDACTED] was still talking, and a person being choked cannot speak or breathe. Additionally, Officer Giron relied on the fact that his superiors, Sgt. Rake and Lt. Daly, reviewed the video from the incident and did not say Officer Garcia did anything wrong.

While COPA recognizes it is a problem that Officer Giron's superiors were aware of Officer Garcia's misconduct and ignored it, Sgt. Rake and Lt. Daly's inaction does not absolve Officer Giron of his responsibility to make the required notifications and complete a written report describing the misconduct. In this case, the misconduct was clear, obvious, and egregious, and Officer Giron's ignorance or intentional failure to report it is a cause of great concern. COPA recommends Officer Giron be separated from the Chicago Police Department.

#### **c. Sergeant Kevin Rake**

COPA has reviewed and considered Sgt. Rake's complimentary, disciplinary and training history when recommending discipline. Sgt. Rake does not have a history of discipline.

Sgt. Rake, even after reviewing video, failed to initiate a report of misconduct against Officer Garcia. Although Sgt. Rake stated he did not believe Officer Garcia's hands were on or near [REDACTED] neck, he admitted he did not ask Officer Garcia on the night of the incident, even after reviewing the BWC video. In contrast, after Officer Garcia reviewed the same BWC footage, he admitted his hands/arm were on [REDACTED] neck, and that [REDACTED] was struggling to breath. Similarly, Captain Gushes described [REDACTED] as gasping for air while Officer Garcia's hands were near his throat. After reviewing all the evidence, it is clear that Officer Garcia choked [REDACTED] and that [REDACTED] struggled to breath. COPA finds it particularly troubling that as a direct supervisor tasked with ensuring officers use effective communication, de-escalation efforts, and the appropriate use of force, that Sgt. Rake refused to admit Officer Garcia's hands were on [REDACTED] neck, and refused to admit [REDACTED] was struggling to speak or breath. Sgt. Rake also failed to ensure Officer Garcia completed his TRR properly.

The gross act of misconduct in this case was clear and obvious, and Sgt. Rake's failure to address it as such is a cause for great concern. Although the sergeant does not have a history of discipline, the allegations in this case are significant and warrant discipline. COPA recommends Sgt. Rake be separated from the Chicago Police Department.

#### **d. Lieutenant Charles Daly**

COPA has considered Lt. Daly's complimentary, training and disciplinary history when making disciplinary recommendations in this case. Lt. Daly does not have a history of discipline.

The facts of this case make it clear that Officer Garcia used a chokehold on [REDACTED] while he was handcuffed, out of frustration and retaliation. Officer Garcia's actions caused [REDACTED] to gasp for air and struggle to breath. This act was caught on a BWC video that Lt. Daly viewed the night of the incident. Not only did Lt. Daly refuse to complete an initiation report, he failed to

acknowledge Officer Garcia’s actions as clearly depicted on video. Officer Garcia himself admitted that he choked [REDACTED] albeit allegedly unintentionally, after reviewing the same BWC footage. Lt. Daly’s persistent denials and inaction are particularly troubling for a supervisor with Chicago Police Department. Lt. Daly also reviewed Officer Garcia’s TRR, which lacks specific information regarding the event and was improperly completed.

It is unacceptable that Lt. Daly either refused to provide an honest account of seeing Officer Garcia choke [REDACTED] on BWC, or worse, he did not understand Officer Garcia’s actions were unnecessary, disproportionate, and blatant misconduct. Therefore, COPA recommends that Lt. Daly be separated from the Chicago Police Department.

Approved:

[REDACTED]

December 31, 2020

\_\_\_\_\_  
Andrea Kersten  
*Chief of Investigative Operations*

\_\_\_\_\_  
Date

[REDACTED]

December 31, 2020

\_\_\_\_\_  
Sydney Roberts  
*Chief Administrator*

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	Six
<b>Investigator:</b>	Elizabeth Brett
<b>Supervising Investigator:</b>	Steffany Hreno