

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	May 30, 2020 / 7:00 pm / 401 N. Wabash Ave., Chicago, IL 60611.
Date/Time of COPA Notification:	June 8, 2020 / 3:00 pm.
Involved Officer #1:	Officer David De La O / Star#9329 / Employee ID# [REDACTED] / Unit: 189 / DOA: June 27, 2019 / White / Male.
Involved Officer #2:	Officer David Dubois / Star#2946 / Employee ID# [REDACTED] / Unit: 022 / DOA: December 17, 2001 / White / Male.
Involved Officer #3:	Unidentified Member(s).
Involved Individual #1:	[REDACTED] / White / Non-Binary. <sup>1</sup>
Involved Individual #2:	Unidentified.
Case Type:	05A – Excessive Force

I. ALLEGATIONS

Officer	Allegation	Finding
Officer David De La O	1. Striking [REDACTED] with a baton, without justification.	Not Sustained.
	2. Failing to document the force used on [REDACTED] in a Tactical Response Report.	Not Sustained.
	3. Failing to activate your Body Worn Camera.	Unfounded.
	4. Failing to notify OEMC of your baton use.	Not Sustained.
	5. Failing to request a supervisor to the scene of your baton use.	Not Sustained.
Officer David Dubois	1. Pushing unidentified member(s) of the public, without justification.	Not Sustained.
	2. Kicking unidentified member(s) of the public, without justification.	Not Sustained.
	3. Failing to activate your Body Worn Camera.	Not Sustained.

<sup>1</sup> [REDACTED] uses gender neutral pronouns.

	4. Failing to document the force used on unidentified member(s) of the public in a Tactical Response Report.	Not Sustained.
Unidentified Member(s)	1. Striking [REDACTED] with a baton, without justification.	Not Sustained.
	2. Pushing unidentified member(s) of the public to the ground, without justification.	Not Sustained.
	3. Kicking unidentified member(s) of the public, without justification.	Not Sustained.
	4. Failing to activate your Body Worn Camera.	Not Sustained.
	5. Failing to document the force used on [REDACTED] in a Tactical Response Report.	Not Sustained.
	6. Failing to notify OEMC of your baton use.	Not Sustained.
	7. Failing to request a supervisor to the scene of your baton use.	Not Sustained.
	8. Failing to document the force used on unidentified member(s) of the public in a Tactical Response Report.	Not Sustained.

**II. SUMMARY OF EVIDENCE**

[REDACTED] was amongst a crowd on the Michigan Avenue Bridge during a mass gathering when unidentified members of the Department ordered the crowd to disburse several times.<sup>2</sup> The crowd failed to heed the orders. In response to the crowds’ failure to disburse members began to push the crowd with batons and shields; however, the crowd failed to move. As the members continued to push the crowd from the bridge, [REDACTED] observed an unidentified male member push an unidentified citizen to the ground and kick them. Additionally, [REDACTED] observed three unidentified members, “jab” and “swing” their batons at the crowd. One member’s baton struck [REDACTED] several times. Eventually, the crowd disbursed, and the bridge was raised.

During their statement, [REDACTED] initially relayed that the members who used force against [REDACTED] had their names and stars covered, would not provide their names when requested and [REDACTED] was unable to identify the members.<sup>3</sup> However, [REDACTED] also provided a letter and photographs identifying Officers De La O and Dubois as members they observed use force, and that Officer De La O was one of the three members who used force against [REDACTED]<sup>4</sup> Further, [REDACTED] was clear that

<sup>2</sup> [REDACTED] explained that they were at the front of the crowd nearest the Department members. Att. 6, at 33:40.

<sup>3</sup> [REDACTED] explained that these members were standing directly in front of them and described one a standing six feet eight inches tall and another as having red hair.

<sup>4</sup> The photographs provided clearly show that Officers De La O and Dubois in no way covered their names or star numbers nor are they six feet eight inches in height nor have red hair. Att. 7, pgs. 1 to 3. See Atts. 15 and 16.

the crowd was ordered numerous times to disburse but they “stood [their] ground” and refused to disburse.<sup>5</sup> Additionally, █████ explained they raised their hands to defend themselves as the members began to push the crowd.

During a statement, Officer De La O explained that at the time of the incident he was assigned to Gang Enforcement Unit 311 and was not equipped with a Body Worn Camera (BWC). Additionally, Officer De La O relayed that the entire interaction was violent, and he was subjected to several objects being thrown at him.<sup>6</sup> Further, Officer De La O admitted to using his baton as a control technique to push the crowd but that he did not swinging the baton at or strike anyone nor jab anyone with his baton. Officer De La O explained that if he swung at, struck, or jabbed anyone with his baton it would have been in direct response to assailants’ actions. Finally, Officer De La O explained that he did not witness any Department member kicking any members of the public and that he would have intervened to stop the kicking and would have reported it to a supervisor.

During a statement, Officer Dubois explained that at the time of the incident he was an Intelligence Officer assigned to the 022nd District, and that while he was issued a camera, he was unsure if he deployed to the field with his camera. Additionally, Officer Dubois explained that at no time did he intentionally push any member of the public to the ground.<sup>7</sup> Further, Officer Dubois was clear that he did not kick any citizens, even those on the ground, and in fact relayed that he assisted citizens who had fallen to the ground.<sup>8</sup> Finally, Officer Dubois explained that even if he had used force that would have required a Tactical Response Report (TRR) he was informed that a “blanket TRR” was being used for all the force related to the City wide civil unrest.

### III. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

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<sup>5</sup> █████ informed COPA that they are trained in self-defense and actively participate in kickboxing.

<sup>6</sup> Officer De La O relayed that citizen were grabbing for his weapon, shield, and baton while others threw bottles, rocks, paint, and other objects. Officer De La O explained that these actions were consistent with those of an assailant.

<sup>7</sup> Officer Dubois explained that after the crowd failed to disburse, after numerous orders, an order from a ranking member was issued to move the crowd from the bridge. Officer Dubois explained that when he was positioned at the front of the line, he would hold is baton parallel to the ground with one hand on each end and pushed the baton towards the crowd while issuing verbal directions.

<sup>8</sup> Officer Dubois explained that while assisting citizens to their feet, the members present were being pelted with bottles of frozen water or filled with urine, rocks, and other items. Further, Officer Dubois recounted that during this incident he felt unknown people reaching for his holstered firearm which caused him great concern.

4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy.<sup>9</sup> If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense.<sup>10</sup> 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."<sup>11</sup>

#### IV. ANALYSIS AND CONCLUSION

COPA finds that Allegations #1 and 2 against Officers De La O and Dubois are **not sustained**. COPA does not question that [REDACTED] witnessed force used on unidentified member(s) of the public and was subjected to force that included baton use. However, COPA has credibility concerns related to [REDACTED] identification of the involved members. COPA's concerns are based on [REDACTED] contradictory description of the involved members. Initially, [REDACTED] described the members who used force as three unidentified uniformed male members, one of whom had red hair and another that stood at least six feet eight inches tall, all of whom had their stars and names covered. However, [REDACTED] then provided photographs of Officers De La O and Dubois while identifying them as the involved members. [REDACTED] own photographs show that neither Officer De La O nor Dubois had their names or star numbers covered nor does either have red hair or stand six feet eight inches in height. [REDACTED] contradictory descriptions of the members who used the force cause COPA to question the accuracy of [REDACTED] identification of Officers De La O and Dubois.<sup>12</sup> Therefore, COPA finds that there is insufficient evidence to determine if Officers De La O and Dubois were in fact the members who used the force described by [REDACTED]

COPA finds that Allegation #3 against Officer De La O is **unfounded**. At the time of this incident Officer De La O was assigned to the Gang Enforcement Unit and was not equipped with a Body Worn Camera (BWC). Additionally, the photograph of Officers De La O provided by [REDACTED] documented that nether was equipped with a BWC during this incident.

COPA finds that Allegation #3 against Officer Dubois is **not sustained**. While Officer Dubois admitted that he was assigned a BWC during the incident, he was unsure if he deployed to the field equipped with his BWC. Further, COPA was unable to locate any evidence, to include the photographs provided by [REDACTED] that showed Officer Dubois was deployed to the location of

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<sup>9</sup> *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).

<sup>10</sup> *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>11</sup> *Id.* at ¶ 28.

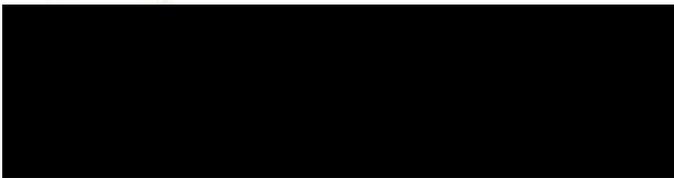
<sup>12</sup> COPA acknowledges that this incident occurred in a highly dynamic environment with numerous citizens and uniformed members present all of which likely contributed to [REDACTED] confusion on the involved members' identities.

the incident with a BWC affixed to his person. Therefore, COPA cannot determine if, during this highly fluid and dynamic incident, that Officer Dubois was equipped and failed to activate his BWC.

COPA finds that Allegations #4 and 5 against Officer De La O and Allegation #4 against Officer Dubois are **not sustained**. Since COPA was unable to determine if these members used the force as alleged, COPA cannot determine if they failed to comply with the reporting and notification requirements.

COPA finds that all the allegations against the unidentified member(s) are **not sustained**. Since COPA was unable to identify the member(s), COPA could not obtain their account(s) of the events. In the event the member(s) identity is learned, this matter may be reopened for additional investigation.

Approved:



Angela Hearts-Glass  
*Deputy Chief Investigator*

4-29-2022

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Date