

## SUMMARY REPORT OF INVESTIGATION

## I. EXECUTIVE SUMMARY

Date of Incident:	May 30, 2020
Time of Incident:	7:37 pm
Location of Incident:	1 West Grand Avenue, Chicago
Date of COPA Notification:	June 1, 2020
Time of COPA Notification:	11:15 am

In the wake of George Floyd's death at the hands of police officers in Minneapolis, Minnesota on May 26, 2020, large scale protests and demonstrations erupted around our nation calling for police reform. Chicago experienced a period of significant civil unrest which resulted in thousands of police and civilian encounters, many of which were fraught with emotion and hostility. Many of these encounters were captured on videos that were posted to and widely spread on social media platforms. While these videos were vital pieces of evidence, they often failed to positively identify the involved officer or civilian. Significant investigative resources were expended in order to obtain such information and move these cases to conclusion.

This investigation into the misconduct of Officer Drinnan began as a viral video which depicted an unidentified officer shouting a homophobic slur at several unidentified protestors. COPA's investigation **sustained** verbal abuse allegations against Officer Drinnan. COPA also **sustained** allegations against Officer Powell, for failing to activate his Body Worn Camera (BWC).

## II. INVOLVED PARTIES

Involved Officer #1:	Officer Matthew Drinnan / Star#13585 / Employee ID# [REDACTED] / DOA: February 16, 2017 / Unit: 007/376 / Male / White.
Involved Officer #2:	Officer Niyell Powell / Star#13594 / Employee ID# [REDACTED] / DOA: February 25, 2002 / Unit: 002 / Male / Black.
Involved Officer #3:	Officer Cortney Jackson / Star#19075 / Employee ID# [REDACTED] / DOA: December 18, 2000 / Unit: 002 / Male / Black.
Involved Individual #1:	[REDACTED] / Male / White.

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Matthew Drinnan	1. Referring to unidentified member(s) of the public as “bitch” or words of similar effect, in violation of Rules 2, 6, and 8.	Sustained / Separation
	2. Referring to unidentified member(s) of the public as “fucking faggot” or words of similar effect, in violation of Rule 2, 6, and 8.	Sustained / Separation
	3. Failing to comply with S04-13 by, failing to active your Body Worn Camera while engaged in law-enforcement-related activity, in violation of Rule 6.	Exonerated
Officer Niyell Powell	1. Failing to report to the Department Officer Matthew Drinnan’s verbal abuse, in violation of Rule 22.	Unfounded
	2. Failing to comply with S04-13 by, failing to active your Body Worn Camera while engaged in law-enforcement-related activity, in violation of Rule 6.	Sustained/ 3-day suspension
Officer Cortney Jackson	1. Failing to report to the Department Officer Matthew Drinnan’s verbal abuse, in violation of Rule 22.	Unfounded

**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 2: Prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.
3. Rule 8: Prohibits disrespect or maltreatment of any person, while on or off duty.
4. Rule 22: Prohibits the 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.

General Orders

1. G02-01 – Human Rights and Human Resources – effective October 5, 2017 to current.

2. G02-04 – Prohibition Regarding Racial Profiling and Other Biased Based Policing – effective December 1, 2017 to current.

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Special Orders

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1. S03-14 – Body Worn Cameras – effective April 30, 2018 to current.

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## V. BACKGROUND

On June 1, 2020, COPA was notified of this incident by Sergeant Michael Malinoswki, who received a complaint from Mr. ██████████ of Pink News, alleging that on May 30th an unidentified uniformed member of the Chicago Police Department directed the words “fucking faggot” to unidentified members of the public who were protesting in response to the death of George Floyd<sup>1</sup>. Provided in support of this complaint was a link to a Twitter video which depicted the member’s actions; however, the footage did not provide sufficient details to identify the member. Therefore; COPA canvassed the area of the incident for additional video, sought and located witnesses via social media, obtained photographs of the incident, and reviewed various Department records to identify the members involved. Despite these efforts, COPA was unable to identify the members of the public to whom the comments were directed. However, COPA identified the accused officers, as well as two civilian witnesses who were interviewed and provided sworn affidavits. The below is a summary of the evidence COPA obtained and the ultimate outcome of this investigation.

## VI. SUMMARY OF EVIDENCE<sup>2</sup>

On May 30, 2020, in the late afternoon, Mr. ██████████ was participating in a protest when he observed Officer Matthew Drinnan, in full uniform, carrying a stop sign walking east on W. Grand Ave. towards N. State St. As Officer Drinnan was walking, an unidentified individual(s) threw a traffic cone and barricade, striking Officer Drinnan in the back. Officer Drinnan responded by turning around and calling the unidentified individual(s)<sup>4</sup> “bitch” and “fucking faggot.” Officer Drinnan then walked away, heading southbound on N. State St.

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<sup>1</sup> COPA has jurisdiction over police misconduct involving verbal abuse which is defined as “the use of oral or written remarks that are overtly insulting, mocking or belittling, directed at a person based upon the actual, or perceived race, immigration status, color, gender, age, religion, ancestry, national origin, sexual orientation, disability, marital status, parental status, military discharge status, source of income, or gender identity or expression of that person. “Verbal abuse” shall also include any unwelcome sexual advances or requests for sexual favors.” (Chicago Municipal Code 2-78-100)

<sup>2</sup> COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. This section is a concise summary of the facts surrounding this incident as uncovered by COPA during the course of the investigation.

<sup>3</sup> ██████████ did not register this complaint with COPA; however, during this investigation, he was identified through social media records as the person who recorded this incident that was posted to Twitter which generated the complaint.

<sup>4</sup> Despite extensive investigative efforts, COPA was unable to identify the individual(s) to whom the comments were directed.

Simultaneously, Officers Niyell Powell, Cortney Jackson, and two additional unidentified white male officers approached the area.<sup>5</sup>

During our investigation, COPA obtained third-party video recordings and photographs documenting this incident.<sup>6</sup> These video recordings clearly depict the entirety of the interaction. Additionally, the obtained photographs were instrumental in identifying the members. Further, COPA obtained and reviewed BWC footage from Officer Jackson and determined that while it does depict this incident and the chaotic nature of the scene, it failed to clearly capture Officer Drinnan's language.<sup>7</sup>

During his statement to COPA, Officer Drinnan explained that this incident occurred in the second hour of his second 12-hour-shift after an approximately five-hour break. Officer Drinnan explained that at on May 29th he started his work shift at 6:00 pm and it did not end until approximately 1:00 pm on May 30th; Officer Drinnan then returned to work on May 30th at 6:00 pm. During his shift on May 30th, Officer Drinnan was not equipped with a BWC because the battery was depleted, and Sergeant Erik Ruhnke ordered that the BWC did not need to be worn.<sup>8</sup> Officer Drinnan took responsibly and apologized for his language while acknowledging it was in violation of Department policy.<sup>9</sup>

During a statement to COPA, Sgt. Ruhnke confirmed Officers Drinnan's work hours and his order to Officer Drinnan to deploy without a BWC on May 30th.<sup>10</sup> Sgt. Ruhnke explained his order was based on the BWC not being recharged.<sup>11</sup>

During their statements to COPA, Officers Powell and Jackson<sup>12</sup> explained that they do not know Officer Drinnan, did not hear him say "bitch," "fucking faggot" or make any other derogatory or profane comments<sup>13</sup> and that had they heard Officer Drinnan's make such statements they would have reported it to a supervisor as required by Department policy.<sup>14</sup> Further, Officer Powell explained that he believes he should have activated his BWC for the entirety of his response

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<sup>5</sup> Atts. 2 and 16. Witness Mr. [REDACTED] is depicted in the footage photographing Officer Drinnan as the incident occurs. *See* Att. 16 from 00:04 to 00:09. The lack of clear images combined with insufficient Department deployment records negatively impacted COPA's ability to identify Department members; however, if these members had been identified they would have received failure to report allegations, similar to those served on Officers Powell and Jackson. Officer Jackson's BWC footage depicts the incident; however, both Officers Powell and Jackson are so far away from Officer Drinnan that the language he uses was not clearly captured. *See* Att. 52 at 07:29.

<sup>6</sup> Atts. 2, 15 and 25. The video footage of Officer Drinnan was posted to social media platforms, such as Instagram and Twitter, and published by local, national, and international news outlets. *See* Atts. 31 to 35.

<sup>7</sup> Att. 52 from 07:27 to 07:37.

<sup>8</sup> Att. 45 from 04:05 to 04:32. Additionally, Assignment and Attendance Sheets reflect Officer Drinnan started work at 6:00 pm on May 29 and May 30; however, the time his workdays ended is not listed. Att. 46. Further, PDT Messages, Unit History confirm Officer Drinnan's work schedule. Atts. 20 and 21.

<sup>9</sup> Att. 45 from 05:26 to 05:48, 06:00 to 06:13, 11:56 to 12:06, and 12:16 to 12:57.

<sup>10</sup> Att. 55 from 02:55 and 04:45.

<sup>11</sup> Axon's User's Manual for the Body 2 Camera details that after 12-hours of use a Body 2 Camera requires up to six-hours to fully recharge. *See* Att. 49, pg. 17.

<sup>12</sup> Officer Jackson waived his right to counsel. *See* Att. 53, pg. 3.

<sup>13</sup> This incident occurred in the 018th District, Officer Drinnan was assigned to the 007th District, and Officers Powell and Jackson were assigned to the 002nd District.

<sup>14</sup> Att. 51 from 02:26 to 03:00 and 04:22 to 04:45; Att. 54 from 03:15 to 03:42.

to the protest related activity because protestors were throwing things, destroying property, and because the chaotic nature of the scene presented a danger to members.<sup>15</sup>

## VII. LEGAL STANDARD

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

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VIII. ANALYSIS AND CONCLUSION

COPA finds that the verbal abuse allegations against Officer Drinnan are **sustained**. Department members are prohibited from engaging in "any action or conduct which impeded[s] the Department's efforts to achieve its policy and goals or brings discredit upon the Department."<sup>16</sup> Department policy mandates that all members "treat all persons with the courtesy and dignity which is inherently due every person as a human being" and do so while "speak[ing] ... in a professional manner and maintain[ing] a courteous attitude in all contacts with the public."<sup>17</sup> Additionally, Department Rules prohibit a member from showing "[d]isrespect to or maltreatment

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<sup>15</sup> Att. 51 from 03:55 to 04:15 and 17:14 to 17:49

<sup>16</sup> Article V, Rule 2 of the Rules and Regulations of the Chicago Police Department.

<sup>17</sup> G02-01 III (B); G02-04 II (C).

of any person, while on or off duty.”<sup>18</sup> Here, the video and photographic evidence showing Officer Drinnan in full uniform and engaged in his official capacity as a Department member, directing profanities and a derogatory homophobic slur towards member(s) of the public is irrefutable and speaks for itself. It is undisputed that Officer Drinnan’s actions fail to comply with Department policy mandating that members “treat all persons with courtesy and respect” while “speak[ing] in a professional manner.” Additionally, since Officer Drinnan was readily identifiable as a Department member to any one present during the incident and the countless individuals who viewed the subsequent worldwide dissemination of the footage, there is no doubt his actions have brought “discredit upon the Department,” and the law enforcement profession as a whole.

COPA finds that the BWC allegation against Officer Drinnan is **exonerated**. During our investigation, COPA determined that Officer Drinnan had ended a 12-hour-shift less than six-hours before he started the shift during which this incident occurred.<sup>19</sup> Additionally, COPA learned that the an AXON 2 Body Camera requires a six-hour recharge period after 12-hours of use, and that the recharge period was why Sgt. Ruhnke instructed his subordinates to deploy without being equipped with the BWCs on May 30th. Thus, even if Sgt. Ruhnke had not issued an order to Officer Drinnan to deploy without his BWC, it was impracticable for Officer Drinnan to be equipped with a BWC during this incident.

COPA finds that the BWC allegation against Officer Powell is **sustained**. Department Members are required to activate BWC “at the beginning of” or “as soon as practical” for “... any encounter with the police that becomes adversarial after the initial contact; ... [and] any other instance when enforcing the law.”<sup>20</sup> Here, the video footage and Officer Powell’s own admission support that Officer Powell was presented with an instance in which his interaction with protestors was adversarial. Thus, Officer Powell was required to activate his BWC and failing to do so was in violation of Department policy. COPA notes that Officer Powell’s failure to active his BWC is not an isolated incident but rather a symptom of the Department wide failures during the response to the civil unrest.

COPA finds that the failure to report observed misconduct allegations against Officers Powell and Jackson are **unfounded**. Despite the social media video footage capturing Officer Drinnan’s language and Officers Powell and Jackson in the area during the incident, Officer Jackson’s BWC clearly depicts the chaotic nature of the scene but fails to clearly capture Officer Drinnan’s language; this revelation, supports a finding that it is reasonable neither Officers Powell or Jackson heard Officer Drinnan’s language and therefore had no knowledge of the misconduct to warrant a duty to report. Both officers also denied seeing any media coverage of this incident. Additionally, both Officers Powell and Jackson were clear in their statement to COPA, that had they heard Officer Drinnan’s language they would have reported the incident to a supervisor.

## IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

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<sup>18</sup> Article V, Rule 8 of the Rules and Regulations of the Chicago Police Department.

<sup>19</sup> This determination is supported by Sgt. Ruhnke’s and Officer Drinnan’s statements, Assignment and Attendance sheets, and Officer Drinnan’s PDT Messages and Unit History.

<sup>20</sup> S03-14 III(A)(2)(p),(r).

**a. Officer Matthew Drinnan****i. History**

- 1. Complimentary:** 17 Honorable Mentions
- 2. Disciplinary:** None

**ii. Recommended Penalty, by Allegation****1. Allegation No. 1 and No. 2**

Here, the evidence of Officer Drinnan's wholly inexcusable misconduct is irrefutable. In addition to the inherently derogatory nature of the homophobic slur used by Officer Drinnan, the context in which he used the slur is even more concerning and egregious. Officer Drinnan's actions were viewed by countless individuals worldwide, thereby bringing discredit to the Department and the broader law enforcement profession. Moreover, Officer Drinnan's comments significantly undermine the public's trust in his ability to support the stated missions of the Chicago Police Department. For an officer in a highly public situation, who was aware of all the cameras on him, to so easily unleash those words demonstrates a profound lack of judgment and professionalism. Moreover, Officer Drinnan's expression of hate speech significantly undermines Department efforts to enforce the law impartially. Chicago is reported to have the third largest LGBT community in the US and certainly has the largest LGBT community in the Midwest. Officer Drinnan's words constitute bias-based verbal abuse, which impacts a significant portion of the people he is tasked with serving as an officer. Considering the weight of Officer Drinnan's words, and especially the context in which these statements were uttered, during a moment of civil unrest in which protestors were calling for a police force that protects *all* members of its community, these statements cannot be allowed.

In mitigation, COPA considers the lack of disciplinary history for Officer Drinnan, as well as the extraordinary circumstances he faced during this incident. Specifically, his extended tour of duty, lack of sleep, and the aggressive action of a protestor which precipitated Officer Drinnan's comment. COPA also appreciates Officer Drinnan's acceptance of responsibility for his actions. However, the serious and deeply offensive nature of Officer Drinnan's statement cannot be overlooked. Moreover, Officer Drinnan never came forward to report his misconduct, despite being aware that there was a viral video capturing his actions and public announcement his conduct was being investigated. Additionally, because of the extremely public nature of his video, Officer Drinnan brought significant discredit to the Department. Therefore; COPA recommends separation from the Department.

**b. Officer Niyell Powell****i. History**

- 1. Complimentary:** 2 Life Saving Awards; 4 Department Commendations; and 20 Honorable Mentions
- 2. Disciplinary:** 1 Equipment Violation Reprimand

**ii. Recommended Penalty, by Allegation****1. Allegation No. 2**

Officer Powell was put in an unconventional situation, detailed outside his district, working in a capacity that was extraordinary. Officer Powell described the situation and chaotic and dangerous. While it's understandable that under the circumstances Officer Powell may not have been as conscientious as he should have been, the use of body worn cameras is fundamental to transparency and the integrity of the Department. It is clear from the bulk of the protest incidents that the lack of BWC was pervasive. Officer Powell was clearly not alone in this infraction. However, while the events call into serious question the Departments organization of these protest deployments and supervision provided, Officer Powell was aware of his obligation to activate his camera. These orders are now well established and therefore COPA recommends a 3-day suspension for Officer Powell.

**X. RECOMMENDATIONS – DEPARTMENT**

Policing is grounded in the public's trust and legitimacy of the enforcement actions taken by its police department. Trust and legitimacy are undermined when oversight bodies, such as COPA and the Bureau of Internal Affairs, are unable to identify members. In this case, the Department's failure to adequately document when and where members were deployed adversely impacted COPA's investigative efforts. Additionally, this failure created a significant officer safety concerns while simultaneously risking successful criminal prosecutions. COPA recommends the Department revise its operating procedures to ensure that mass deployment activities include clear records that properly identify where and when members are working and that those records contain sufficient information to accurately identify individual members or group of members.

COPA is greatly concerned with the Department's practice of re-deploying members without sufficient recovery time. Common sense dictates that inadequate rest periods impair decision making in interactions with the public, uses of force, and vehicle operations. In this case, Officer Drinnan was deployed less than 6-hours after completing an approximately 17-hour shift. COPA recommends the Department take necessary steps to ensure members are afforded adequate rest between shifts, especially during times of emergency operations.

Possession, use and activation of body worn camera is a vital tool in which the Department can build public trust, enhance accountability and provide transparency in the actions of its members. The absence of body worn camera only serves to undermine those ideals the Department seeks to achieve. COPA recommends that the Department take necessary steps to ensure that all members are deployed with functioning body worn camera, ensure governing policies are clear on their duty to activate when members are interacting with the public, regardless of the nature of the interaction.<sup>21</sup>

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<sup>21</sup> COPA acknowledges the current version of S03-14 provides for deactivation during certain privacy concerns and covert operations. COPA believes that the delineated instances are reasonable and should remain part of any future policy, provided the member clearly indicates the reason for deactivation on the recording. Additionally, while COPA

Approved:



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Andrea Kersten  
*Chief of Investigative Operations*

August 27, 2020

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Date



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Sydney R. Roberts  
*Chief Administrator*

August 27, 2020

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Date

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acknowledges there are certain operational needs, such as covert investigations, that are prohibitive to the use of BWCs; COPA strongly believes that it is only time members should not be equipped with BWCs.

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	0
<b>Investigator:</b>	Garrett Schaaf
<b>Supervising Investigator:</b>	James Murphy-Aguilu
<b>Deputy Chief Administrator:</b>	Andrea Kersten