

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	March 14, 2017
Time of Incident:	10:30 p.m.
Location of Incident:	8234 S. Paulina Street
Date of COPA Notification:	July 25, 2017
Time of COPA Notification:	4:08 p.m.

On March 14, 2017, at approximately 10:45 p.m., Chicago Police Department (CPD) Officers and Fire Department (CFD) Paramedics responded to 8234 S. Paulina Street for a call of a man stabbed. When they arrived to the apartment building, [REDACTED] [REDACTED] was sitting in the interior second-floor stairwell with injuries to his head. The officers inquired how [REDACTED] had been injured but [REDACTED] was incoherent and initially said the offender had left. [REDACTED] then demanded that they open the nearby door so he could talk to his “girl”, whom he proceeded to argue with. [REDACTED] then indicated that she had been the one to stab him. After the officers closed the door, [REDACTED] became more animated. Paramedic (PM) James Francoeur² instructed [REDACTED] to stop spitting on him and forcefully grabbed [REDACTED] face to turn it away, and then put [REDACTED] in a brief headlock. As [REDACTED] continued yelling, Officer Bryan Moylan tased [REDACTED] and the officers were eventually able to subdue [REDACTED] and assist in taking him to an ambulance. [REDACTED] continued to try and inform the officers that his girl had hurt him, but the officers did not follow up.

Officer Moylan completed a Tactical Response Report (TRR) documenting that he tased [REDACTED] because [REDACTED] spat on PM Francoeur, making [REDACTED] an assailant. Officer Donald Klein completed two Original Case Incident Reports (OCIR), one which listed [REDACTED] as the offender for battering PM Francoeur by spitting, and one which listed [REDACTED] as the victim, but stated [REDACTED] refused to provide information about the offender.

COPA found that Officer Moylan discharged his Taser in violation of policy, and improperly documented the Taser use; that Officer Klein improperly documented the incident in the OCIRs; and that the two officers failed to conduct a proper preliminary investigation into [REDACTED] stabbing. COPA further determined that Officers Klein, Moylan and assisting Officer Izet Husic did not commit misconduct by failing to intervene when PM Francoeur used force on [REDACTED]

¹On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

²CFD records document his name as James Francoeur, but CPD reports identify him as Ryan Francoeur. Compare Attachments 4, 5, 10.

II. INVOLVED PARTIES

Involved Officer #1:	Bryan Moylan, Star #11135, Employee # [REDACTED], Date of Appointment: 31 August 2015, Police Officer, 006th District, Date of Birth: [REDACTED] 1991, Male, White
Involved Officer #2:	Donald Klein, Star 12446, Employee # [REDACTED] Date of Appointment: 5 December 2005, Police Officer, 006 th District, Date of Birth: [REDACTED] 1971, Male, White
Involved Officer #3	Izet Husic, Star #17591, Employee # [REDACTED], Date of Appointment: February 2014, Police Officer, 015 th District, Date of Birth: [REDACTED] 1983, Male, White
Subject #1:	[REDACTED] [REDACTED] Date of Birth: [REDACTED] t 1981, Black, Male, address at time of incident: [REDACTED]

III. ALLEGATIONS³

Officer	Allegation	Finding
Officer Bryan Moylan	On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Moylan:	
	1. Failed to use your Taser in compliance with Department rules and directives.	Sustained
	2. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation, identify an offender, and make an arrest.	Sustained
	3. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney.	Not Sustained

³ COPA unsuccessfully attempted to interview [REDACTED] [REDACTED] related to this incident. COPA Deputy Chief Jay Westensee served as complainant for the allegations.

Officer	Allegation	Finding
	4. Failed to accurately complete the Tactical Response Report.	Sustained
Officer Izet Husic	<p>On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Husic:</p> <p>1. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation, identify an offender, and make an arrest.</p> <p>2. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney.</p>	<p>Unfounded</p> <p>Not Sustained</p>
Officer Donald Klein	<p>On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Klein:</p> <p>1. Failed to accurately document events in the Original Incident Report.</p> <p>2. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation, identify an offender, and make an arrest.</p> <p>3. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney.</p>	<p>Sustained</p> <p>Sustained</p> <p>Not Sustained</p>

IV. APPLICABLE RULES AND LAWS

Rules
<p>Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.</p>

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

Rule 6: Disobedience of an order or directive, whether written or oral. Rule 8: Disrespect or maltreatment of any person, while on or off duty.

General Orders

G04-04: Domestic Incidents⁴ (eff. 28-Dec-2012).

G03-02: Use of Force Guidelines (eff. 1 Oct 2002 to 16 Oct 2017)

G03-02-01: Use of Force Model⁵ (eff. 16 May 2012 to 16 Oct 2017).

G03-02-02: Force Options⁶ (eff. 01 Jan 2016 to 16 Oct 2017).

G03-02-07: Other Weapon Discharge Incidents⁷ (eff. 30 Oct 2014 to 16 Oct 2017).

Special Orders

S03-02-04 CLEAR Automated Tactical Response Report⁸ (eff. 30 Oct 2014 to 16 Oct 2017)

S03-08: Assisting Chicago Fire Department Paramedics⁹ (eff. 27 Sep 1995).

V. INVESTIGATION

COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in COPA's analysis.

a. Digital Evidence

COPA reviewed the Body Worn Camera (BWC) videos for Officer Klein, Officer Moylan, and Officer Husic,¹⁰ show these officers responding to 8234 S. Paulina Ave, along with Chicago Fire Department (CFD) Paramedics James Francoeur, and Robert Spoon for a call of a person stabbed. Officers Moylan and Klein initially entered the apartment building and went to the second floor at the direction of the woman on the first floor. Officer Husic arrived as those officers were being let inside, and he waited downstairs to let the paramedics into the building. █████ sat in the second-floor stairwell on the steps with a laceration to the head. █████'s speech was slurred as he says "I need to get to the hospital real quick, I'm losing consciousness, man."¹¹ █████ initially reports that the person who is responsible for his injuries ran away, and that █████ was stabbed in the stairwell. █████ voice gets loud as he asks officers to knock on the apartment door on the second-floor

⁴ Attachment #52

⁵ Attachment #49.

⁶ Attachment #50.

⁷ Attachment #51.

⁸ Attachment #65.

⁹ Attachment #57.

¹⁰ This is a summary of all BWC recordings from the officers who responded to the scene.

¹¹ Klein BWC 1:40-1:46.

where his girlfriend ██████ resides. When the officers open the door, ██████ begins yelling at Ms. ██████ to, “Put her shit on,” and come with him to the hospital.¹² When Ms. ██████ refuses to accompany ██████ to the hospital, he threatens to tell the police what happened. Ms. ██████ says ██████ cut himself and accuses him of calling the police. Ms. ██████ mother, who also stands inside the doorway, informs Officer Klein that her daughter and ██████ have been drinking all day and that she just got home and does not know what happened. There is another man inside the doorway who repeatedly calls ██████ a clown. The conversation between ██████ and Ms. ██████ escalates to a shouting match and Ms. ██████ closes the door. After the door is closed, ██████ yells, “She the one that cut me.”¹³ ██████ refused to the go the ambulance and repeated, “That’s the motherfucker that cut me.”¹⁴

██████ is yelling, refusing to leave the landing, and his speech is unsteady. ██████ continues yelling and PM Francoeur forcefully places his hand over ██████ mouth and nose and instructs ██████ not to spit on his face. ██████ pulls away and tells PM Francoeur not to put his hands on him. Officer Moylan unholsters his Taser. PM Francoeur grabs ██████ with two hands, one on each side of his head, and says words to ██████ to the effect of, “I said don’t spit in my face, motherfucker.”¹⁵ PM Francoeur then places ██████ in a headlock, turns his body toward the wall, and pulls him backwards towards the floor.

Officer Moylan stands on the stairs between the second and third floors looking down at ██████ and PM Francoeur as these events unfold. After PM Francoeur places ██████ in a headlock and pulls him backwards, Officer Moylan warns, “Hey, you are about to get tased. You’re about to get tased. You’re about to get tased.”¹⁶ Seven seconds after PM Francoeur places ██████ in a headlock, Officer Moylan discharges his Taser and strikes ██████ ██████ is incapacitated, and he is placed in a seated position on the stairs.

At the moment Officer Moylan discharges the Taser, Officer Klein, and Officer Husic are standing on the second-floor platform, which is a relatively confined area, along with ██████ PMs Francoeur and Spoon, who has a stair chair when these events unfold. Officer Klein does not appear to react as these events unfold. Officer Husic moves towards PM Francoeur and ██████ moments before Officer Moylan deploys his Taser. Officer Husic jumps back away from PM Francoeur and ██████ just as the Taser is deployed.

After the Taser deployment, ██████ sits on the stairs and shouts that he is the victim and he was tased for no reason. ██████ tells the first responders he does not want anything to do with CPD and he refuses to stand up or go to the ambulance. PM Francoeur tells ██████ he does not have a choice he must go to the hospital. ██████ continues to state he has been tased for no reason and he is not going to the hospital. Officer Husic approaches ██████ turns him onto his stomach and he and PM Francoeur escort ██████ to the ambulance. PM Francoeur and Officer Moylan enter the ambulance. ██████ continues to resist PM Francoeur and yells “Let me the fuck go!”¹⁷ and PM Francoeur forcefully pushes ██████ onto the ambulance gurney. ██████ refuses to sit down and continually stands

¹² Klein BWC approx. 4:00.

¹³ Klein BWC, 4:40.

¹⁴ Klein BWC, 4:48.

¹⁵ Klein BWC, 5:05.

¹⁶ Moylan BWC, 05:08.

¹⁷ Husic BWC appx 9:00

up while PM Francoeur tries to treat [REDACTED] wounds.¹⁸ [REDACTED] repeatedly says “I don’t want this shit” and “I’m glad you did that,” and yells “I’m glad y’all tased me!”¹⁹ Officer Moylan then enters the ambulance and helps PM Francoeur restrain [REDACTED] against the gurney. Officer Moylan applies a towel to [REDACTED] face while PM Francoeur straps [REDACTED] to the gurney. After [REDACTED] is restrained, Officer Moylan steps away from [REDACTED] and the paramedics begin treating [REDACTED].²⁰ While in the ambulance after he was tased, [REDACTED] indicates that he has mental health diagnoses including psychosis. PM Francoeur asks if [REDACTED] has any other medical conditions, such as hepatitis, [REDACTED] then says “I got hepatitis, all that shit, that’s why I spit in y’all face.”²¹ [REDACTED] is visibly struggling against the restraints on the gurney nearly the entire time he is visible on BWC while the officers are in the ambulance. At times in the ambulance when [REDACTED] is yelling, the paramedics cover his face with a towel.

b. Interviews

Officer Donald Klein was interviewed by COPA on December 1, 2017, at approximately 6:00 a.m. Prior to the interview, Officer Klein reviewed Body Worn Camera video related to this incident with COPA investigators. Officer Klein said he did not review this video before he prepared his reports related to this incident. Officer Klein was assigned to Beat 611R on March 14, 2017, when he responded to a call of a person stabbed. Officer Klein and Officer Brian Moylan arrived at 8234 S. Paulina Ave. where they saw [REDACTED] sitting in the second-floor stairwell. [REDACTED] was bleeding from the head. [REDACTED] had blood on his face but Officer Klein did not see blood coming from his nose or mouth.

Officer Klein asked [REDACTED] on several occasions who was responsible for his injuries. [REDACTED] refused to provide any information on how he was injured. Officer Klein did not hear [REDACTED] indicate that [REDACTED] [REDACTED] his girlfriend, was responsible for his injuries. Officer Klein did not conduct any follow-up inquiry with Ms. [REDACTED] because he did not have any information that she was the assailant.

Officer Klein saw PM Francoeur place his hand over [REDACTED] mouth, grab his head with two hands, turn his head, and place him in a head-lock. Officer Klein did not take any action to intervene or diffuse this situation. Officer Klein said from his perspective, PM Francoeur was protecting himself. PM Francoeur said [REDACTED] was spitting on him. Officer Klein never saw [REDACTED] spit on PM Francoeur or anyone else during this incident. When CFD Paramedics attempt to provide patient care they are in charge; CPD is responsible for assisting CFD and ensuring their safety. Officer Klein does not know CFD policy as it pertains to the amount of force a Paramedic may use against a non-compliant patient or a patient who refuses transport. Officer Klein does not know what a Chicago Police Officer is required to do under these circumstances. The Department requires sworn officers to act if they observe a person being assaulted or battered.

Officer Klein was not aware of any Department policy that provides an exception to the requirement to act when an officer observes an assault and/or battery. Officer Klein’s Incident

¹⁸ Klein BWC appx 9:50

¹⁹ Husic BWC appx 9:00-9:30

²⁰ Moylan BWC appx 10:00-12:00

²¹ Officer Moylan’s BWC 13:41-13:58

Reports were a summary of the events that occurred during this incident. His reports were based on his perception of events at the time he wrote the reports. Officer Klein acknowledged these reports fail to indicate PM Francoeur put hands on [REDACTED] on several occasions during this incident when he was not attempting to provide [REDACTED] medical care.

From Officer Klein's perspective, [REDACTED] was the aggressor in this incident. From Officer Klein's vantage point, [REDACTED] appeared to present a threat to the paramedic. Officer Klein said the paramedic did not know what his possible disease exposure was due to [REDACTED] spitting/spraying him. [REDACTED] and PM Francoeur were wrestling. Officer Klein heard PM Francoeur instruct [REDACTED] to stop spitting in his face. Officer Klein said he never actually saw [REDACTED] spit on the paramedic and it might have been more appropriate to say in his report that [REDACTED] sprayed him with saliva. When questioned further, Officer Klein indicated he never saw blood or spittle on PM Francoeur.

Officer Klein acknowledged, after reviewing the BWC during the interview with COPA, that [REDACTED] was tased by Officer Moylan after PM Francoeur placed his hand over [REDACTED] mouth, grabbed him by both sides of the head with two hands, called him a motherfucker, and placed him in a headlock. Officer Klein acknowledged his Incident Report omitted these details and the report incorrectly suggests that, "Paramedic Francoeur was attempting to place [REDACTED] in a stair chair when [REDACTED] became combative, stood up, and began yelling at Paramedic Francoeur spraying saliva at him." He stated after viewing video with COPA, that there was a stair chair but that PM Francoeur was not trying to put [REDACTED] into it. Officer Klein said Officer Moylan did not give a caution to other first responders before he deployed his Taser.²²

In an interview with COPA on December 5, 2017, at approximately 6:46 a.m., **Officer Brian J. Moylan** reviewed the footage from his Body Worn Camera prior to the start of this interview. Officer Moylan was assigned to Beat 611R on March 14, 2017 at approximately 10:45 p.m., when he responded to call of a person stabbed at 8234 S. Paulina Ave.

When Officers Moylan and Klein arrived they saw [REDACTED] sitting in the second-floor stairwell. [REDACTED] had blood on his face, head and around his mouth. Officer Moylan is currently certified to use the Taser. Officer Moylan said the Taser may be used against a subject who is an active resister or above on the Department's use of force model. Officer Moylan said the Tactical Response Report (TRR) is used to note details about the use of the Taser during a use of force incident. On his TRR related to this incident, Officer Moylan indicated that [REDACTED] was an imminent threat of battery due to the fact that he spit on PM Francoeur.

Officer Moylan personally never saw [REDACTED] spit blood in anyone's face during this incident. From his perspective, Officer Moylan determined [REDACTED] was the aggressor during this incident and that from the beginning [REDACTED] elbowed Francoeur as soon as he opened the door. PM Francoeur was defending himself because of his possible exposure to blood, saliva, and [REDACTED] combative nature, according to Officer Moylan.

After reviewing his BWC for a second time, Officer Moylan said he thought [REDACTED] had pushed against PM Francoeur and spit blood in his face placing him at risk of receiving a battery. Officer Moylan heard PM Francoeur verbalize that [REDACTED] spit blood in his face, but Officer Moylan never actually saw [REDACTED] spit blood or saliva on anyone during this incident. Officer Moylan saw PM

²² Attachment #61 – Interview Transcript - Officer Klein#12446

Francoeur cover [REDACTED] mouth with his hand, put two hands on the side of his head and turn his head, place him in a headlock, and forcefully sit him on the ambulance gurney. Officer Moylan did not act to stop the PM Francoeur because he felt the paramedic's actions were justified and the paramedic was trying to render aid to [REDACTED]. Officer Moylan believed the use of his Taser was the least amount of force available to him under the circumstances. Officer Moylan admitted he did not give a warning to other first responders prior to deploying his Taser because of the imminent threat [REDACTED] posed to the paramedic.²³ Officer Moylan stated that there was not a lower amount of force that he could use because the encounter was happening so quickly, and because [REDACTED] was covered in blood, so he believed it would be risky to touch him.

Officer Moylan said [REDACTED] refused to tell first responders who was responsible for his injuries. Officer Moylan did not hear [REDACTED] indicate that his girlfriend [REDACTED] [REDACTED] caused his injuries.

In an interview with COPA on December 7, 2017, **Officer Michael Vanboldrik**, it was determined he was not one of the officers involved in this incident. During COPA's initial review of the Attendance and Assignment Sheets from March 14, 2017, for the 6th District, those sheets incorrectly indicated Officer Vanboldrik was assigned to Beat 611R with Officer Moylan. Officer Vanboldrik identified **Officer Izet Husic #17591**, as the officer on the BWC video.

In an interview with **COPA on January 18, 2018**, at approximately 5:35 p.m., **Officer Izet Husic** said on March 14, 2017, at approximately 10:45 p.m., he was assigned to the 006th District when he responded to 8234 S. Paulina to assist other responding units for a call of a person who had been stabbed. Officer Husic said it was not his responsibility as an assisting unit to conduct a preliminary investigation related to this response. When he arrived, he saw [REDACTED] with blood coming from his mouth and head.

Officer Husic saw PM Francoeur place his hand over [REDACTED] mouth. Officer Husic did not see PM Francoeur grab Mr. [REDACTED] by the head with two hands at the time of this incident. After reviewing his BWC video, Officer Husic indicated PM Francoeur grabbed [REDACTED] by the head with two hands. Officer Husic said PM Francoeur had his back turned to him and he never saw PM Francoeur place [REDACTED] in a headlock.

Officer Husic never saw [REDACTED] spit blood or saliva in anyone's face, nor see [REDACTED] strike, hit, push or elbow anyone during this incident. Officer Husic did not seek treatment for exposure to blood or airborne pathogens because of this incident. Officer Husic believes [REDACTED] placed first responders at risk of bodily harm when he failed to follow verbal instructions, became aggressive, and appeared to be agitated. Officer Husic said [REDACTED] was yelling and flailing his arms and he was near PM Francoeur.

Officer Husic did not hear Officer Moylan give other first responders any warning prior to deploying his Taser. Officer Husic moved towards [REDACTED] after he observed PM Francoeur place his hand over his mouth. Officer Husic planned to physically restrain [REDACTED] prior to Officer Moyer deploying his Taser. Officer Husic did not observe [REDACTED] spitting at that time, but he was becoming aggressive. Officer Husic could not recall much of what happened during this incident besides

²³ COPA asked Officer Moylan about the other officers but mistakenly referred to Officer Husic (who was close to [REDACTED]) as Officer Vanboldrik, who actually was not Officer Moylan's partner this day. Officer Moylan indicated he was unaware of where "Officer Vanboldrik" was when he discharged the Taser, but it is unclear if he knew that Officer Husic was attempting to jump in and provide aid in detaining [REDACTED].

what he reviewed on his BWC. Officer Husic could not account for what led to Officer Moylan's decision to deploy his Taser because that was Officer Moylan's viewpoint. Officer Husic was wearing a Taser and he did not deploy his Taser.

Officer Husic did not recall [REDACTED] indicating his girlfriend [REDACTED] [REDACTED] caused his injuries. Officer Husic did not recall [REDACTED] indicating [REDACTED] [REDACTED] was his girlfriend during this incident. Officer Husic made the decision to restrain and handcuff [REDACTED] after PM Francoeur indicated [REDACTED] was drunk and injured, and he had to go to the hospital. Officer Husic made that decision after [REDACTED] was given the opportunity to voluntarily accompany the paramedics, but he refused to do so.²⁴

In an interview with COPA on January 24, 2018, **Paramedic (PM) James Francoeur** initially said he had no recollection of events that occurred when he responded to a stabbing incident on March 14, 2017 at approximately 10:45 p.m., at 8234 S. Paulina Ave. PM Francoeur was provided a copy of the Chicago Fire Department, Emergency Medical Services Report (EMS) dated March 14, 2017, for his review. After reviewing the EMS report PM Francoeur said he contacted [REDACTED] in the stairwell at 8234 S. Paulina Ave. Officers from the Chicago Police Department also responded during that incident.

PM Francoeur was not sure if [REDACTED] spit on any of the responding officers. PM Francoeur could not recall if [REDACTED] spit blood or saliva directly on him during this incident. PM Francoeur believes [REDACTED] may have spit blood on him.

[REDACTED] was in the stairwell yelling and spitting in PM Francoeur's direction when an officer deployed his Taser. PM Francoeur could not recall if the officer who deployed the Taser gave a warning to other first responders prior to deploying the Taser. PM Francoeur could not recall if [REDACTED] identified who was responsible for causing his injuries. PM Francoeur could not recall if [REDACTED] informed officers, on two occasions, that his girlfriend was responsible for his injuries, and he does not recall the nature of the conversation officers had when they knocked on the girlfriend's door.

[REDACTED] could not refuse transport to the hospital because he was intoxicated, and he had injuries to his head. PM Francoeur could not recall who handcuffed [REDACTED] and prepared him for transport to the hospital. The officers made it safe for the Paramedics who were on scene when they tased [REDACTED].²⁵

COPA attempted to **interview** [REDACTED] [REDACTED] COPA called [REDACTED] last known phone number and left several messages on his voice mail. [REDACTED] failed to respond to those messages. COPA sent letters to his last known address which were not responded to. COPA conducted a personal visit and canvass to his last known addresses without success.

On December 14, 2017, Investigator Frank Sheets contacted CFD, Internal Affairs Division (IAD) to schedule an **interview** with **Paramedic Spoon**. The R/I was advised Paramedic Spoon is deceased with a date of separation from the Department of June 1, 2017.

²⁴ Attachment #63 – Interview Transcript - Officer Husic #117591

²⁵ Attachment#45 – Paramedic Francoeur

c. Physical Evidence

The CFD, **Emergency Medical Services (EMS) Report**, dated March 14, 2017, documents CFD Paramedics James Francoeur #21561, and Paramedic Robert Spoon #21484 responded to a call of a stabbing victim at 8234 S. Paulina Ave. The report indicates when they arrived with CPD officers they found █████ █████ in a stairwell bleeding from his head. █████ indicated someone had stabbed him in the head. The report indicates █████ had blood on his face, nose, and mouth and he had a two-inch laceration on his forehead. █████ was slurring his words and he was agitated. █████ refused medical treatment or transport. █████ began arguing with another resident of the building and he became more hostile and began yelling when the other residents closed their door.

█████ directed his yelling at the Paramedics, and he refused to stop yelling and spitting (due to blood in his airways) after being asked to do so by the Paramedics. █████ refused to cooperate, he was tased, and handcuffed by CPD. █████ was assisted to the ambulance and seated on the stretcher. He remained uncooperative and handcuffed. █████ head wound was bandaged and refused further treatment. █████ lost consciousness but maintained his airway and breathing during transport. The Paramedics transported █████ to Advocate Hospital with CPD assistance.²⁶

The **Advocate Christ Medical Center Records** dated March 14, 2017, at approximately 2317 hours, documents █████ █████ was seen in the emergency room by Doctor █████. Mr. █████ presented with a cut or lesion that went through all layers of the skin and into the tissue just beneath the skin. He suffered a superficial laceration to the forehead. █████ had a punctuate abrasion on his right flank because of being tased twice. When █████ arrived at the emergency room his airway was intact, breathing was spontaneous, and breath sound was equal and bilateral. The hospital staff performed a toxicology screen on █████ at 2324 hours. The screen came back positive for cannabis and alcohol. His blood alcohol concentration was 250 mg/dL.²⁷

█████ removed the c-collar at 0805 on March 15, 2017, and advised emergency room staff he was going home. █████ was yelling profanities and he had to be escorted out of the emergency room by hospital security. █████ was clinically sober at the time of his discharge and he refused to accept his discharge papers.²⁸

d. Documentary Evidence

CPD, **Original Incident Report JA187351**²⁹, dated March 14, 2017, with reporting officer Donald Klein #12446, treats the incident as a Battery of a protected employee, and lists Ryan Francoeur, paramedic, as the victim and █████ █████ as the suspect. The report's narrative section states that Officer Klein responded to a call of an aggravated battery with a knife at 8234 S. Paulina Ave. When officers, and paramedics arrived they observed █████ sitting in the second-floor stairwell with two lacerations to his forehead. The report indicates "█████ █████ (victim and complainant) refused to give R/O's any UNK (Offender) information."³⁰ The narrative states that

²⁶ Attachment #10 – EMS Ambulance Report – █████ █████

²⁷ Attachment #55 – Medical Records, (toxicology screen results at p. 66.)

²⁸ Attachment #55 – Medical Records – █████ █████

²⁹ It appears that the narrative sections of the case reports JA187351 and JA187387 were transposed.

³⁰ Attachment #5 – Original Incident Report JA187351

■■■■ made statements about having mental illness and became “combative during the event”, and cross-references event JA187387.

Original Incident Report JA187387, dated March 14, 2017, with reporting officer Donald Klein, classifies the incident as an aggravated battery with a knife or cutting instrument, and lists ■■■■ as the victim and an Unknown offender. The narrative section states that officers responded to a call of a person stabbed and encountered ■■■■. The report claims that ■■■■ provided no information about an offender and was yelling and screaming at officers and CFD personnel. Further, when CFD attempted to put him into a stair-chair, ■■■■ “became combative, stood up, and began yelling at [Francoeur], spraying saliva at victim.” The report states that ■■■■ became more combative, yelled, and sprayed more spit, and the report twice states that Francoeur pushed ■■■■ away, and after the second time, Officer Moylan deployed a Taser to eliminate the threat of bodily harm to Francoeur. Moreover, the report indicates that when once they had put ■■■■ into the ambulance, he stated that “I’m psycho and I spit in your face cause I have hepatitis and all kinds of shit.”

Officer Moylan completed a **Tactical Response Report** dated March 14, 2017. Officer Moylan selected the boxes indicating that ■■■■ did not follow verbal direction, flailed his arms, was an imminent threat of battery by spitting blood in paramedic[’s face], and was an assailant without a weapon by spitting blood in paramedic’s face. It indicates that his response was with member presence and voice commands, and that he discharged one Taser probe. It further lists a narrative that he “deployed Taser due to the subject’s combative nature and combativeness towards a Chicago Fireman paramedic. The subject spit blood in the paramedic’s face and became combative towards the paramedic.” The report further indicates Mr. ■■■■ failed to follow verbal directions, flailed his arms, and spit blood in the Paramedic’s face placing the Paramedic in fear of receiving a battery. The report states it was determined that to prevent injury to the Paramedic and to avoid being spit on himself, Officer Moylan deployed his Taser from a safe distance. Mr. ■■■■ was placed in custody and transported to the hospital for treatment and psychiatric evaluation.³¹

The OEMC, **Event Query Reports**, dated March 14, 2017, indicate that Beat 611R was dispatched to a call of a person stabbed at 8234 S. Paulina Ave and that beat 606E responded to assist. Responding officers were advised to ring the first bell to gain entry to the residence. This Report informed responding officers that the caller indicated they could hear a male yelling for help indicating they had been stabbed and the caller could hear two males and a female. The caller indicated “they” been arguing all day. The Report indicates a Taser had been deployed and the victim, ■■■■ ■■■■ had been stabbed in the face around his nose and he was in good condition. The Report indicates the required notifications were made.³²

³¹ Attachment #6 – Tactical Response Report

³² Attachment #17-19 – OEMC Event Query

VI. LEGAL STANDARD

a. Use of Force

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable, necessary, and appropriate in light of the totality of the circumstances faced by the officer.³³ 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 safety of the officer or others; (2) the severity of the crime at issue; and (3) whether the subject is actively resisting arrest or attempting to evade arrest by flight.³⁴ When assisting CFD paramedics, officers are authorized to employ the minimum amount of force necessary to overcome the amount of force exerted by the patient.³⁵

The Force Options directive divides subjects into categories based upon the amount of force the subject is using and provides for what types of force members are permitted to use against those subjects. These categories are (1) cooperative subjects who are compliant without the need for physical force; (2) passive resisters who fail to comply, via non-movement, with verbal or other direction; (3) active resisters who attempt to create distance between themselves and members' reach with the intent to avoid physical control and/or defeat arrest; and (4) assailants who use or threaten the use of force which is likely to cause physical injury.³⁶

Officers must de-escalate and use force mitigation whenever possible and appropriate before resorting to force and to reduce the need for force.³⁷ Force mitigation includes (1) establishing continual verbal communication to deescalate and use persuasion, advice, and warnings prior to the use of physical force; and (2) using time, distance, and cover to create a "zone of safety" and de-escalate emotion.³⁸ When responding to an incident involving persons in need of mental health treatment, officers must use every possible means to verbally de-escalate the situation before resorting to the use of equipment, physical restraint, or other use of force options.³⁹

Officers may use a Taser only against a subject who is an assailant or an active resistor.⁴⁰ An officer who is about to discharge a Taser will, when possible (1) inform all other officers of the imminent deployment of the Taser and (2) give verbal commands to the subject, prior to, during, and after the deployment.⁴¹

b. Preliminary Investigations

³³ G03-02 (III)(B) and G03-02-02(II).

³⁴ G03-02 (III)(C)

³⁵ S03-08 (V)(B).

³⁶ G03-02-02 (IV).

³⁷ G03-02-02(II)(C).

³⁸ G03-02-02(III).

³⁹ G03-02-02(III)(C).

⁴⁰ G03-02-02 (IV).

⁴¹ G03-02-07(IV)(A).

Officers conducting a preliminary investigation will conduct a thorough and accurate investigation and convey a sense of concern and general interest to all persons in need of police service.⁴² Such investigation shall include rendering aid to the injured, arresting the offender if still on or near the scene, identifying the complainant and obtaining a description of the offender(s).⁴³ If a victim decides not to proceed with charges, officers will document the victim's decision and their specific reason(s) given for not prosecuting in the victim's own words.⁴⁴

Moreover, Department Policy recognizes that Illinois law seeks to protect victims of domestic violence and members will use all reasonable means to prevent further abuse including the arrest of the offender when there is probable cause.⁴⁵ When conducting a preliminary investigation into domestic violence incidents, officers must conduct a thorough investigation including identifying and interviewing all involved parties separately and completing reports which identify the victim, offender, and witnesses.

c. Report Writing

Officers are required to complete a Tactical Response Report (TRR) when, in the performance of the officer's duties, he discharges his Taser or other weapon, as well as uses of force where the subject is injured; or where the subject was an assailant or active resistor.⁴⁶ Officers are required at all times to truthfully and completely describe the facts and circumstances concerning any incident involving the use of force by Department members.⁴⁷ Department members will report and thoroughly document each reportable use of force.⁴⁸ Officers are required to complete a narrative within the TRR describing with specificity, the use of force incident, the subject's actions, and the officer's response including force mitigation efforts and specific types and amount of force used.⁴⁹

Moreover, Departmental Rules of Conduct 2 and 3, working in combination, serve the principal that sworn officers are held to standard of truthfulness:

Department Rule 2 and 3 require that Chicago police officers provide a complete and accurate accounting of what they observe while on duty. Officers may not offer misleading statements which emphasize certain facts to the exclusion of others. And they are not permitted to pick and choose facts in order to support a pre-determined conclusion. Instead, officers must provide a complete accounting without embellishment, exaggeration, or spin.⁵⁰

d. Standard of Review

⁴² G04-01 (III).

⁴³ G04-01(IV)(A).

⁴⁴ G04-01(III)(C).

⁴⁵ G04-04.

⁴⁶ G03-02-02(III).

⁴⁷ G03-02-02(II)(A).

⁴⁸ *Id.*

⁴⁹ G03-02-02(IV)(B).

⁵⁰ *In re Franko et. al.*, 16 PB 2909-2912, Findings and Decisions, July 18, 2019, at pp. 5-6.

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** is evidence indicating that it is **more likely than not** that the conduct reviewed 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 conduct violated 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 is 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. Analysis

A. Officer Moylan discharged his Taser in violation of Department policy.

1. **It was not objectively reasonable to use his Taser in these circumstances.**

It was not objectively reasonable for Officer Moylan to use his Taser based on [REDACTED] actions. Officers may only use their Taser against an active resistor or assailant, but [REDACTED] did not meet the threshold for either, indeed he was the victim of a stabbing, in need of medical treatment. He was certainly being vocal, but that at most is considered a *passive* resistor, as he was not pulling away or attempting to create distance between himself and officers or PM Francoeur. Moreover, while PM Francoeur alleged that [REDACTED] was spitting on him, that does not render [REDACTED] an assailant. It was clear that the alleged spitting was incidental when he spoke/shouted⁵¹, and he was not being aggressively offensive or likely to cause physical injury⁵² and did not meet the standard of an

⁵¹ COPA acknowledges that [REDACTED] indicated in the ambulance that he had spit on purpose, however, the video evidence does not corroborate this statement, and the evidence instead indicates that [REDACTED] was lying to antagonize the officers who had tased him.

⁵² *See, United States v Evans*, 576 F.3d 766, 768 (7th Cir. 2009) (finding that under Illinois law, spitting does not constitute a serious risk of physical injury).

assailant. Therefore, [REDACTED] conduct did not rise to a level which permitted Officer Moylan to use a Taser.

Additionally, neither Officer Moylan, nor any of the other officers, attempted to engage in force mitigation. From when PM Francoeur first complained of being spit on, to when Officer Moylan discharged the firearm, only took seven seconds. During that time, PM Francoeur had turned [REDACTED] face away from him, which gave the officers the opportunity to use time as a tactic and/or communicate with [REDACTED]. Instead, Officer Moylan immediately used his Taser.

Moreover, S03-08 requires that officers who are assisting paramedics must use the minimum amount of force necessary to overcome the amount of force exerted by a patient. There are certainly more minimal levels of force that Officer Moylan could have used in order to prevent PM Francoeur from being spit on. For example, once [REDACTED] was in the ambulance, officers merely held a towel over his face to prevent spitting; they could reasonably have employed a similar method in the stairwell.

Therefore, it was not objectively reasonable and not permitted by Department policy for Officer Moylan to discharge his Taser in violation of Rule 6.

2. Officer Moylan failed to warn that he was discharging his Taser.

Officer Moylan was required by policy to give warning prior to discharging his Taser. In his statement to COPA, Officer Moylan admitted he did not give any precautions prior to deploying his Taser. [REDACTED] was surrounded by first responders, in an enclosed stairway, and Officer Moylan failed to inform Department members present he was going to deploy his Taser even though he had ample time to do so. While Officer Moylan did say words to the effect of, “You’re about to get tased,” this carried the tone of a threat to [REDACTED] and did not clearly convey to his partners, the paramedics, or [REDACTED] that Officer Moylan would soon deploy his Taser.⁵³ Officer Moylan’s use of the Taser was not consistent with Department policy and was in violation of Rule 6.

Therefore, COPA finds that Allegation #1 against Officer Moylan is **Sustained**.

B. Officer Moylan’s TRR Did Not Accurately Portray the Incident.

The TRR completed by Officer Moylan is not accurate, complete, or consistent with the facts of the incident, as uncovered during the course of this investigation. Officer Moylan indicated that [REDACTED] was an assailant, even though as discussed above he was, at most, accidentally spitting. It also listed [REDACTED] as an active resister for flailing his arms, however, there is no evidence that he did so. Finally, he lists that [REDACTED] ignored verbal commands. [REDACTED] did not appear to ignore any commands, at most he continued spitting after being told not to, but accidentally spitting as he attempted to explain the situation, albeit demonstrably, does not constitute a failure to follow commands.

⁵³ Officers are taught to clearly state “Taser. Taser.” prior to discharge.

Officer Moylan has a duty to complete reports without exaggeration. His TRR, however, exaggerates ██████ conduct. Therefore, Officer Moylan's report violated Rules 2 and 3 and Allegation #4 is **Sustained**.

C. The Officers Failed to Conduct a Thorough Preliminary Investigation.

COPA finds that the officers failed to do a proper preliminary investigation. Prior to arrival they knew that a man had been stabbed and were informed by the 911 caller that two males and a female had been arguing upstairs all day. Upon arrival, the woman who answered the door informed them they were upstairs. At this moment, the officers should have known that this was a domestic incident, and that the offender was still present. However, they were immediately dismissive of ██████ when he said that the assailant had run away. After they opened the apartment door, and he began arguing with ██████ and the unidentified male, it should have been clear that ██████ injuries related to this quarrel, which had been described by the 911 caller. When ██████ said that ██████ had cut himself, and he replied "I cut my own self? You want me to tell them the truth?" should have led the officers to believe both ██████ and ██████ knew who assaulted ██████ but were covering up information, which should have led the officers to further inquire with ██████ and/or interview ██████ once she and ██████ had been separated. However, they instead continued to ignore him, even though there were strong indicators that they engaged in a domestic altercation. Department policy required the officers to thoroughly engage with ██████ and determine the assailant and make an arrest if possible. Instead they treated him more as a suspect when they took him to the hospital.

Therefore, COPA finds that Allegation #2 against Officer Moylan and Allegation #2 against Officer Klein violated Rule 6 and are **Sustained**. However, since Officer Husic was only an assist officer, he did not have an obligation to conduct the preliminary investigation and Allegation 1 against Officer Husic is **Unfounded**.

D. The officers did not unreasonably fail to intervene.

The investigation establishes that PM Francoeur believed ██████ was spitting blood on him while he yelled. ██████ also clearly needed medical assistance. In order to render the assistance, PM Francoeur needed to turn ██████ head away. It was reasonable for the officers to believe that PM Francoeur's conduct, even though forceful, was necessary to safely render aid to ██████. Indeed, as discussed above, it would have been more appropriate for Officer Moylan to turn ██████ head away, as opposed to tasing him. While PM Francoeur's conduct was aggressive, the headlock was very short in time.⁵⁴ Additionally, the preponderance of the evidence does not demonstrate that even if this was excessive, that the officers had an opportunity to intervene, as the headlock lasted for only about a second. The officers all indicated that their role is to assist in transporting difficult patients but to defer to paramedics in rendering aid. It is not unreasonable for the officers to defer to PM Francoeur in how he treated ██████ even though he used force. Therefore, since the preponderance of the evidence does not establish that the officers should have intervened, Allegation # 3 against Officer Moylan, Allegation #3 against Officer Klein, and Allegation # 2 against Officer Husic are **Not Sustained**.

⁵⁴ COPA does not have jurisdiction to review Francoeur's conduct but referred the case to the Office of the Inspector General. Attachment 24.

E. Officer Klein did not accurately document the encounter in the Original Case Incident Reports.

Officer Klein completed two Original Case Incident Reports related to his response to this incident. The information contained in these reports is not consistent with facts that were uncovered during the course of this investigation.

The Original Incident Report under JA #187351 provides a narrative of the stabbing of [REDACTED]. First, the report indicates that [REDACTED] [REDACTED] refused to give responding officers any information related to the offender who was responsible for injuring him. However, [REDACTED] attempted multiple times to tell officers that [REDACTED] [REDACTED] had assaulted him, but the officers ignored him. Moreover, there is sufficient information from the OEMC report, and [REDACTED] mother, that they were drinking and arguing all day, which corroborates these statements. Officer Klein's report also omits the fact that [REDACTED] was tased (however it is mentioned in the other OCIR which is cross-referenced). This information is highly relevant to why the officers did not obtain more information about the assailant from [REDACTED] (who became far less cooperative after he had been tased) which would be crucial should the stabbing every be prosecuted. G04-01 requires officers to document with specific facts why a victim does not go forward with a prosecution, and explicitly states that a failure to document these specific facts may hinder prosecution later. Thus, by failing to properly document the supposed reason for not going forward, Officer Klein hindered department objectives in violation of Rules 2 and 3.

The Original Incident Report under JA #187387, provides a narrative of [REDACTED] alleged battery of Francoeur. As with Officer Moylan's TRR, this report exaggerates [REDACTED] conduct to make it appear as if he was an aggressor. At most, [REDACTED] unintentionally spit on Francoeur, and it should have been clear to Officer Klein that this was unintentional. Battery in Illinois requires *intentional* conduct, and therefore it was improper for Officer Klein to classify this encounter as a battery.

The report also minimizes Francoeur's conduct by describing his actions as mere pushes, when he in fact grabbed [REDACTED] by the head to forcefully turn him away, and put him into a headlock. While it does not appear that Officer Klein purposefully submitted false reports, he is required by Rules 2 and 3 to provide complete and accurate reports without exaggeration, and he failed to do so here. Therefore, COPA finds that Allegation #1 against Officer Klein is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Bryan Moylan

i. Complimentary and Disciplinary History

Complimentary History: 1 – 2019 Crime Reduction Award, 1- Attendance Recognition Award, 3 – Department Commendations, 4 – Emblems of Recognition-Physical Fitness, 60 – Honorable Mentions, 2 – Joint Operations Awards, 1 – Life Saving Award, 1 – Problem Solving Award. 1 – SPAR; Reprimand, April 28, 2021, for a March 7, 2021, Preventable Car Accident.

ii. Recommended Penalty

In consideration of Officer Moylan’s complimentary history, and lack of disciplinary history, COPA recommends a 25-day suspension.

b. Officer Donald Klein

i. Complimentary and Disciplinary History

Complimentary History: 1 – 2009 Crime Reduction Award, 1 -2019 Crime Reduction Award, 4 – Attendance Recognition Awards, 2 – Complimentary Letters, 4 - Department Commendations, 32 – Honorable Mentions, 1 – Joint Operations Awards, 1 – Life Saving Awards, 1 – NATO Summit Service Award, 1 – Presidential Election Deployment Award 2008, 1 – Problem Solving Award. No disciplinary History.

ii. Recommended Penalty

In consideration of Officer Klein’s complimentary history, and lack of disciplinary history, COPA recommends a 10-day suspension.

IX. CONCLUSION

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

Officer	Allegation	Finding
Officer Bryan Moylan	On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Moylan:	
	1. Failed to use your Taser in compliance with Department rules and directives in violation of Rule 6.	Sustained
	2. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation identify an offender, and make an arrest in violation of Rule 6.	Sustained
	3. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney.	Not Sustained
	4. Failed to accurately complete the Tactical Response Report in violation of Rules 2 and 3.	Sustained

Officer	Allegation	Finding
Officer Izet Husic	<p>On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Husic:</p> <ol style="list-style-type: none"> 1. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation, identify an offender, and make an arrest. 2. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney. 	<p>Unfounded</p> <p>Not Sustained</p>
Officer Donald Klein	<p>On 14 March 2017, at approximately 2245 hours, at 8234 S. Paulina Ave., Officer Klein:</p> <ol style="list-style-type: none"> 1. Failed to accurately document events in the Original Incident Report in violation of Rules 2 and 3. 2. Violated Department rules and directives when you responded to a domestic violence incident and failed to conduct a preliminary investigation, identify an offender, and make an arrest in violation of Rule 6. 3. Violated Department rules and directives when you failed to intervene when you observed Paramedic Francoeur put his hand over [REDACTED] [REDACTED] mouth, grab and turn his head with two hands, place him in a headlock, and slam him onto an ambulance gurney. 	<p>Sustained</p> <p>Sustained</p> <p>Not Sustained</p>

Approved:

[REDACTED]

Sherry Daun
Director of Investigations

June 29, 2021

Date

Appendix A

Assigned Investigative Staff

Squad#:	14
Investigator:	Frank Sheets
Supervising Investigator:	Adam Pfeifer
Deputy Chief Administrator:	DIO Sherry Daun