

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	July 7, 2019 / 12:56 am / 8001 S. Martin Luther King Dr., Chicago, IL 60619.
Date/Time of COPA Notification:	July 8, 2019 / 3:50 pm
Involved Officer #1:	Officer Steven Smith / Star #6684 / Employee ID # [REDACTED] / DOA: December 15, 2017 / Unit: 006 / Male / Black.
Involved Individual #1:	[REDACTED] / Male / Black.
Case Type:	05A – Excessive Force

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Steven Smith	<ol style="list-style-type: none"> 1. Kicking / stomping Mr. [REDACTED] in the head / face, without justification. 2. Failing to properly document the force used on Mr. [REDACTED] in a Tactical Response Report. 	<p>Sustained / 60-day suspension.</p> <p>Sustained / 60-day suspension.</p>

II. SUMMARY OF EVIDENCE

Officers Steven Smith and Diana Valentine (collectively “the Officers”) were dispatched to a business burglary alarm at 8001 S. Martin Luther King Drive. Upon arrival at the location, the Officers observed a shattered front door window and a black male, Mr. [REDACTED] inside.¹ Officer Valentine addressed the [REDACTED] from the entry door and [REDACTED] fled out of the rear of the business. Officer Smith ran to the rear of the business and encountered [REDACTED]² With his weapon drawn, Officer Smith ordered [REDACTED] to the ground. [REDACTED] did not comply with the orders and began to walk away from Officer Smith.³ Officer Smith holstered his weapon and used an emergency takedown to place [REDACTED] on his stomach on the ground.⁴

Once on the ground, Officer Smith ordered [REDACTED] to place his hands behind his back; however, [REDACTED] did not comply. Officer Smith delivered one kick, using his right leg, to the right side of [REDACTED] head.⁵ [REDACTED] still did not place his hands behind his back. Officer Smith then delivered one open hand strike to [REDACTED] right upper arm while again ordering him to

¹ Att. 8 at 02:02; Att. 9 at 02:02.

² Att. 8 at 02:12.

³ Officer Smith informed COPA, that [REDACTED] walking away from him caused him to believe that [REDACTED] was attempting to flee.

⁴ Att. 8 at 02:20.

⁵ Att. 8 at 02:28; Att. 9 at 02:34.

place his hands behind his back.⁶ ██████ complied and was handcuffed. Once handcuffed ██████ was escorted to the Department vehicle where he was searched and secured.

██████ was transported to ██████ where he was diagnosed with and treated for an indeterminate-age fractures to right inferior orbital wall and right nasal bone, and lacerations to the right side of his forehead.⁷ Upon release from the hospital, ██████ was transported to the district station where he was processed and charged with criminal damage to property, criminal trespass, and resisting an officer.⁸

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
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.

⁶ Att. 8 at 02:32; Att. 9 at 02:37.

⁷ Att. 23, pg. 8.

⁸ ██████ booking photograph and Evidence Technician photographs document the treated and dressed injury to his right eye. Att. 2, pg. 6; Att. 21.

IV. ANALYSIS AND CONCLUSION

COPA finds that Allegation #1 against Officer Smith is **sustained**. Department members are permitted to use force to overcome resistance.⁹ When members encounter a citizen who attempts to create distance from a member with an intent to avoid physical control and/or defeat arrest, that citizen is an active resister.¹⁰ Members are permitted to respond to active resistance with presence; verbal directions; holding and compliance techniques; control instruments; deployment of oleoresin capsicum; stunning; takedowns; canine use; and taser deployment.¹¹

Here, ██████ was an active resister as he failed to comply with orders to get on the ground while walking away from the Officers, thus Officer Smith's emergency takedown was permitted by policy.¹² Once ██████ was on the ground he continued his active resistance by failing to comply with orders to produce his hands while moving his arm to avoid Officer Smith's control. Officer Smith responded to this with a kick to ██████ head and an open hand stun to ██████ right upper arm.¹³ Since ██████ was only an active resister, Officer Smith's was not permitted to respond with a kick to ██████ head. Officer Smith's actions were in violation of Department policy and Rules 2, 3, 6 and 9.

COPA finds that Allegation #2 against Officer Smith is **sustained**. Department members are required to complete a Tactical Response Report (TRR) detailing force used when the use of force involves a subject who is injured or alleges injury; is an active resister; actively obstructs a member by using a physical act directed at the member; physically attacks a member, to include murder, and aggravated battery or battery.¹⁴ Here, it is undisputed that Officer Smith failed to document his kick to ██████ head in his TRR. This failure was a violation of Department policy and Rules 2, 3 and 6.

I. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Steven Smith

i. Complimentary and Disciplinary History

Officer Smith has received 23 various awards. Additionally, in July 2020, Officer Smith received a reprimand for sleeping on duty.¹⁵

⁹ See G03-02-01 generally.

¹⁰ G03-02-01 IV(B)(2), Response to Resistance and Force Options.

¹¹ G03-02-01 IV(B)(2)(c).

¹² During our preliminary investigation, COPA determined there was not a reasonable basis to serve an allegation related to the take down.

¹³ During our preliminary investigation, COPA determined there was not a reasonable basis to serve an allegation related to Officer Smith's open hand strike to ██████ upper right arm.

¹⁴ G03-02-02 III(A)(1)(a-e), Incidents Requiring the Completion of a Tactical Response Report.

¹⁵ Att. 28, pg. 3.

ii. Recommended Penalty, by Allegation

While Officer Smith asserted that the kick to [REDACTED] head was an accident, COPA does not accept this explanation; instead, COPA finds that Officer Smith's act of kicking [REDACTED] was a deliberate act, which he then omitted from his TRR. Accordingly, COPA recommends a **60-day suspension**.

Approved:

[REDACTED]

1/27/2022

Matthew Haynam
Deputy Chief Investigator

Date