

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	August 16, 2019/ 1:47 am/ 6826 South Lafayette Avenue
Date/Time of COPA Notification:	October 18, 2019/ 6:07 pm
Involved Officer #1:	Trevor Ben, star #7795, employee ID [REDACTED] Date of Appointment: July 17, 2017, PO, Unit 007/189, DOB: [REDACTED] 1991, Male, Black
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1999, Male, Black

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Trevor Ben	It is alleged that on or about August 16, 2019, at approximately 1:47 a.m., at or near 6826 South Lafayette Avenue, you: 1. Used unnecessary force against [REDACTED] by entering and attempting to control a moving vehicle; and 2. Struck [REDACTED] on or about the head and neck area using your firearm.	Sustained Not Sustained

II. IV. APPLICABLE RULES AND LAWS

Rules
<ol style="list-style-type: none"> 1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department. 2. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals. 3. Rule 6: Disobedience of an order or directive, whether written or oral. 4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty. 5. Rule 9: Engaging in any unjustified verbal or physical altercation with any person.
General Orders
<ol style="list-style-type: none"> 1. G03-02 Use of Force (effective October 16, 2017 to February 28, 2020) 2. G03-02-01 Force Options (effective October 16, 2017 to February 28, 2020)

III. SUMMARY OF EVIDENCE¹

On October 18, 2019, COPA received a letter from ██████████ detailing an encounter he had with Officer Trevor Ben and his partner, Officer Neftali Padilla, on August 16, 2019.² On August 6, 2020, Mr. ██████████ provided a statement to COPA. He alleged Officer Ben used excessive and unnecessary force when he entered Mr. ██████████ vehicle during a traffic stop. Mr. ██████████ further alleged Officer Ben struck him about the head and neck area with his firearm.³ COPA investigated the allegations and the following is a summary of the incident based on information gathered from several different sources, including CPD body-worn cameras (BWCs),⁴ in-car camera,⁵ witness statements,⁶ and police reports.⁷

On August 16, 2019, Officers Ben and Padilla stopped Mr. ██████████ vehicle after observing Mr. ██████████ using his phone while at a red light.⁸ Officer Ben asked Mr. ██████████ for his driver's license and insurance card, and Mr. ██████████ complied. According to Officer Ben, when Mr. ██████████ reached for the insurance card from the glove compartment, Officer Ben observed him attempt to conceal an object with his right forearm.⁹ Officer Ben explained the reason for the traffic stop and asked whose vehicle Mr. ██████████ was driving. Mr. ██████████ responded it was his grandmother's car, then answered a phone call.

After Mr. ██████████ hung up his cell phone, Officer Ben asked whether there was anything of concern inside the vehicle. Mr. ██████████ response was not audible on camera. Officer Ben then asked Mr. ██████████ to surrender his vehicle keys.¹⁰ Mr. ██████████ questioned Officer Ben's request for his keys and did not provide them. Officer Ben stated he was going to hold onto the keys while Mr. ██████████ was detained. An argument ensued over Mr. ██████████ rights and what actions Officer Ben was allowed to take. Approximately a minute later, Officer Ben announced that he would complete a physical arrest for the traffic violation and opened the driver's door of Mr. ██████████ vehicle. Mr. ██████████ continued to argue over Officer Ben's actions. Officer Padilla intervened, stepping in front of her partner, and asked Mr. ██████████ if he understood what Officer Ben said and whether he would comply. After agreeing to comply, Mr. ██████████ placed his vehicle in drive and began to drive away.¹¹

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in the analysis.

² Att. 1.

³ Atts. 44, 45.

⁴ Atts. 4 - 32.

⁵ Atts. 33 - 42.

⁶ Atts. 44, 45, 51, 52, 54, 55.

⁷ Atts. 2, 3, 56 - 62.

⁸ Att. 4 at 2:22; Atts. 51, 52, 54, 55, 58.

⁹ Officer Ben admitted he did not observe the object Mr. ██████████ was attempting to conceal, but based on his experience and training, he believed it was either a weapon or drugs. Att. 52, pg. 9 lines 7-10, pg. 12 line 23 - pg. 13 line 5.

¹⁰ Att. 4 at 2:58 - 3:05.

¹¹ Att. 4 at 2:00 - 4:46. According to Mr. ██████████ Officer Ben was aggressive, frustrated that Mr. ██████████ would not give him the car keys, and clutched his waistband near his weapon. Mr. ██████████ unsure of Officer Ben's intentions, panicked and attempted to drive away. Att. 45, pg. 7 line 2 - pg. 8 line 4.

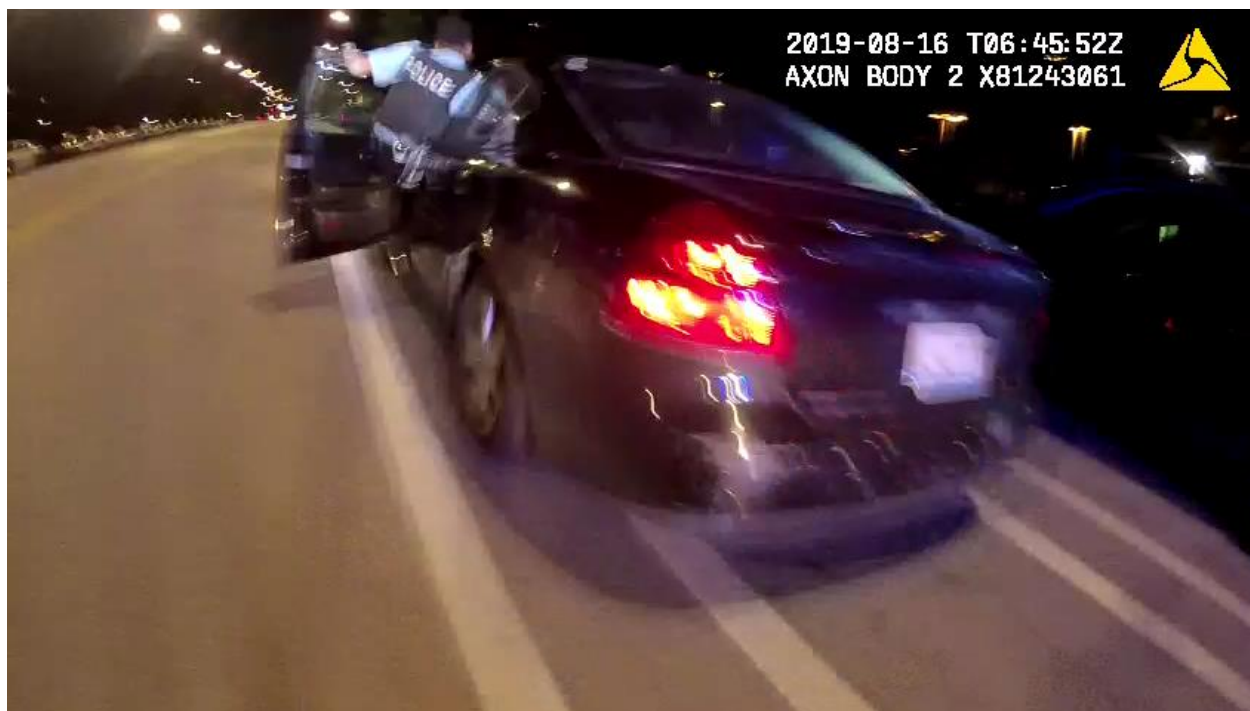


Figure 1: Screenshot from Officer Padilla's BWC as Mr. [REDACTED] drove away with Officer Ben inside.

Officer Ben pushed Officer Padilla out of the way and jumped inside Mr. [REDACTED] vehicle.¹² He described his positioning as “halfway on [Mr. [REDACTED]] lap, halfway in the doorway.”¹³ As Officer Ben and Mr. [REDACTED] struggled over control of the vehicle, the officer grabbed both the steering wheel and the gear shifter, and he placed the vehicle in park twice.¹⁴ There is no video footage of this struggle because Officer Ben's BWC fell off his vest inside the vehicle. However, the audio captured Officer Ben yelling “stop,” and Mr. [REDACTED] repeatedly saying, “You gonna kill us.”¹⁵ Officer Padilla reported the emergency situation over the radio while following Mr. [REDACTED] vehicle in the police vehicle.¹⁶ Mr. [REDACTED] vehicle crashed into a parked vehicle, at which point Mr. [REDACTED] exited the passenger's side door and fled on foot.¹⁷

Officer Padilla reported over the radio that Mr. [REDACTED] ran northbound. Officers Padilla and Ben followed Mr. [REDACTED] in their police vehicle. Less than 30 seconds later, when Officer Padilla attempted to turn left, she lost control of the police vehicle and crashed into a tree.¹⁸ Officer Ben then pursued Mr. [REDACTED] on foot.¹⁹ Officer Ben and Mr. [REDACTED] provided contradictory accounts of what happened during the foot pursuit, and COPA was unable to locate any video or independent witnesses to this portion of the incident. Additionally, while Officer Padilla joined

¹² Att. 52, pg. 16 lines 3 – 20. According to Officer Ben, his only option to avoid being struck by Mr. [REDACTED] vehicle was to jump inside the vehicle. See Att. 4 at 4:46; Att. 5 at 4:48.

¹³ Att. 52, pg. 30 lines 14 – 15.

¹⁴ Att. 45, pg. 10 lines 12 – 16 and pg. 20 line 23 – pg. 21 line 4; Att. 52, pg. 17 lines 10 – 17.

¹⁵ Att. 4 at 4:54 – 5:07.

¹⁶ Att. 5 at 4:50.

¹⁷ Att. 4 at 5:10; Att. 5 at 4:47 – 5:18. See Att. 45, pg. 21 lines 6 – 23.

¹⁸ Att. 5 at 5:24 – 5:55.

¹⁹ Atts. 45, 46, 51, 52.

the pursuit after requesting EMS over the radio, she could not recall specific details and her BWC did not capture any further interaction with Mr. ██████████²⁰

According to Mr. ██████████ he ran from the officers despite hearing Officer Ben repeatedly order him to stop. However, when Mr. ██████████ reached a gate and noticed Officer Ben was getting closer to him, he decided it was safer to surrender. He stopped with his back to Officer Ben and raised his hands in the air. Officer Ben grabbed Mr. ██████████ by the collar and used his firearm to strike Mr. ██████████ in the back of the head three to four times. Mr. ██████████ yelled for Officer Ben to stop and again attempted to escape, but Officer Ben tackled him to the ground. After a brief struggle, Mr. ██████████ placed his hands behind his back and Officer Ben handcuffed him.²¹

According to Officer Ben, he observed Mr. ██████████ running through an alley with a firearm in his right hand. Officer Ben ordered Mr. ██████████ to drop the weapon several times. At some point, Mr. ██████████ stopped and attempted to throw the firearm over a garage. The firearm bounced off the roof and landed on the ground in front of Officer Ben.²² Mr. ██████████ continued to flee and Officer Ben chased after him, ordering him to stop. Eventually, Officer Ben grabbed Mr. ██████████ and took him to the ground. Officer Ben denied Mr. ██████████ allegations, stating he did not use any force against Mr. ██████████ beyond the emergency takedown.²³ Specifically, Officer Ben stated he has never used his firearm to strike an individual because that would be excessive.²⁴

Responding officers' BWC videos captured Officer Ben and Mr. ██████████ on the ground after the takedown. Officer Ben had his firearm in his right hand, and he appeared to be holding Mr. ██████████ down with his knee against Mr. ██████████ back area.²⁵ Officers Juan Ramos and Irvin Cortes handcuffed Mr. ██████████ searched his person, and placed him in their police vehicle.²⁶ Officers Ramos and Cortes then transported Mr. ██████████ to Saint Bernard Hospital, where he presented with abrasions to his left hand and left knee, and complained of head pain after being struck in the back of the head. X-rays revealed negative results, and Mr. ██████████ head CT scan came back clear.²⁷ While at the hospital, Mr. ██████████ told an officer that another officer had "pistol whipped" him.²⁸

Officers Ben and Padilla were transported to and treated at the University of Chicago Hospital. Officer Ben had a swollen finger on his right hand and pain to his back and upper legs.

²⁰ Att. 5 at 6:07 – 6:41. Officer Padilla's BWC video terminated when she was running through the alley. At the time, she was holding her flashlight in her right hand and was using her left hand to operate her radio. COPA did not serve an allegation regarding this deactivation as there is no evidence indicating that Officer Padilla intentionally deactivated the BWC.

²¹ Att. 46, pgs. 11, 23 – 27.

²² A firearm attributed to Mr. ██████████ was recovered from the scene. Att. 64; *see* Atts. 2, 61.

²³ Att. 52, pg. 20 – 25; *see* Att. 2; Att. 58, pg. 8 – 9.

²⁴ Att. 52, pg. 29 lines 5 – 19.

²⁵ Att. 6 at 2:02.

²⁶ Att. 6 at 2:06 – 5:07; Att. 7 at 1:54 – 4:52.

²⁷ Att. 49, pgs. 5 – 7, 16, 25 – 27. A CPD supplementary report and Evidence Technician (ET) photographs document that Mr. ██████████ had a small knot on the back right side of his head, an abrasion on his left knee, an abrasion on his left hand, and a laceration below his left ear. Att. 58, pg. 5; Att. 63.

²⁸ Att. 28 at 2:17 – 2:21.

Officer Padilla had an abrasion on her right wrist, a laceration to her left wrist, chest pain, broken nails on both hands, and a possible concussion.²⁹

IV. 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 a proposition is proved.³⁰ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. 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.”³¹

V. ANALYSIS AND CONCLUSIONS

- a. **Officer Ben used unnecessary force against Mr. [REDACTED] when he entered and attempted to control Mr. [REDACTED] moving vehicle.**

An officer may only use force that is objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.³² Factors to be considered in assessing the reasonableness of force include, but are not limited to: (1) whether the subject poses an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; (3) the subject’s proximity or access to weapons;

²⁹ Att. 58, pgs. 4, 9 – 10.

³⁰ 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.”).

³¹ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

³² G03-02-01(II)C.

(4) the severity of the crime at issue; and (5) whether the subject is actively resisting arrest or attempting to evade arrest by flight.³³

Department policy recognizes that officers must “make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”³⁴ The policy further states that officers are not required to take actions, or fail to take actions, that would unreasonably endanger themselves or others.³⁵

Here, Mr. ██████ alleged Officer Ben was unnecessarily aggressive and endangered his life by jumping into and attempting to take control of Mr. ██████ vehicle. Officer Ben asserted he had no choice but to jump into the vehicle to avoid being run over. COPA finds Officer Ben’s actions were both unnecessary and unreasonable, as Mr. ██████ committed a nonhazardous traffic violation, Officer Ben knew Mr. ██████ identity, and neither officer was in the path of Mr. ██████ vehicle. Officer Ben’s decision to jump into the vehicle, then struggle with Mr. ██████ for control of the vehicle while it was moving, significantly endangered the safety of himself, Mr. ██████ and any nearby citizens.

The BWC footage shows Officer Ben patiently explained to Mr. ██████ the reason for the stop and provided Mr. ██████ ample time to comply with lawful commands. Mr. ██████ refused to comply and placed his vehicle into drive in an attempt to escape the officers. However, Mr. ██████ did not use his vehicle as a weapon against the officers, and neither officer was in the vehicle’s path. The videos show Officer Ben pushed aside Officer Padilla, who was closer to Mr. ██████ vehicle, before actively jumping into the vehicle. Officer Ben admitted this occurred at a major intersection, though he was unaware if there were other vehicles or pedestrians present at the time. Additionally, although Officer Ben suspected that Mr. ██████ possessed illegal contraband, he did not actually see the object Mr. ██████ was pushing down with his right forearm. Therefore, the officer did not know whether Mr. ██████ motion was intended to conceal or just a moment of readjustment.

Based on the totality of the circumstances, COPA finds it was unreasonable and unnecessarily dangerous for Officer Ben to jump into Mr. ██████ vehicle. Further, once inside the vehicle, Officer Ben engaged Mr. ██████ in an unsafe struggle over control of the vehicle. Officer Ben admitted he both grabbed the steering wheel and placed the moving vehicle into park twice, increasing the likelihood for the vehicle to crash and injure Officer Ben, Mr. ██████ or a nearby civilian. For all these reasons, COPA finds Allegation #1 against Officer Ben is **sustained** as a violation of Rules 2, 3, 6, 8, 9.

³³ G03-02(III)(B)(1); *Graham v. Connor*, 490 U.S. 386, 396 (1989).

³⁴ G03-02(II)D.

³⁵ *Id.*

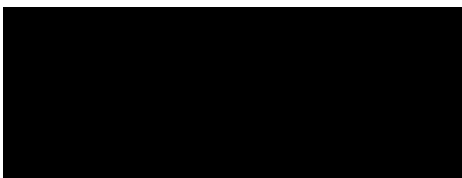
b. There is insufficient evidence to determine whether Officer Ben struck Mr. [REDACTED] on or about the head and neck area using his firearm.

While every use of force is required to be objectively reasonable, necessary, and proportional,³⁶ Department policy further prohibits officers from using their firearm as an impact weapon unless it is reasonably necessary and no other practical options are available.³⁷ Here, Mr. [REDACTED] alleged that, after he surrendered himself to Officer Ben, the officer struck him multiple times in the back of the head with his firearm. Officer Ben vehemently denied the allegation, stating he has never used his firearm as an impact weapon, nor is he trained to do so. In this case, Mr. [REDACTED] and Officer Ben's accounts are so contradictory that both accounts simply cannot be accurate. However, there are no independent witnesses or videos to corroborate the incident as described by Mr. [REDACTED] or Officer Ben. Additionally, while Mr. [REDACTED] medical records and the ET photographs document a knot and swelling on the back of Mr. [REDACTED] head, it is unclear what caused the injury or whether it happened during this incident. As a result of these uncertainties, COPA finds there is insufficient evidence to prove or disprove that Officer Ben struck Mr. [REDACTED] with his firearm, and this allegation is **not sustained**.

VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

COPA has found that Officer Ben violated Rules 2, 3, 6, 8 and 9 by entering and attempting to control Mr. [REDACTED] moving vehicle. In mitigation, COPA has considered Officer Ben's complimentary history, lack of disciplinary history,³⁸ and inexperience as an officer. In aggravation, COPA notes that Officer Ben's decision to jump into Mr. [REDACTED] vehicle, then struggle with Mr. [REDACTED] for control of the vehicle while it was moving, significantly endangered the safety of Officer Ben, Mr. [REDACTED] and any nearby citizens. The officer's actions also resulted in Mr. [REDACTED] vehicle colliding with several parked cars. Accordingly, COPA recommends Officer Ben receive a **30-day suspension**.

Approved:



Matthew Haynam
Deputy Chief Administrator

Date: 5/16/2022

³⁶ G03-02-01(II)C.

³⁷ G03-02-01(IV)(C)(1)(a)(2). An impact weapon is a weapon, such as a baton, that is designed to apply mechanical impact to a subject in order to disable elements of his or her musculoskeletal structure.

³⁸ Officer Ben has received 45 awards, including two life saving awards, four Department commendations, one police officer of the month award, and 33 honorable mentions. He has no sustained disciplinary history. Att. 66.