

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	March 1, 2022 / at or about 12:04 a.m. / Near 3252 N. Menard Ave
Date/Time of COPA Notification:	March 1, 2022/3:58 a.m.
Involved Officer #1:	Police Officer Victor Jimenez; Star #18895; Employee [REDACTED]; Date of Appointment: 04/16/2019; DOB: [REDACTED]86; Unit: 016 / Male / Hispanic.
Involved Officer #2:	Police Officer Thomas McNichols; Star #3051; Employee [REDACTED]; Date of Appointment: 01/27/2003; DOB: [REDACTED]77; Unit 016; Male; White.
Subject #1:	[REDACTED] DOB: [REDACTED]1996; Male/Hispanic.
Involved Individual #1:	[REDACTED] Female/Hispanic.
Case Type:	Use of Force

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Victor Jimenez	It is alleged by COPA that on or about March 1, 2022, at approximately 12:04a.m., at or near 5802 W. Melrose Street, Chicago, IL, Officer Victor Jimenez committed misconduct through the following acts or omissions by: 1. Handcuffing [REDACTED] without justification.	Not Sustained
Officer Thomas McNichols	It is alleged by COPA that on or about March 1, 2022, at approximately 12:04a.m., at or near 5802 W. Melrose Street, Chicago, IL, Officer Thomas McNichols committed misconduct through the following acts or omissions by: 1. Pulling [REDACTED] hands upwards over his head while handcuffed without justification.	Unfounded

II. SUMMARY OF EVIDENCE¹

██████████ and his girlfriend, ██████████ went out drinking on the night of February 28, 2022.² The couple started arguing as ██████████ drove them home shortly before midnight. ██████████ stated that ██████████ was highly intoxicated, became upset, and threatened to jump out of the vehicle. ██████████ stopped the car in an alleyway near their home, and he and ██████████ argued outside of the vehicle.

A neighbor overheard and called 911.³ Officer Victor Jimenez and Officer Solimar Calo, #5025, responded to what was reported as a battery in progress, arriving at approximately 12:04 a.m., on March 1, 2022. ██████████ and ██████████ were standing approximately 20 feet apart, and ██████████ was screaming at ██████████ when the officers arrived. Body worn camera footage (BWC)⁴ depicted that both ██████████ and ██████████ appeared intoxicated, and ██████████ struggled to stand upright.

The officers called out to ██████████ who walked towards them. Officer Jimenez grabbed ██████████ arm and appeared to gently pull him towards the patrol car before attempting to handcuff him.⁵ Officer Calo asked ██████████ for his name and told ██████████ to “relax” and “calm down.” Officer Jimenez stated that he had recently lost his voice and did not issue verbal commands to ██████████⁶ ██████████ pulled away and resisted Officer Jimenez’s handcuffing attempts. ██████████ was belligerent with the officers and repeatedly swore at them.

Officers Jimenez and Calo struggled to handcuff ██████████ because Officer Calo⁷ was too short to effectively reach him. Officer Calo threatened to tase ██████████ to de-escalate the situation—but did not do so when ██████████ ignored her. Officer Calo also tried to calm ██████████ during the struggle. One of the officers radioed for assistance. Officer Thomas McNichols responded and helped handcuff ██████████ after which ██████████ said he would stop resisting. ██████████ stated that he had not done anything, so he initially resisted during the handcuffing process.

Officer Jimenez again called for additional officers who responded shortly thereafter. Officers Jimenez and McNichols escorted ██████████ to a patrol car in the street, while Officer Calo spoke with ██████████ in English and Spanish. ██████████ remained belligerent towards the

¹ 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. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases summarized more succinctly in a Modified Summary Report of Investigation.

² Att. #2 – Michael ██████████ provided a telephone interview with COPA.

³ Att. #19 - Event Query.

⁴ Att. #6 – Officer Calo’s BWC; Att. #7 & 10 – Officer Jimenez’s BWC.

⁵ Att. #6 – Starting at 04:10, ██████████ appeared to be cooperative—and was not belligerent—until Officer Jimenez attempted to handcuff him.

⁶ Att. #7 – At 4:29, Officer Jimenez told ██████████ to “stop resisting.”

⁷ Att. #24 - Officer Calo is a female officer, and her height is 4’11”.

officers and made a vague, incomprehensible comment about a gun.⁸ ██████ repeatedly stated to Officer Calo that ██████ had not hit her. Sergeant Amelia Kessem arrived, spoke to the officers on scene, and then called for a police wagon. Sergeant Kessem spoke to the reporting witness who said that he did not see ██████ hit ██████

Officers Jimenez and McNichols escorted ██████ to the police wagon once it arrived. Officer McNichols positioned his left arm between ██████ handcuffed right arm and torso, and pushed him forward slightly, near ██████ right shoulder in a come-along technique. ██████ cried out as if in pain and protested, and Officer McNichols told ██████ that he did not want him to slip.⁹ Officer McNichols' explained in his statement to COPA¹⁰ that he did not want the officers or ██████ to trip in the ice. He stated it was wet and cold, he had slipped and fallen earlier that night, and he did not want ██████—who was drunk—to slip and hurt himself. BWC shows that there was snow on the ground and ice on the street. Officer McNichols further explained that ██████ was a passive resister and believed he was on the verge of becoming an active resister.

Sergeant Kessem spoke with Officers Jimenez and McNichols and decided to arrest ██████ after Officer McNichols said ██████ threatened them with a gun. ██████ was later released from the station without being charged. Sergeant Kessem reviewed BWC and spoke with Officer Calo regarding use of force and de-escalation techniques. Sergeant Kessem submitted an initiation report to COPA, writing that Officers Jimenez and Calo should have used time as a tactic and de-escalation techniques, along with due diligence in their investigation, instead of immediately handcuffing ██████¹¹ Sergeant Kessem wrote that she was second-guessing the officers by making this recommendation in Officer Jimenez's TRR:

[It's] my opinion that the officers tried to put [████████] in cuffs for officer safety. Based on my viewing of the videos, I [don't] believe it was necessary, but I freely admit that I am second-guessing the officers and that their understanding of what would constitute an appropriate time to apply handcuffs.¹²

Officer Calo¹³ acknowledged that Sergeant Kessem reviewed BWC with her and spoke with her about the use of force policies and de-escalation. Officer Jimenez¹⁴ did not recall this interaction. However, Officer Jimenez reiterated that he and Officer Calo believed ██████ was violent because of the OEMC call saying ██████ had battered ██████ Officer Jimenez also wrote in his TRR that ██████ tried to pull away, in what he perceived was an aggressive

⁸ Att. #10 – PO Victor Jimenez BWC 2, at 3:42.

⁹ Officer McNichols' BWC, Att. #8 – Starting at 08:04, ██████ screamed in pain and Officer McNichols told him that he did not want him to fall or trip. Officer Blomstrad's BWC, Att. 9 – Timestamped at 3:15.

¹⁰ Att. #5 – Officer McNichols statement to COPA

¹¹ Att. #1 – CPD Initiation Report from Sgt Kessem.

¹² Att. # 12 – TRR 2022-00486 – Jimenez, Victor, Page 8.

¹³ Att. #3 – Officer Calo statement to COPA.

¹⁴ Att. #4 – Officer Jimenez statement to COPA.

manner.¹⁵ Officer McNichols explained that he spoke with ██████████ the next morning after he was released from custody. ██████████ apologized to Officer McNichols for being belligerent the night before and explained that he had been very drunk.¹⁶

III. LEGAL STANDARDS

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

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

An allegation is supported by a preponderance of the evidence when “it is more likely than not” that the facts alleged occurred.¹⁷ COPA must sustain such an allegation. Conversely, COPA cannot sustain an allegation when it is more likely than not that the facts alleged did not occur.¹⁸

The clear and convincing evidence standard is a higher burden of proof than a preponderance of the evidence.¹⁹ However, clear and convincing evidence is a lower burden of proof than the “proof beyond a reasonable doubt” required for a criminal conviction.²⁰

IV. ANALYSIS

a. Use of Force

General Order G03-02 defines force as “any physical contact by a Department member, either directly or through the use of equipment, to compel . . . compliance.”²¹ An officer’s “use of force must be objectively reasonable, necessary, and proportional to” a subject’s “threat, actions, and level of resistance . . . under the totality of the circumstances.”²² Officers must continuously

¹⁵ Att. #12, Page 2.

¹⁶ Att. #5.

¹⁷ See, e.g., *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”).

¹⁸ See *id.*

¹⁹ See, e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

²⁰ See *id.*; for further analysis of burdens of proof see also, *Sawyer v. Whitley*, 505 U.S. 333 (1992).

²¹ G03-02 (III) (A).

²² G03-02-01 II (C).

assess situations to determine if they must use any force, and if they can use force mitigation or other response options.²³

Officers must adjust their level of force based on subjects' actions or changes in circumstances, and immediately de-escalate the level of force as resistance decreases.²⁴ Officers must immediately use less force against a subject offering less resistance but may offer more force against a subject offering more resistance.²⁵ General Order G03-02-01 defines and categorizes subjects based on levels of resistance and explains the maximum force officers may use against such subjects when necessary. Taken together, General Order G03-02-01 sections II and IV, require officers to use the minimal technique necessary to gain a subject's compliance.

A cooperative subject is compliant with officers "without the need for physical force."²⁶ Officers may use verbal responses and establish their presence and authority in the proximity of a cooperative person.²⁷

A resister is a subject who is uncooperative with officers. A resister may be classified as a passive or active resister.²⁸ A passive resister is one who does not comply with officers' directions by refusing to move.²⁹ Officers are permitted to use a range of techniques—including holding techniques and compliance techniques—to gain a passive resister's compliance.³⁰ "Holding techniques include a firm grip, grabbing an arm, wristlocks, and come-along holds."³¹

An active resister "attempts to create distance between himself or herself and the [officer's] reach . . . to avoid physical control and/or defeat the arrest."³² General Order G03-02-01 permits officers to use the force options available for passive resisters, as well as methods such as stuns, takedowns, tasers, and OC spray.³³

Additionally, G03-02-01 prohibits officers "from using force against a person who is secured and restrained with handcuffs".³⁴ G03-02-01 allows officers to use force against a handcuffed subject only when the officer: (1) "must act to prevent injury to the Department member, the restrained person, or another person," (2) "must act to prevent escape," or (3) is compelled by other law enforcement objectives."³⁵

²³ *Id.*, E (1), (2).

²⁴ *Id.*, (4).

²⁵ *Id.*, (F).

²⁶ *Id.* (IV) (A).

²⁷ *Id.*

²⁸ *Id.* (B).

²⁹ *Id.* (B) (1).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (2).

³³ *Id.*

³⁴ *Id.* (G)

³⁵ *Id.*

1. Officer Jimenez

It is unclear whether it was necessary for Officer Jimenez to handcuff ██████████ COPA finds convincing Officer Jimenez's explanation that officers believed ██████████ had been violent given the nature of the call and ██████████ demeanor. Officer Jimenez stated that he had lost his voice and could not give verbal commands, eliminating a crucial means to de-escalate the situation, but Officer Jimenez's BWC depicted that he did tell ██████████ to stop resisting.

Alternatively, ██████████ appeared to be cooperative—and was not belligerent—until Officer Jimenez attempted to handcuff him. Sergeant Kessem reviewed Officer Jimenez's BWC and determined his use of force was disproportionate to ██████████ actions. Sergeant Kessem noted that Officer Jimenez should have investigated the alleged domestic battery, used time as a tactic, and attempted to de-escalate once ██████████ became agitated. Sergeant Kessem also noted that she was second-guessing the officers and that their understanding of what would constitute an appropriate time to apply handcuffs.

Based on the available evidence, COPA finds that Allegation #1 against Officer Jimenez is **Not Sustained**.³⁶ However, COPA recommends that Officer Jimenez be given remedial training on force mitigation and de-escalation techniques, including using time as a tactic.

2. Officer McNichols

Officer McNichols' actions—as shown on Officer Blomstrand's BWC—initially appeared to depict that Officer McNichols intentionally moved ██████████ handcuffed wrists upwards to inflict pain without justification. However, upon hearing Officer McNichols' statement and upon further review of Officer Blomstrand's BWC, COPA finds that Officer McNichols did not violate CPD rules.

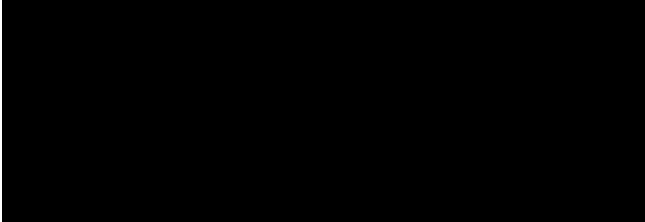
Officer McNichols used a come-along hold to escort ██████████ to the police wagon, which was permitted under G03-02-01. ██████████ was a passive resister who Officer McNichols believed was on the verge of becoming an active resister. This was a reasonable belief, given ██████████ language towards officers, and the fact that he had recently been an active resister. ██████████ did not allege that Officer McNichols used excessive force, nor did Sergeant Kessem.

Additionally, Officer McNichols' explanation that he did not want the officers or ██████████ to trip in the ice convincing. It is unclear whether Officer McNichols' come-along hold qualifies as force under G03-02, as Officer McNichols reasonably believed that the hold was necessary to prevent injury to ██████████ and himself. As such, Officer McNichols come-along technique was justified under G03-02-01 (II) (G) and not an unreasonable or unjustified use of

³⁶ COPA notes that Officer Calo tried to talk to ██████████ to calm him down, and did not use force against him. Officer Calo tried to de-escalate the situation and did not violate CPD's use of force policies. As such, no allegation was made against Officer Calo.

force. Based on the available evidence, COPA recommends a finding of **Unfounded** for the allegation against Officer McNichols.

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

8-31-2022

Date

Appendix A

Assigned Investigative Staff

Squad#:	4
Investigator:	Matthew Jones
Supervising Investigator:	LaKenya White
Deputy Chief Administrator:	Angela Hearts-Glass