

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

Date/Time/Location of Incident:	November 14, 2017 / 2:30 PM / 5344 W. Argyle
Date/Time of COPA Notification:	November 14, 2017 / 5:29 PM
Involved Officer #1:	Tomasz A. Surma, Star #: 1044; Employee ID#: [REDACTED]; Date of Appointment: June 21, 1999; Rank: Sergeant; Unit of Assignment: 019; DOB: [REDACTED], 1973; Male, White
Involved Individual #1:	[REDACTED], DOB: [REDACTED], 1994; Male, White
Case Type:	Sexual Orientation – Verbal Abuse

I. ALLEGATIONS

Officer	Allegation	Finding
Sgt. Tomasz Surma	It is alleged on or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, stopped and issued [REDACTED] an Administrative Notice of Violation (ANOV) citation for public urination, during which the officer stated words to the effect of: "Next time find a better place to piss, faggot" in violation of CPD rules and regulations.	<b>Not Sustained</b>
	On or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, failed to activate his department-issued Body-Worn Camera when he stopped, questioned and issued an ANOV citation to [REDACTED] for public urination, without due justification.	<b>Unfounded</b>
	On or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, failed to legibly write his signature on an ANOV citation he issued to [REDACTED], without due justification.	<b>Not Sustained</b>

<sup>1</sup>COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

## II. SUMMARY OF EVIDENCE

On November 14, 2017, COPA received a web complaint from Mr. [REDACTED]. In summary, Mr. [REDACTED] alleged that the accused, Sgt. Tomasz Surma, yelled in Mr. [REDACTED] face: "Next time, find a better spot to piss, faggot" and drove away.<sup>2</sup> Mr. [REDACTED] stated that Sgt. Surma issued him a citation that did not have his name on it.

Preliminary investigation revealed on November 14, 2017, at approximately 2:30 – 3:00 PM, accused Sgt. Surma, Police Officers Kenneth Varchetto and Robert Gniot encountered [REDACTED] at or near 5344 W. Argyle, Chicago, IL. The CPD members were in an assigned unmarked SUV police vehicle. Mr. [REDACTED] was in the process or had completed relieving himself (urinating) in the area. Subsequent to some brief conversation between the members (identified member being Sgt. Surma) and Mr. [REDACTED], members issued an Administrative Notice of Violation (ANOV) to Mr. [REDACTED] for public urination.

There is no BWC (Body Worn Camera) video of the encounter between the CPD members (including Sgt. Surma) and Mr. [REDACTED] as the CPD members had not been issued BWC at the time of this incident<sup>3</sup>. COPA personnel, via a search of CPD's Evidence.com and BWC recordings storage, confirmed there was no BWC involving Sgt. Surma, involved members and Mr. [REDACTED]. There is no OEMC (Office of Emergency Management Communication) recordings of the encounter or events leading up to or after the encounter between CPD members and Mr. [REDACTED].<sup>4</sup>

COPA personnel obtained and reviewed a better copy of ANOV #P004954849 18 issued to Mr. [REDACTED] for urinating on the sidewalk (public way).<sup>5</sup> It was confirmed that accused Sgt. Surma issued this ANOV to Mr. [REDACTED]. This ANOV shows "[REDACTED], [REDACTED], Chicago [REDACTED]" as Respondent (person receiving the ANOV). Regarding the member's signature on this ANOV, the signature is clearly shown, however, the penmanship makes the signature illegible. (It is noted poor penmanship is not an offense or indicative of misconduct).

COPA personnel interviewed witness Officer Kenneth Varchetto.<sup>6</sup> Officer Varchetto acknowledged he had been riding in the same vehicle as Sgt. Surma when the encounter/interaction with Mr. [REDACTED] occurred. Also riding in the vehicle on that day had been Officer Robert Gniot.<sup>7</sup> Officer Varchetto acknowledged that while he could not recall all the specifics of the interaction with Mr. [REDACTED], Sgt. Surma was the primary member handling the interaction. He (Varchetto) could not recall having said anything specific to Mr. [REDACTED]. Officer Varchetto further acknowledged that it was Sgt. Surma who issued ANOV # P004954849 18 to Mr. [REDACTED]. Officer

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<sup>2</sup> Attachment #6 – Web Complaint from [REDACTED]

<sup>3</sup> Attachments #33 and 37 – Recorded Interview statement of witness Officer Kenneth Varchetto @ COPA Offices; recorded interview statement of accused Sgt. Tomasz Surma @ COPA offices

<sup>4</sup> Attachment 24 – OEMC response for media digital records

<sup>5</sup> Attachment 21 – Faxed better copy of ANOV # P004954849 18

<sup>6</sup> Attachment #33 – Recorded interview statement of witness Officer Kenneth Varchetto @ COPA offices

<sup>7</sup> Officer Gniot retired from CPD prior to COPA conducting an interview regarding this matter. See Attachment #32 – PAR Report on Officer Gniot

Varchetto was resolute in that he did not hear Sgt. Surma, or anyone make any comment that could be disrespectful or use the word “faggot” towards or in or outside the presence of Mr. [REDACTED].

COPA personnel interviewed Sgt. Surma.<sup>8</sup> Sgt. Surma recalled the incident and interaction with Mr. [REDACTED] on the day in question. Sgt. Surma acknowledged that it was his signature on ANOV # P004954849 18 issued to Mr. [REDACTED] for urinating on the public way. Sgt. Surma advised he had issued countless ANOVs for various offenses. Sgt. Surma advised he recalled nothing out of the ordinary regarding the issuance of this ANOV to Mr. [REDACTED]. Sgt. Surma adamantly denied calling or using the word “faggot” in or outside the presence of Mr. [REDACTED]. Sgt. Surma adamantly denied directing the use of the word “faggot” at Mr. [REDACTED] or in reference to Mr. [REDACTED]. Sgt. Surma went on to advise that in his 20 years plus career, he had never been accused of such behavior. Finally, Sgt. Surma advised he would never use such a word or refer to any person using such a word or any other offensive language.

### III. LEGAL ANALYSIS

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 reviewed complied with 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 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. 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.

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<sup>8</sup> Attachment #37 – Recorded interview statement of accused Sgt. Tomasz Surma @ COPA offices

#### IV. ANALYSIS AND CONCLUSION

COPA finds the allegation that on or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, stopped and issued [REDACTED] an Administrative Notice of Violation (ANOV) citation for public urination, during which the officer stated words to the effect of: "Next time find a better place to piss, faggot" is Not Sustained. Based on the investigation, there is insufficient evidence to prove the allegation by a preponderance of the evidence.

The underlying facts of this case appear straightforward – [REDACTED] admitted to urinating on the sidewalk (public way) when Sgt. Surma encountered Mr. [REDACTED] during or after Mr. [REDACTED] having urinated in public. Sgt. Surma admitted issuing Mr. [REDACTED] the Administrative Notice of Violation (ANOV) #P004954849 18 for urinating in public. Mr. [REDACTED] claims that during the interaction, Sgt. Surma allegedly used the word “faggot” in reference to the incident. Witness Officer Kenneth Varchetto and Sgt. Surma both deny Sgt. Surma ever uttered such a word. By CPD members’ account, there was no abnormal event that occurred during the interaction with Mr. [REDACTED]. There was no objective verifiable evidence that either further supported or discredited the statements of Mr. [REDACTED], Officer Varchetto and Sgt. Surma. Hence, there is insufficient evidence to prove the allegation by a preponderance of the evidence.

COPA finds the allegation that on or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, failed to activate his Department - issued Body-Worn Camera when he stopped, questioned and issued an ANOV citation to [REDACTED] for public urination, without due justification is unfounded. Based on investigation, there is clear and convincing evidence that the allegation is not factual.

During interviews with COPA personnel, witness Officer Kenneth Varchetto and accused Sgt. Surma both acknowledged that they, respectively, had not been issued body worn cameras by CPD at the time the encounter/interaction with [REDACTED] occurred. COPA personnel performed research investigation and confirmed that per available CPD records, Officer Varchetto and Sgt. Surma had not been issued BWC. This provides clear and convincing evidence that the allegation is not factual.

COPA finds the allegation that on or about November 14, 2017, at approximately 2:30 p.m., at or near 5344 W. Argyle St., Chicago, the Accused Sergeant, Tomasz Surma, failed to legibly write his signature on an ANOV citation he issued to [REDACTED], without due justification, is Not Sustained. Based on investigation, there is insufficient evidence to prove the allegation by a preponderance of the evidence.

During interviews with COPA personnel, [REDACTED], Officer Varchetta, and Sgt. Surma acknowledged Sgt. Surma issued ANOV #P004954849 18 to [REDACTED] for urinating on the sidewalk (public way). COPA personnel obtained a better copy of ANOV #P004954849 18 and

reviewed same. This review showed that with respect to Sgt. Surma's signature on this ANOV, the signature is clearly shown, however, the penmanship makes the signature illegible. As noted earlier in this report, poor penmanship is not an offense or indicative of misconduct. There is insufficient evidence to prove the allegation by a preponderance of the evidence.

For the foregoing reasons, COPA finds this case should be summarily closed at this time.

Approved:



Angela Hearts-Glass  
Deputy Chief Investigator

8-22-2022

Date