

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 20, 2019.
Time of Incident:	2:03 a.m.
Location of Incident:	6057 S. Kedzie Avenue, Chicago, IL 60629.
Date of COPA Notification:	July 20, 2019.
Time of COPA Notification:	4:30 a.m.

This complaint was initiated by 8th District Sergeant, James Desmond, #2060. The accused officer, Officer Thomas Marshall, was assisting officers in placing ██████████ in a van for transport. Mr. ██████████ ignored Officer Marshall's verbal commands to enter the van, at which time Officer Marshall simultaneously pushed Mr. ██████████ inside the van and stated, "Get in the fucking wagon. I will beat your black ass to death!"¹ Officer Marshall lifted and pushed Mr. ██████████ legs into the van and closed the door. Officer Marshall did not have his Body Worn Camera (BWC) activated during this incident; however, his actions were captured on multiple officers BWC.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Marshall, Star #19868, Employee # ██████████, Date of Appointment: March 18, 1996, Police Officer, Unit of Assignment: 008 th District, DOB: ██████████, 1968, male, white.
Involved Individual #1:	██████████ DOB: ██████████, 1982, male, black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Marshall	It is alleged that on July 20, 2019, at approximately 0220 hours at 6057 S. Kedzie Avenue Chicago, IL 60629. Officer Marshall committed misconduct in that he; 1. Pushed arrestee ██████████ inside a squadrol.	Sustained

¹ Attachment #44 at 16:40.

	<p>2. Directed profanity toward arrestee [REDACTED] [REDACTED] by stating words to the effect, “Get in the fucking wagon, I will beat your black ass to death!”</p> <p>3. Directed a racial statement toward arrestee [REDACTED] by stating words to the effect, “I will beat your black ass to death!”</p> <p>4. Threatened arrestee [REDACTED] with great bodily harm by stating words to the effect, “I will beat your black ass to death!”</p> <p>5. Failed to wear and or activate his Body Worn Camera.</p>	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p>

IV. APPLICABLE RULES AND LAWS

Rules

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 8:** Disrespect/Maltreatment of any person while on or off duty.

General Orders

1. **G03-02-01:** Response to Resistance and Force Options.

2. **G08-05:** Prohibition of Retaliation.

Special Orders

1. **S03-14:** Body Worn Cameras.

2. **S04-20:** Recognizing and Responding to Individuals in Crisis.

V. INVESTIGATION²

a. Interviews

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

In his statement to COPA on October 23, 2019, **accused Police Officer Thomas Marshall** #19868,³ stated he pushed Mr. [REDACTED] inside the van because he was in fear of receiving a battery (head-butt) from Mr. [REDACTED]. Officer Marshall described Mr. [REDACTED] behavior as non-compliant in that Mr. [REDACTED] moved side to side, was yelling and pulled away. Officer Marshall confessed in saying, “I was screaming, yelling, and I threatened, but I didn’t mean it. I think I said something in the lines of you’re lucky I don’t climb in there and beat you to death.”⁴ When asked if he said, “Get in the fucking wagon, I will beat your black ass to death!” He responded with, “Yes, yes I did, or something like that.”⁵ He explained the reason he said that was because he was tired from working overtime that day. Officer Marshall was remorseful of his actions and referred to his language as irresponsible. Officer Marshall stated that he failed to activate his BWC because he was focused on assisting officers with Mr. [REDACTED]. Officer Marshall did not have any further verbal or physical contact with Mr. [REDACTED] after securing him into the van.

There is no recorded statement from the **Complainant**, [REDACTED] because this complaint was registered by Sergeant Desmond at the scene of the incident. COPA tried to contact the complainant, but the complainant could not be reached at his contact number or address.⁶

b. Digital Evidence

The **Body Worn Cameras (BWCs)** of **Officer Arellano**⁷ and **Officer Mota**,⁸ both show a Chicago Police Department van arriving at the scene to transport Mr. [REDACTED]. Officer Marshall escorts Mr. [REDACTED] to the van and commands Mr. [REDACTED] to get inside. Mr. [REDACTED] refuses to enter the van and argues with officers. Officer Marshall pushes Mr. [REDACTED] into the van and states, “Sit down and relax and I will talk to her.”⁹ Mr. [REDACTED] response, “Why are you grabbing me like that?”¹⁰ and, “I know my rights!”¹¹ Officer Marshall responds, “Good!”¹² and simultaneously, with force, pushes Mr. [REDACTED] chest, causing Mr. [REDACTED] to fall inside the van and yells, “Get in that fucking wagon before I beat your black ass to death! Do you understand!?”¹³ Officer Marshall pushes Mr. [REDACTED] legs inside the van, closes the door and states, “I’m going to get in there with you brother!”¹⁴ Officer Marshall states to Sergeant Desmond, “I’m getting too old for this shit Sarge!”¹⁵ Officer Marshall and Officer Arellano depart the area.

No **BWC** was found for Officer Marshall regarding this incident.¹⁶

³ Attachment #12.

⁴ Attachment #12 at 9:40.

⁵ Attachment #12 at 12:30.

⁶ See CMS notes.

⁷ Attachment #10.

⁸ Attachment #44.

⁹ Attachment #44 at 16:25.

¹⁰ Attachment #44 at 16:31.

¹¹ Attachment #44 at 16:36.

¹² Attachment # 44 at 16:39.

¹³ Attachment #44 at 16:41.

¹⁴ Attachment #44 at 16:50.

¹⁵ Attachment #44 at 16:55.

¹⁶ Attachment #17.

c. Documentary Evidence

In an **Initiation Report**,¹⁷ Sergeant Desmond related that Beat X845, Officers Marshall and Arellano, assisted Beat 822R in maintaining control of Mr. ██████ until a transport vehicle arrived at the scene. When the van arrived, Mr. ██████ refused Officer Marshall's verbal commands to enter the van. At that point, Officer Marshall pushed Mr. ██████ inside the vehicle and stated, "Get in the fucking wagon, I will beat your black ass to death!" Officer Marshall did not have his BWC activated during this incident, but video of the incident was captured on Officer Arellano's BWC.

Mr. ██████ **Arrest Report**,¹⁸ relates he was charged with Battery, and two counts of resisting/obstruction of a peace officer. The narrative states Victim/Complainant, ██████ informed responding officers that Mr. ██████ intentionally caused bodily harm to her by grabbing her about her forearm and punching her on the back of her head. Ms. ██████ sustained a red abrasion to her forearm. When officers attempted to place Mr. ██████ in custody, Mr. ██████ disobeyed verbal commands, walked away, flailed his arms, and stiffened his body.

The "Visual Check of Arrestee" section states there was obvious pain or injury to Mr. ██████. The "Questionnaire Remarks" section relates Mr. ██████ entered lock-up with a bandage over his left eye. Per Mr. ██████ he sustained an injury to his left-eye during a prior arrest. Regarding this arrest, Mr. ██████ sustained injury to his wrist and was transported to the hospital for medical treatment.

The **Original Case Incident Report**,¹⁹ essentially related the same information as the Arrest Report, in addition the report related that Mr. ██████ attempted to take Ms. ██████ cellular telephone, that officers conducted a take-down/leg-sweep of Mr. ██████ that Mr. ██████ was transported to ██████ for minor scrapes to his right hand and left knee, that an Evidence Technician was requested to take photos of Mr. ██████ injuries, and that throughout his arrest, Mr. ██████ was verbally abusive and appeared intoxicated.

In a **Supplementary Report**,²⁰ Officer Marshall related he assisted Beat 822R in maintaining control of Mr. ██████ who was handcuffed upon him arriving at the scene. When the transport vehicle arrived at the scene, Officer Marshall escorted Mr. ██████ to the vehicle and attempted to place Mr. ██████ inside. Mr. ██████ refused to enter the vehicle and became agitated by stiffening his body, verbally combative, and screaming at Officer Marshall. Mr. ██████ began to move his body side to side toward Officer Marshall. Officer Marshall forced Mr. ██████ inside the vehicle by pushing his torso inside and then lifting his legs inside the vehicle. Officer Marshall noted the incident was captured on Officer Arellano's BWC.

In a **Tactical Response Report**,²¹ Officer Marshall related Mr. ██████ did not follow verbal command, stiffened, and was an imminent threat of battery-no weapon. Officer Marshall's

¹⁷ Attachment #11.

¹⁸ Attachment #6.

¹⁹ Attachment #7.

²⁰ Attachment #3.

²¹ Attachment #4.

response actions to Mr. [REDACTED] actions were member presence, tactical positioning, additional unit members, verbal direction/control techniques, escort holds and pushed Mr. [REDACTED] into vehicle and lifted legs. Officer Marshall essentially related the same account of the incident as he did in a Supplementary Report, in addition, he stated that he perceived Mr. [REDACTED] moving his body side to side and toward him as an act of aggression and that he was about to be a Battery victim.

In the Commander Comments Section, Lieutenant Gerald Kock, #715, related that he attempted to interview Mr. [REDACTED] but Mr. [REDACTED] was very intoxicated, grunted something unintelligible and refused to say anything further. Mr. [REDACTED] never answered the question if he was injured. Lt. Kock observed minor cuts on Mr. [REDACTED] right hand palm and left knee. Mr. [REDACTED] was transported to [REDACTED] but refused medical treatment. After viewing available BWC video and Department reports regarding the arrest of Mr. [REDACTED] Lt. Kock initiated a complaint number relative Officer Marshall's physical and prohibitive offensive verbal actions during the arrest of Mr. [REDACTED]

The **Crime Scene Processing Report**,²² states photos were taken of Mr. [REDACTED] face, left side (bandaged) and injury to his hands. Evidence Technician Officer David Konrath, #13148, related that Mr. [REDACTED] was highly uncooperative.

The **Evidence Technician photos**,²³ of Mr. [REDACTED] shows a bandage over Mr. [REDACTED] left eye; the injury was sustained during a prior arrest. There is no other injury shown to Mr. [REDACTED]

An attempt to contact Mr. [REDACTED] via personal visit was unsuccessful.²⁴

VI. 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.

²² Attachment #14.

²³ Attachment #18.

²⁴ See CMS case notes.

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.

VII. ANALYSIS

1. Officer Marshall pushed arrestee [REDACTED] inside a squadrol.

Department members' use of force must be objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance offered by a person, under the totality of the circumstances.²⁵

During this incident Officer Marshall pushed Mr. [REDACTED] into the van with force. Officer Marshall said Mr. [REDACTED] was moving his body from side to side and toward him as an act of aggression and believed he was about to receive a battery from Mr. [REDACTED]. BWC shows Officer Marshall shove Mr. [REDACTED] inside the opening of the van as Mr. [REDACTED] yells, "I know my rights!" Officer Marshall pushes Mr. [REDACTED] again on his chest, causing Mr. [REDACTED] torso to fall inside the van. Mr. [REDACTED] appeared to be agitated during his arrest, but BWC does not support Officer Marshall's perception that Mr. [REDACTED] made an aggressive movement toward him. Thus, the reliable evidence, such as the BWC, does not show Mr. [REDACTED] acting aggressively toward Officer Marshall and Officer Marshall just pushed Mr. [REDACTED] into the van without justification. Thus, the allegation that Officer Marshall pushed the arrestee [REDACTED] inside a squadrol to be **SUSTAINED**.

2. Officer Marshall directed profanity toward arrestee [REDACTED] by stating words to the effect, "Get in the fucking wagon, I will beat your black ass to death!"

The Department is committed to ensuring the actions of its members are lawful, ethical, and serve a proper law enforcement purpose, knowing that the conduct or actions of a single Department member may impair public trust and confidence or cast suspicion and disrespect upon the entire Department.²⁶

A Chicago Police Department member stating, "Get in the fucking wagon! I will beat your black ass to death!" is unacceptable. Being tired from working is not an excuse and should be not

²⁵ G03-02-01, Policy C- When Force is Authorized.

²⁶ G08-05- Prohibition of Retaliation, Policy 111, C.

acceptable to say to anyone. Department members are supposed to treat everyone with dignity and respect. The comments made by Officer Marshall, were inappropriate and brought disrespect upon the entire Department. The statement Officer Marshall made shows a lack of respect for Mr. ██████████ and the citizens of Chicago. During Officer Marshall's COPA interview, he admitted to making the aforementioned statement and it was captured on BWC. Thus, the allegation that Officer Marshall directed profanity toward arrestee ██████████ by stating words to the effect, "Get in the fucking wagon, I will beat your black ass to death!" is **SUSTAINED**.

3. Officer Marshall directed a racial statement toward arrestee ██████████ by stating words to the effect, "I will beat your black ass to death!"

The Department's highest priority is the sanctity of human life. The concept of the sanctity of human life is the belief that all human beings are to be perceived and treated as persons of inherent worth and dignity, regardless of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military status, immigration status, homeless status, source of income, credit history, criminal record, criminal history, or incarceration status. Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved.²⁷

The Chicago Police Department is committed to interacting with individuals in crisis with dignity, respect, and the foremost regard for the preservation of human life and the safety of all persons involved.²⁸ At best, Officer Marshall's words are a threat to seriously injure Mr. ██████████ if he does not comply. They are, at worst, a threat to beat Mr. ██████████ a black man, to death. Such language, in either situation, is inappropriate and unbecoming and in opposition to the Departments policies set out in Orders G03-02-01 and S04-20 and Rules 2 and 8. Department members are supposed to treat everyone, regardless of skin color, race or religious beliefs, the same, which promotes positive community relations between the police department and the citizens they serve. Again, Officer Marshall admitted to making that aforementioned statement and it was captured on BWC. Which leads the allegation that Officer Marshall directed a racial statement toward arrestee ██████████ by stating words to the effect, "I will beat your black ass to death!" to be **SUSTAINED**.

4. Officer Marshall threatened arrestee ██████████ with great bodily harm by stating words to the effect, "I will beat your black ass to death!"

Retaliation is defined as any conduct, action, or inaction of a damaging, intimidating, or threatening nature, or any interference, intimidation, coercion, or other adverse action taken against any individual designed to serve as retribution that is intended to punish, cause harm or emotional stress, or improperly influence the individual's actions.²⁹

As stated above, Department members are supposed to treat all citizens with respect, dignity and with the foremost regard for the preservation of human life. There is no issue whether Officer Marshall made those statements to Mr. ██████████ Such conduct and language run afoul of

²⁷ G03-02-01, Policy A- Sanction of Human Life.

²⁸ Special Order S04-20, 11. A-1.

²⁹ Prohibition of retaliation G08-05, Policy 111, F.

the standards set by the Chicago Police Department. Regardless of Officer Marshall's self-serving apology made during his COPA interview for what he said to Mr. ██████████ what transpired between him, and Mr. ██████████ is a clear violation. Threatening someone by stating they will kill you, while in a Chicago Police Department uniform, brought discredit to himself and the Department. Thus, the allegation that Officer Marshall threatened arrestee ██████████ with great bodily harm by stating words to the effect, "I will beat your black ass to death!" to be **SUSTAINED**.

5. Officer Marshall failed to wear or operate his Body Worn Camera.

The Department is committed to protecting the safety and welfare of the public as well as its members. Audio and visual recordings from the body-worn camera (BWC) can improve the quality and reliability of investigations and increase transparency. Members will be trained prior to the assignment and utilization of the BWC. If a member assigned a BWC is in a vehicle equipped with an in-car video system, the member will follow both the In-Car Video Systems directive and this directive. Any member who knowingly fails to comply with this directive will be subject to progressive discipline, training, or other remedial action according to current Department policies.³⁰

Officer Marshall failed to wear and/or activate his Body Worn Camera. During this incident, there is no BWC footage available for Officer Marshall, when it should have been on, since he was engaging in law enforcement activity which he admitted to. Thus, the allegation that Officer Marshall failed to wear or operate his Body Worn Camera is **SUSTIANED**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Thomas Marshall

i. Complimentary and Disciplinary History

1. Officer Marshall has received; a 2004 Crime Reduction Ribbon, 2009 Crime Reduction Award, 2019 Crime Reduction Award, eight Complimentary Letters, a Democratic Nation Convention Award, thirty-four Honorable Mentions, a Joint Operations Award, NATO Summit Service Award, Presidential Election Deployment Award 2008, and a Problem-Solving Award.

2. Officer Marshall has no disciplinary history.

ii. Recommended Penalty

COPA recommends 29 days Suspension; the actions Officer Marshall has admitted in doing while engaging with the public and representing the Chicago Police Department is unacceptable and should not be tolerated. Officer Marshall's Complimentary History demonstrates that normally he is attentive to duties and responsibilities as a sworn member of CPD. Officer

³⁰ Body Worn Cameras, Special Order S03-14, 11-A.

