

SUMMARY REPORT DIGEST

Civilian Office of Police Accountability

LOG NO
1085955

TYPE
CR

DATE OF REPORT
18-DEC-2017

INSTRUCTIONS: To be used in all cases that are to be classified as either EXONERATED, UNFOUNDED, NOT SUSTAINED, NO AFFIDAVIT, or in SUSTAINED cases where the Disciplinary Recommendation does not exceed Five (5) DAYS SUSPENSION.

TO: CHIEF ADMINISTRATOR,
COPA

CHIEF,
BUREAU OF INTERNAL AFFAIRS

FROM - INVESTIGATOR'S NAME	RANK	STAR NO	EMPLOYEE NO	UNIT ASSIGNED	UNIT DETAILED
FLEURY, MICHAEL	1255			113	

REFERENCE NOS.(LIST ALL RELATED C.L., C.B., I.R., INVENTORY NOS., ETC., PERTINENT OF THIS INVESTIGATION)

INCIDENT ADDRESS: 3601 N. CLARK ST, CHICAGO, IL 60613	DATE / TIME: 07-JUL-2017 16:07	BEAT: 1923
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ACCUSED

NAME	RANK	STAR NO	EMP NO	UNIT ASSIGNED	UNIT DETAILED	SEX/RACE	DOB	APPOINTED DATE	ON DUTY ?	SWORN ?
BRAXTON, GREGORY E	9161	11269		005		M / BLK	-1986	29-FEB-2016	YES	YES
GUTIERREZ, EFRAIN	9161	11941		145	057	M / S	-1967	27-AUG-1990	YES	YES
UNKNOWN						/			YES	UNK

REPORTING PARTY

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
				M / WHI	-1955 / 62

VICTIMS

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
				M / WHI	-1955 / 62

WITNESSES

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
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* IF CPD MEMBER, LIST RANK, STAR, EMPLOYEE NOS. IN ADDRESS, PAX/BELL IN TELEPHONE BOX.

ALLEGATIONS

See Report

SUMMARY

See Report

ATTACHMENTS

INVESTIGATIVE REPORTS - SUPPORTING ALLEGATIONS LIST ATTACHMENTS NUMBER	INVESTIGATIVE REPORTS - SUPPORTING ACCUSED MEMBERS(S) LIST ATTACHMENTS NUMBER:	PHYSICAL EVIDENCE LIST ATTACHMENTS NUMBERS:	TOTAL NUMBER OF ATTACHMENTS SUBMITTED WITH THIS FILE:
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FINDINGS - RECOMMENDATIONS

See Report

DATE INITIATED
(Date incident was received for investigation)

07-AUG-2017

DATE COMPLETED (Date of this report)

18-DEC-2017

ELAPSED TIME
(Total time expressed in days)

133

Investigator will initiate the Command Channel Review form by
completing the Investigator's Section.

INVESTIGATOR'S SIGNATURE

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INTRODUCTION:

On July 7, 2017 [REDACTED] was operating his taxi in the vicinity of 3601 N. Clark when he attempted to pick up a fare in a NO PARKING/STANDING ANYTIME zone near Wrigley Field at approximately 4:18 pm. A Department member instructed [REDACTED] to move his cab before issuing [REDACTED] a citation for violation code 9-64-140(b). Later, a second department member issued two administrative notices of ordinance violations ('ANOV') to [REDACTED] for failing to move his cab from the zone and for discourteous behavior.

ALLEGATIONS:

It is alleged that on July 7, 2017 at approximately 4:18 pm, in the vicinity of 3601 N. Clark, **Officer George Braxton, star # 10647** is alleged to have:

- 1) Used Excessive force by grabbing [REDACTED] right arm and twisting it causing [REDACTED] discomfort.
- 2) Issued [REDACTED] a traffic citation without justification.
- 3) Failed to complete an Investigatory Stop Report (ISR) regarding your contact with [REDACTED] in accordance with Special Order S04-13-09

It is alleged that on July 7, 2017 at approximately 4:18 pm, in the vicinity of 3601 N. Clark, **Officer Efrain Gutierrez, star # 11941** is alleged to have:

- 1) Issued two Administrative Notices of Ordinance Violation (ANOV) without lawful justification.

It is alleged that on July 7, 2017 at approximately 4:18 pm, in the vicinity of 3601 N. Clark, **Unknown Officer** is alleged to have:

- 1) Stated words to the effect of "we can do what we want to do"

APPLICABLE LAWS AND RULES:

Rule 8: prohibits, "Disrespect to or maltreatment of any person, while on or off duty."

Rule 9: prohibits, "Engaging in any unjustified verbal or physical altercation with any person, while on or off duty."

Rule 10: prohibits "Inattention to duty."

**Chicago Police Department Special Order S04-13-09 Investigatory Stop System
Section 8—Procedures**

A. Investigatory Stop

1. Sworn members who conduct an Investigatory Stop, and, if applicable, a Protective Pat Down or other search in a public place, are required to submit an Investigatory Stop Report into the Investigatory Stop Database. All of the factors that support Reasonable Articulate Suspicion in order to temporarily detain an individual for investigation, and if applicable, all of the factors that support Reasonable Articulate Suspicion in order to perform a Protective Pat Down will be documented in the narrative portions of the database.

2. In addition, Investigatory Stop Reports will be submitted for all Investigatory Stops and Protective Pat Downs that lead to an arrest, Personal Service Citation, Administrative Notice of Violation (ANOV), Curfew Violation Report, School Absentee Report, or other enforcement action.

Chicago Police Department Directive, General Order G03-02, Use of Force Guidelines

“When a Department member engages a member of the public, the member will do so in such a manner which affords that person the respect and dignity to which all persons are entitled. The use of excessive force or unwarranted physical force or unprofessional conduct by a Department member will not be tolerated under any circumstances.”

“Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistances, control a subject, or protect themselves or others from injury.”

INVESTIGATION:

In an interview with IPRA¹, ██████████ the Complainant, stated that he was operating his taxicab near Wrigley Field, specifically 3601 N. Clark Street, when he spotted a woman who was trying to flag him down for service. ██████████ maneuvered his cab to pick her up and as the woman

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

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approached his car, a uniformed Department member began to waive [REDACTED] cab away and dissuade the woman from getting into [REDACTED] cab. [REDACTED] stated the officer told him to “move on, move on” and that [REDACTED] rolled down his rear window to talk to the officer. [REDACTED] described the officer as being a patrol officer on foot without a CPD vehicle. When [REDACTED] inquired why the officer was chasing away his fare and insisting that he move, [REDACTED] said he was told he could not make pick-ups here and had to leave the area immediately.

[REDACTED] argued with the officer that he wasn't doing anything wrong and that he would leave immediately after the woman entered his cab, but the officer refused to allow the transaction and the woman seeking the cab walked away. [REDACTED] described the officer as a “rookie,” who seemed to be hesitant to write [REDACTED] a ticket. [REDACTED] said he begged the officer to just let him go and not make this a bigger deal than it was. [REDACTED] continued his discussion with the officer and was becoming “heated” and increasingly frustrated with the officer, who [REDACTED] then told “this is why police officers get shot.”

[REDACTED] stated that the officer then wrote him a ticket, and that about five other rookie officers approached the scene. [REDACTED] exited his cab and was standing near the officer as the officer wrote him a ticket. At that point, [REDACTED] learned the officer's star number 10647, now known to be Officer Gregory Braxton. [REDACTED] stated that he asked Officer Braxton “is that all?” and Officer Braxton seemed confused as to what to do next. [REDACTED] stated that a female officer asked [REDACTED] for his driver's license, which he says was still inside his cab. [REDACTED] demanded to know who was in charge and got angrier at the female officer's demands to see his license. [REDACTED] attempted to comply by walking from the back of his cab to retrieve his license from the sun visor. Officer Braxton then suddenly grabbed his arm and twisted it upwards at an uncomfortable angle. Officer Braxton then proceeded to handcuff [REDACTED] with his arms behind his back.

[REDACTED] described a marked Department vehicle pulling up the scene while he was handcuffed outside of his car. He described an unknown officer, described as a “big black guy,” getting out of the vehicle. According to [REDACTED] the officer claimed that he could do whatever he wanted because he was with the Public Vehicle Unit. The officer stated that he was going search the trunk of [REDACTED] cab without probable cause because he had the authority since [REDACTED] cab serves the public. [REDACTED] stated that the trunk of his cab was opened, and his cab was searched.

Another unknown officer arrived, [REDACTED] described as being “Italian” and calmer than the others. He stated that this officer asked [REDACTED] what happened, and after [REDACTED] briefly explained the situation to him, he immediately ordered [REDACTED] be uncuffed. The “Italian guy” officer told [REDACTED] he would release [REDACTED] after he checked the cab for safety issues and subsequently issued [REDACTED] two tickets and two ANOVs.

Finally, [REDACTED] stated he was not seriously injured during the interaction and did not seek medical attention following the incident. (Att.4)

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Citations and Administrative Notices of Ordinance Violation

██████ was issued a **City of Chicago Violation Notice** for by Officer Gregory Braxton at 4:18 pm, at 3601 N. Clark Street The ticket states that ██████ violated code number 9-64-150 (b), "Park/Stand Prohibited Anytime" with an associated fine of \$75.00. The ticket was issued at 4:18 pm on July 7, 2017. The location of the infraction is not listed. The Star number listed on the ticket is 10647, and the Unit/District is listed as 057. The ticket appears to be signed by a "G. Braxton." The vehicle ticketed has a license plate number of ██████, the '█████' denoting the vehicle is a taxicab. (Att. 7)

██████ was issued two **Administrative Notice of Ordinance Violations** ('ANOV') for a traffic violation and "discourtesy". According to the signature lines, both ANOVs were issued on the behalf of Officer Braxton, whose name appears in the "Complainant's Name" box. The signature that appears in the signature box is undecipherable, but "Star/Badge" box states that the Officer who filled out the ANOV has star number 11941. A CLEAR search of CPD personnel database shows that Star #11941 corresponds with Officer Efrain Gutierrez. On ANOV ██████ ('ANOV 14'), it reports that ██████ cab parked in front of Wrigley Field in an effort to secure a fare despite the presence of signs denoting "No Parking, No Standing." ANOV #14 contains ██████ driver's license information. The second notice, ANOV ██████ ('ANOV 15') was issued to ██████ for "courtesy/ discourtesy." The ANOV reports that ██████ got into an argument with Officer Braxton in a "loud and offensive manner" and ██████ yelled at Officer Braxton while pointing his finger in the officer's direction. Officer Braxton's name and Star number appear on both ANOVs which are both dated July 7, 2017 at a time of 4:16 pm. (Att. 8)

The **Chicago Municipal Code** states the following with regards to taxicabs picking up and dropping off passengers:

9-48-060 Taxicabs – Stopping, standing and parking.

(a) The driver of any taxicab shall not stop such vehicle upon any business street at any place other than a taxicab stand, except for the expeditious loading or unloading of passengers or when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, traffic control aide or traffic sign or signal; provided, however, that this section shall not apply when the taxicab is unoccupied, not for hire and otherwise lawfully parked.

(b) No driver, involved in the expeditious loading or unloading of passengers shall be charged with a violation of any parking ordinance contained in this code, unless such driver fails to move his vehicle after having been directed by a police officer or traffic control aide to do so.

(Added Coun. J. 7-12-90, p. 18634; Amend Coun. J. 11-15-00, p. 46957, § 2)

9-48-070 Cruising of public passenger vehicles prohibited.

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No operator of a public passenger vehicle shall solicit business in such manner as to interfere with the lawful movement of traffic.

Complainant presented no **medical records** with regards to this case and states he did not seek medical attention following this incident. (Att. #6)

The **Chicago Police Department Special Order S04-13-09**, which governs the Investigatory Stop System, states in Section 8(a)2:

“In addition, Investigatory Stop Reports will be submitted for all Investigatory Stops and Protective Pat Downs that lead to an arrest, Personal Service Citation, Administrative Notice of Violation (ANOV), Curfew Violation Report, School Absentee Report, or other enforcement action.”

Statement of Officer Gregory Braxton

Officer Braxton described his encounter with [REDACTED] on July 14, 2017 during an interview at COPA on Nov. 2, 2017. He recalled that on the aforementioned date and time, he was working a Homeland Security detail in front of Wrigley Field during Chicago Cubs home game. At the time, Officer Braxton was a PPO, and he was detailed to this unit as were many PPOs. He recalled patrolling to keep the area free of vehicle traffic and not allow cars to get close to the area for security reasons. He was tasked with enforcing the “NO STOPPING, NO STANDING TOW ZONE” parking prohibition, and he observed [REDACTED] cab occupying the restricted area. Officer Braxton stated he waved to [REDACTED] in an attempt to get him to move along, and when [REDACTED] ignored his non-verbal instruction, he began to shout at [REDACTED] to “move along!” Officer Braxton stated that [REDACTED] ignored his verbal instructions and continued his efforts to solicit a fare from the prohibited zone so Officer Braxton then informed [REDACTED] that he would be receiving a traffic citation and to remain on the scene. Officer Braxton stated that [REDACTED] became irate that he was issuing him a ticket and that [REDACTED] exited his cab and immediately approached Officer Braxton as he was writing the ticket. Officer Braxton stated that [REDACTED] rapidly closed the distance between the two men and that [REDACTED] approach put Officer Braxton in fear of an impending battery. Officer Braxton stated that [REDACTED] was pointing his finger close to Officer Braxton’s face and chest area, and the anger [REDACTED] was displaying was increasing Officer Braxton’s fears that [REDACTED] may attack him, or be struck by a passing car as [REDACTED] did not seem to be mindful of their surroundings.

Officer Braxton stated he made the decision to place [REDACTED] in handcuffs and he seized [REDACTED] right arm and turned him around, placing the handcuffs on both wrists and locking them. Officer Braxton stated that [REDACTED] did not physically resist the handcuffing but continued to protest verbally. Officer Braxton relayed that at this point, Officer Gutierrez arrived to assist Officer Braxton and deescalate the situation. Officer Gutierrez took over the dialogue with [REDACTED] and was able to get [REDACTED] to calm down to the point where his handcuffs could be removed. Officer Braxton stated that after [REDACTED] had calmed, Officer Gutierrez issued two ANOVs in addition to the one

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citation that Officer Braxton had written. [REDACTED] then returned to his cab and drove away without further incident.

Officer Braxton was asked why he didn't arrest [REDACTED] if he felt that [REDACTED] was going to attack him and if [REDACTED] actions had risen to the level of an assault. Officer Braxton answered that he used his discretion in not seeking to make an arrest of [REDACTED] and that despite feeling threatened by the seemingly increasing aggression from [REDACTED] he didn't wish to arrest him and affect [REDACTED] livelihood. When asked why he didn't fill out an ISR documenting the use of handcuffs during this interaction with [REDACTED] Officer Braxton stated that he didn't believe an ISR had to be completed in this situation. When shown Special Order S04-13-09 (Att. #), Officer Braxton indicated that he was unfamiliar with the order. (Att. 14, 15)

Statement of Officer Efrain Gutierrez

Officer Gutierrez stated that on the afternoon of July 14, 2017, he was working Detail 057 in the vicinity of Wrigley Field during a Chicago Cubs home game. He stated that he became aware of a disturbance in the vicinity of 3601 N. Clark when another officer—Jeff Galloway—saw the altercation in the reflection of a mirror and that Officer Gutierrez and Officer Galloway ran to the scene to assist Officer Braxton. Officer Gutierrez stated that upon his arrival, he saw that [REDACTED] was already in handcuffs and appeared to be agitated. Officer Gutierrez stated that he and the other Department members working this beat were part of an Anti-Terrorism unit with strict instructions to not allow any cars stopping in front of Wrigley Field. Officer Gutierrez stated that he was told by Officer Braxton that [REDACTED] had “lunged” at Officer Braxton and that Officer Braxton had cuffed [REDACTED] to prevent himself from being attacked. When asked to elaborate about the lunge, Officer Gutierrez later describes his definition of what he considers a lunge to be as being [REDACTED] taking one step forward and pointing a finger at Officer Braxton. Officer Gutierrez stated that [REDACTED] was yelling and very agitated about losing the fare, being unable to make a living due to the police interfering with his attempts to solicit fares, and his treatment by Officer Braxton. Officer Gutierrez repeatedly told [REDACTED] to calm down and relax, and at some point the handcuffs were taken off [REDACTED]

Officer Gutierrez informed [REDACTED] he was getting two ANOVs for his actions and one traffic citation for parking in the prohibited area. Officer Gutierrez stated that he himself wrote the ANOVs because “he had his ticket book on me” and that he wrote Officer Braxton's name in the box. In response to being asked why [REDACTED] wasn't arrested, Officer Gutierrez stated that the ANOVs are a form of a “quasi-arrest,” and that issuing them was more appropriate than an arrest in this situation. Officer Gutierrez initially stated when asked about the lack of an ISR that there was no need to fill out an ISR because of the ANOVs capturing the interaction. He then later modified his answer after being shown the relevant General Orders to state that he did not cuff [REDACTED] so the responsibility for the ISR was not his, and that a supervisor—an unnamed sergeant—came to the scene. (Att. 13)

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Investigator Mike Fleury

Supervising Investigator James Murphy-Aguilu

CONCLUSIONS AND ANALYSIS:

COPA recommends a finding of **Not Sustained** against Officer Braxton for allegations 1 that Officer Braxton used excessive force by grabbing and twisting [REDACTED] arm and handcuffing him without justification.

Officer Braxton described a reasonable articulable suspicion for placing [REDACTED] in handcuffs that is within Department policy. [REDACTED] by his own admission stated he became belligerent and exited his car in an escalation of his conflict with Officer Braxton over [REDACTED] being issued a citation for a violation of Ordinance 9-64-150. Officer Braxton was within Department guidelines in that he chose to handcuff [REDACTED] to prevent an impending battery to Braxton's person, and that the nature of the high traffic area near Wrigley Field exposed [REDACTED] and Braxton to being potentially struck by the constant vehicular traffic at the scene. [REDACTED] did not assert that he had any lasting injuries from being handcuffed by Officer Braxton, and [REDACTED] did not complain of the handcuffs being purposely applied too tightly, or that Officer Braxton used the cuffs to inflict pain on his person. Officer Braxton's ANOV does mention [REDACTED] pointing his finger at Braxton, but it doesn't mention that [REDACTED] was handcuffed by Officer Braxton.

COPA recommends a finding of **Not Sustained** against Officer Braxton for allegation 2 that Officer Braxton issued [REDACTED] a traffic citation without justification.

[REDACTED] argues he was "expeditiously" dropping off or picking up passengers in compliance with Chicago Municipal Code (Att. #6) section 9-48-060 (b):

(b) No driver, involved in the expeditious loading or unloading of passengers shall be charged with a violation of any parking ordinance contained in this code, unless such driver fails to move his vehicle after having been directed by a police officer or traffic control aide to do so.

However, an important caveat applies in that if "the driver fails to move his vehicle after having been directed by a police officer or traffic control aide to do so," such a driver is subject to being charged with a violation of an applicable parking ordinance. [REDACTED] admitted he observed the signs warning of "No Parking, No Standing Anytime." [REDACTED] described Officer Braxton as being a CPD member in uniform, and Officer Braxton stated he was in uniform during the incident in question. [REDACTED] admitted to hearing Officer Braxton telling him to move along, and that he defied that

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instruction from Officer Braxton. Under the ordinance, Officer Braxton appears to be within policy in his decision to instruct [REDACTED] to move his cab and his subsequent decision to issue a violation when [REDACTED] failed to do so.

COPA recommends a finding of **Sustained** against Officer Braxton for allegation 3 that Officer Braxton failed to complete an Investigatory Stop Report (ISR) regarding his contact with Mr. [REDACTED] in accordance with Special Order S04-13-09.

Officer Braxton admitted to handcuffing [REDACTED] out of a concern for his safety as [REDACTED] appeared to demonstrate an imminent threat of a battery to Officer Braxton, and further that [REDACTED] was placing his own safety in jeopardy by exiting his vehicle in a congested area. Officer Braxton conceded that he did not prepare and issue to [REDACTED] an Investigatory Stop Report (ISR) detailing the full nature of [REDACTED] encounter with the police and specifically the fact that [REDACTED] was handcuffed. Special Order S04-13-09 states:

Section 8—Procedures

B. Investigatory Stop

1. Sworn members who conduct an Investigatory Stop, and, if applicable, a Protective Pat Down or other search in a public place, are required to submit an Investigatory Stop Report into the Investigatory Stop Database. All of the factors that support Reasonable Articulate Suspicion in order to temporarily detain an individual for investigation, and if applicable, all of the factors that support Reasonable Articulate Suspicion in order to perform a Protective Pat Down will be documented in the narrative portions of the database.
2. In addition, Investigatory Stop Reports will be submitted for all Investigatory Stops and Protective Pat Downs that lead to an arrest, Personal Service Citation, Administrative Notice of Violation (ANOV), Curfew Violation Report, School Absentee Report, or other enforcement action.

There are two circumstances under S04-13-09 that require Officer Braxton to issue an ISR for the interaction he had with [REDACTED]

1. The Reasonably Articulated Suspicion that [REDACTED] was going to commit a battery against Officer Braxton and that Officer Braxton handcuffed [REDACTED] to prevent an attack as well as ensure [REDACTED] did not endanger himself due to the high traffic volume at the location,
2. That ISRs are to be submitted for all Investigative Stops and Protective Pat Downs that lead to the issuance of a ANOV.

Furthermore, on the ISR form used at the time, there is a section with a box that reads:

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SCHOOL'S NAME		SCHOOL'S ADDRESS	
WAS THE SUBJECT OF THE STOP HANDCUFFED <input type="checkbox"/> YES <input type="checkbox"/> NO		NAME VERIFIED BY ID <input type="checkbox"/> YES <input type="checkbox"/> NO	
DID THE STOP INVOLVE A VEHICLE <input type="checkbox"/> YES <input type="checkbox"/> NO		WAS THE VEHICLE CURBED AS A RESULT OF THIS STOP <input type="checkbox"/> YES <input type="checkbox"/> NO	

This is the section of the ISR that specifically requires the documentation of the use of handcuffs on a subject. It also requires documenting if the stop involved a vehicle, and whether or not the vehicle was curbed as a result of this stop. Prior to the vehicle stop, [REDACTED] was handcuffed, but this use of force was not documented on either of the ANOVs issued to [REDACTED] in the narrative section on the notice.

COPA recommends a finding of **Unfounded** against Officer Gutierrez for allegation 1 that he issued two baseless ANOVs against a City of Chicago Violation notice for lawfully protected activity consistent with his rights as a licensed taxi/livery driver.

The ANOVs issued to [REDACTED] for parking or standing in a no parking or standing zone and additionally being discourteous are both valid. [REDACTED] own statements established both that he attempted to take a passenger in the no stopping or standing zone and argued with police after he was told to move the cab. Therefore these ANOVs were administered correctly within the purview of the Chicago Municipal Code and there is no evidence that the notices were issued improperly.

COPA recommends a finding of **Not Sustained** against **Unknown Officer** for allegation 1. The complainant was unable to provide sufficient descriptions of the officer alleged to have made the statement. Department reports and officer interviews offer no assistance therefore COPA recommend a finding of not sustained.

Approved:

[REDACTED]

Deputy Chief Administrator, COPA

[REDACTED]

Deputy Chief Administrator, COPA

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FINDINGS:

Officer George Braxton, star # 10647

Allegation 1: Not Sustained

Allegation 2: Not Sustained

Allegation 3: Sustained

Efrain Gutierrez, star # 11941

Allegation 1: Unfounded

Unknown Officers

Allegation 1: Not Sustained