

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / Time of Incident:	October 8, 2018, approximately 7:47 p.m.
Location of Incident:	835 North Michigan Avenue, Chicago, Illinois,
Date / Time of COPA Notification:	October 12, 2018, approximately 7:47 a.m.

██████████ [“██████████”] alleged that an on-duty, uniformed officer knocked a cell phone from his hand as he was video-recording police activity, that the same officer failed to identify himself when ██████████ asked him to do so, and that the officer unjustifiably threatened ██████████ with arrest. COPA viewed video footage provided by ██████████ and we viewed footage that other officers recorded with body worn cameras. That video footage largely corroborates ██████████ account. COPA then identified the officer as Officer Robert J. Balesh [“Officer Balesh”], and we interviewed him after first permitting him to view some of that footage. Officer Balesh then contended that he had instructed ██████████ to leave the scene after ██████████ had interfered with police action. Officer Balesh claimed an inability to remember whether he had struck ██████████ hand, whether he had knocked a cell phone from ██████████ hand, whether ██████████ had been videotaping at the time, and whether he had failed to identify himself after having been so requested. COPA has sustained ██████████ allegations, finding that the video evidence shows that the alleged misconduct likely occurred.

II. INVOLVED PARTIES

Involved Officer #1:	Robert J. Balesh, Star #8111, Employee ID# ██████████; Date of Appointment: November 17, 1986; Rank: Police Officer; Unit of Assignment: 019; DOB: ██████████, 1959; M/WHI
Involved Individual #1:	██████████ DOB: ██████████, 1978; M/WHI

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Balesh	On or about October 8, 2018, at approximately 7:47 p.m., at or near 835 North Michigan Avenue, Chicago, Illinois, Officer Robert J. Balesh committed misconduct through the following acts and/or omissions: 1. Officer Balesh struck the Complainant, ██████████ and/or Officer Balesh struck a mobile phone held by the Complainant, ██████████ without justification; and/or	SUSTAINED / 30-day Suspension

Officer	Allegation	Finding / Recommendation
Officer Balesh (continued)	2. Officer Balesh hindered or prevented the Complainant, [REDACTED] from recording a law enforcement officer who was performing his or her duties in a public place when Officer Balesh had no reasonable expectation of privacy, in violation of provisions of CPD Special Order S03-14 Body Worn Cameras (effective April 30, 2018); and/or	SUSTAINED / 30-day Suspension
	3. Officer Balesh failed to properly identify himself when so requested by the Complainant, [REDACTED] and/or	SUSTAINED / 30-day Suspension
	4. Officer Balesh threatened the Complainant, [REDACTED] with arrest, without justification.	SUSTAINED / 30-day Suspension

**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 2, CPD Rules of Conduct (prohibiting any action or conduct which impedes the CPD’s efforts to achieve its policy and goals or brings discredit upon the CPD)
2. Rule 6, CPD Rules of Conduct (prohibiting the disobedience of an order or directive)
3. Rule 8, CPD Rules of Conduct (prohibiting disrespect to or maltreatment of any person)
4. Rule 9, CPD Rules of Conduct (prohibiting CPD members from engaging in any unjustified verbal or physical altercation with any person)
5. Rule 37 of the CPD Rules of Conduct (prohibiting the failure of CPD members to correctly identify themselves by giving their name, rank and star number when so requested)

Special Orders

1. CPD Special Order S03-14 Body Worn Cameras (effective April 30, 2018)

**V. INVESTIGATION<sup>1</sup>**

*Summary of Alleged Misconduct Under Investigation*

An on-duty, uniformed officer is alleged to have knocked a cell phone from a civilian’s hand as the civilian was video-recording police activity. Thereafter, the same officer allegedly failed to

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

identify himself when the civilian asked him to do so, and he allegedly threatened the civilian with arrest unjustifiably.

### *Initiation Report*

COPA received an Initiation Report dated October 11, 2018 stating that ██████ had presented himself at the CPD's 018<sup>th</sup> District Station earlier that day to make a complaint of police misconduct. According to the report, ██████ complained that a CPD officer (subsequently confirmed by COPA to be Officer Balesh) had struck his hand as he was using a cell phone to record other CPD officers tackling an individual, causing his cell phone to fall. According to the report, ██████ also complained that the same officer yelled at him about interfering with police, he threatened ██████ with arrest, and he refused to provide his name and star number in response to ██████ request. Also, according to the report, ██████ stated that did not believe that he had been interfering with police activity.<sup>2</sup>

### *Interview of ██████*

COPA interviewed ██████ on October 18, 2021.<sup>3</sup> In material summary, non-verbatim (except where otherwise indicated), ██████ then gave the following account:

On October 8, 2018, at approximately 7:30 p.m., at or near the North Michigan Avenue shopping district known as the Magnificent Mile, ██████ observed three police officers tackle or take down a person after that person had been running from the police. ██████ began recording that incident with a cell phone from about fifteen to twenty feet away, zooming in. Another police officer (subsequently determined by COPA to be Officer Balesh) then approached ██████ and told ██████ to "get out of here." ██████ responded by stating, "For what? I'm within my rights. I'm not doing anything wrong." The officer then struck ██████ hand, knocking his cell phone from it. ██████ then said, "I want your name." The officer said, "You're interfering." The officer then yelled to other officers, "Arrest him. Arrest him." The officer also said that he was going to arrest ██████

### *Third-party Video Footage*

COPA reviewed a video recording provided by ██████<sup>4</sup> That recording is approximately eight seconds in length. It appears to show two uniformed CPD officers arresting a person who is on the ground. A third officer then appears in frame, with his back to the camera, apparently coming to assist. The video concludes with a depiction that would be consistent with that captured by a camera falling to the ground.

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<sup>2</sup> Attachment #2 is a copy of that Initiation Report.

<sup>3</sup> Attachment #12 is an audio recording of that interview.

<sup>4</sup> That recording may be found within Attachment #13.

*Body-worn Camera Footage*

COPA reviewed body-worn camera video footage depicting parts of the incident under review.<sup>5</sup> That footage shows two officers standing over a person on a sidewalk immediately adjacent to Water Tower Place, near a west-facing entrance.<sup>6</sup> A shout of “Get out of here” can be heard in the background.<sup>7</sup> Officer Balesh is then depicted, pointing southward and saying, to other CPD members, words to the effect of “This guy over here is interfering with the police; this guy with the camera.”<sup>8</sup> Officer Balesh then walks southward, and he engages with a civilian (apparently ██████) shouting words to the effect of “Leave or you’re going to go to jail.”<sup>9</sup> Figure #1 below is a screenshot, taken from that footage, showing Officer Balesh and ██████ as Officer Balesh shouts to ██████ ordering him to leave.



Figure #1<sup>10</sup>

*Interview of Officer Robert J. Balesh*

COPA interviewed Officer Robert J. Balesh on February 9, 2021.<sup>11</sup> Prior to commencing that interview, COPA permitted Officer Balesh to view body-worn camera recorded video footage depicting parts of the events under review.<sup>12</sup> In material summary, non-verbatim (except where otherwise indicated), Officer Balesh then gave the following account of those events:

There had been a disturbance by the Water Tower involving youths jumping on cars. Officer Balesh headed towards the Water Tower, where CPD officers were struggling on the ground to

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<sup>5</sup> Attachment #21 includes thirty-one videos recorded by CPD body-worn camera or in-car cameras at or near the date, time, and place of the events under review. Of those recordings, the most relevant are those entitled MulcahyOneAXON\_Body\_2\_Video\_2018-10-08\_1944 [hereafter, “MulcahyBWC”] and BrownOneAXON\_Body\_2\_Video\_2018-10-08\_1947 [hereafter, “BrownBWC”], respectively.

<sup>6</sup> See Attachment #21, Mulcahy BWC at approximately T00:47:50z. (Because video footage recorded by CPD body-worn cameras is time-marked using Greenwich Mean Time (or “Zulu Time”) styled designations, COPA here uses those same designations throughout.)

<sup>7</sup> See Attachment #21, MulcahyBWC and BrownBWC, at approximately T00:48:00z.

<sup>8</sup> See Attachment #21, BrownBWC, at approximately T00:48:14z and immediately following.

<sup>9</sup> See Attachment #21, MulcahyBWC, at approximately T00:48:26z and immediately following.

<sup>10</sup> See Attachment #21, MulcahyBWC, at approximately T00:48:27z.

<sup>11</sup> Attachments ## 33 and 34 comprise an audio recording of that statement. Attachment #35 is a transcription of that recording.

<sup>12</sup> See Attachment #35, p. 10, line 11, through p. 12, line 2.

handcuff a youth who was fighting with them. As Officer Balesh arrived at that location, [REDACTED] was standing over the top of those officers, interfering with them. Officer Balesh then exchanged words with [REDACTED] telling him to leave and that he could be arrested.<sup>13</sup>

Officer Balesh described [REDACTED] interference with the officers as “standing over the arresting officers that are fighting with the ... youth.”<sup>14</sup> According to Officer Balesh, other officers were trying to assist the arresting officers in holding down the youth so they could handcuff him, and [REDACTED] was “literally over the top, on top of the officers, within maybe a foot.”<sup>15</sup>

Officer Balesh stated that he did not remember whether [REDACTED] was making a video recording or holding a cell phone in his hand at the time of the incident.<sup>16</sup> Officer Balesh also stated that he did not remember whether he made physical contact with [REDACTED] and that he did not remember whether he knocked a cell phone out of [REDACTED] hand.<sup>17</sup> Officer Balesh also stated that he did not remember whether he had failed to identify himself by name when [REDACTED] asked him to do so.<sup>18</sup> Officer Balesh acknowledged that he told [REDACTED] to leave and that he said to [REDACTED] that he was giving him “one last warning,” as depicted on video.<sup>19</sup> Officer Balesh stated that he did not remember what it was about [REDACTED] actions that merited giving him a warning to leave the scene.<sup>20</sup>

Officer Balesh concluded his statement by saying that his main concern at the time of the incident was officer safety.<sup>21</sup>

## VI. LEGAL STANDARD

At the conclusion of an investigation, COPA makes an assessment as to whether there is sufficient evidence to prove or disprove the alleged misconduct. COPA categorizes its findings as follows: (1) Sustained – where it is determined that an allegation is supported by a preponderance of the evidence; (2) Not Sustained – where it is determined that there is insufficient evidence to prove an allegation 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 an allegation occurred, but that conduct was lawful and proper.

For purposes of COPA's investigations, a “preponderance of evidence” is evidence indicating that it is more likely than not that the alleged misconduct occurred. *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 true). If the evidence establishes that it is more likely than not that the alleged misconduct occurred, even by a narrow

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<sup>13</sup> See Attachment #35, p. 13, line 17, through p. 14, line 20.

<sup>14</sup> See *id.*, p. 15, lines 6 - 20.

<sup>15</sup> See *id.*, p. 15, lines 6 - 20.

<sup>16</sup> See *id.*, p. 17, lines 5 - 17.

<sup>17</sup> See *id.*, p. 26, line 20, through p. 27, line 4.

<sup>18</sup> See *id.*, p. 28, lines 8 - 12.

<sup>19</sup> See *id.*, p. 29, line 13, through p. 30, line 24.

<sup>20</sup> See *id.*, p. 29, line 13, through p. 30, line 24.

<sup>21</sup> See *id.*, p. 42, line 8, through p. 43, line 2.

margin, then the preponderance of the evidence standard is met. “Clear and convincing evidence” is a quantum of evidence that is greater than a preponderance of the evidence but less than the amount that is required to convict a person of a criminal offense under a “beyond-a-reasonable doubt” standard. *See, e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). “Clear and convincing evidence” has been described 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

### *Credibility Assessment*

██████████ video recording shows that ██████████ was not, in fact, standing over arresting officers when Officer Balesh arrived at the incident scene, as Officer Balesh has claimed. By contrast, ██████████ account of the events is largely corroborated by ██████████ video recording and by body-worn camera footage. For these reasons, COPA has determined that ██████████ account of the events is credible and reliable and that Officer Balesh’s account is neither credible nor reliable.

### *Further Analysis*

Allegation #1 is supported by the preponderance of the evidence. ██████████ complaint that Officer Balesh struck his hand, causing a cell phone to fall, is supported by ██████████ own video recording. Officer Balesh does not deny that complaint; instead, he claims an inability to remember whether it is true. On balance, the evidence therefore supports the conclusion that ██████████ complaint is likely true, as well as the concomitant conclusion that Officer Balesh likely violated Rules 2 and 8 of the CPD’s Rules of Conduct, which respectively prohibit conduct bringing discredit upon the CPD as well as conduct involving maltreatment. Allegation #1 is accordingly SUSTAINED.

For the same reasons, Allegation #2 is also supported by the preponderance of the evidence, which shows that Officer Balesh likely took action preventing ██████████ from recording him in public while he performed a law enforcement activity, thereby violating provisions of an applicable CPD directive<sup>22</sup> as well as Rule 6 of the CPD’s Rules of Conduct, which prohibits the violation of such directives. Allegation #2 is therefore also SUSTAINED.

Allegation #3 is also supported by the preponderance of the evidence. Like ██████████ other claims, ██████████ allegation that Officer Balesh failed to provide his name in response to ██████████ request is credible. As with ██████████ other complaints, Officer Balesh does not deny the alleged misconduct;

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<sup>22</sup> That directive provides, in pertinent part:

According to law, no officer may hinder or prevent any non-officer from recording a law enforcement officer who is performing his or her duties in a public place or when the officer has no reasonable expectation of privacy. Violation of this law may constitute disciplinary actions consistent with the directive entitled “Complaint and Disciplinary Procedures” as well as criminal penalties such as theft or criminal damage to property. However, a member may take reasonable actions to enforce the law and perform their duties.

*See* S03-14 *Body Worn Cameras* (effective April 30, 2018), Section IV.C.

instead, he claims an inability to remember the facts. The evidence therefore supports the conclusion that Officer Balesh likely violated Rule 37 of the CPD Rules of Conduct, which requires CPD members to identify themselves by name and star number upon request. Allegation #3 is therefore also SUSTAINED.

Finally, Allegation #4 is also supported by the preponderance of the evidence. In his statement, Officer Balesh essentially admitted that he threatened [REDACTED] with arrest. [REDACTED] video shows that [REDACTED] was not, in fact, standing over arresting officers when Officer Balesh arrived at the incident scene, and it further shows that [REDACTED] was not then standing so close to those officers so as to prevent other officers from arriving to assist. That video therefore shows that an arrest of [REDACTED] for alleged interference would have been improper. Officer Balesh’s threats of arrest therefore violated Rules 2, 8, and 9 of the CPD’s Rules of Conduct, which respectively prohibit conduct bringing discredit upon the CPD, maltreatment and unjustified verbal altercations. Allegation #4 is therefore also SUSTAINED.

**VIII. FINDINGS**

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer Balesh	<p>On or about October 8, 2018, at approximately 7:47 p.m., at or near 835 North Michigan Avenue, Chicago, Illinois, Officer Robert J. Balesh committed misconduct through the following acts and/or omissions:</p> <ol style="list-style-type: none"> <li>1. Officer Balesh struck the Complainant, [REDACTED] and/or Officer Balesh struck a mobile phone held by the Complainant, [REDACTED] without justification; and/or</li> <li>2. Officer Balesh hindered or prevented the Complainant, [REDACTED] from recording a law enforcement officer who was performing his or her duties in a public place when Officer Balesh had no reasonable expectation of privacy, in violation of provisions of CPD Special Order S03-14 Body Worn Cameras (effective April 30, 2018); and/or</li> <li>3. Officer Balesh failed to properly identify himself when so requested by the Complainant, [REDACTED] and/or</li> <li>4. Officer Balesh threatened the Complainant, [REDACTED] with arrest, without justification.</li> </ol>	<p>SUSTAINED</p> <p>SUSTAINED</p> <p>SUSTAINED</p> <p>SUSTAINED</p>

**IX. DISCIPLINARY AND REMEDIAL RECOMMENDATIONS**

COPA considers a number of factors in recommending disciplinary or other remedial action against CPD members found to have violated CPD rules, including, but not limited to, the nature of the member’s offense and its consequences, if any, the nature of any property involved, if any, the member’s position, complimentary history, and disciplinary history, and other mitigating and aggravating factors. Recommended disciplinary action may include reprimand, suspension, or separation. Recommended non-disciplinary remedial action or non-disciplinary intervention may include, but is limited not to, reassignment, additional training, or counseling.

*A. Complimentary and Disciplinary History*

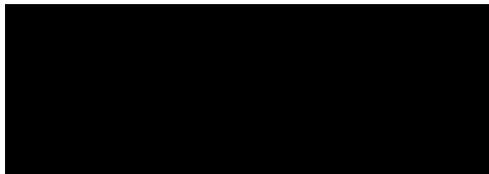
1. Complimentary: 1 - 2004 Crime Reduction Award, 1 - 2009 Crime Reduction Award, 1 - 2019 Crime Reduction Award, 6 – Complimentary Letters, 1 - Democratic National Convention Award, 40 – Honorable Mentions, 1 – Join Operations Award, 1 – NATO Summit Service Award, 1 –Presidential Election Deployment Award 2008.<sup>23</sup>

2. Disciplinary: No applicable history within the past 5 years.<sup>24</sup>

*B. Recommended Penalty:*

COPA recommends Officer Balesh’s 30-day suspension.

Approved:



12/10/2021

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 Matthew Haynam  
 Deputy Chief Administrator – Chief Investigator

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 Date

<sup>23</sup> See Attachment #36, p. 2.

<sup>24</sup> See *id.*, pp. 1, 3 - 4.