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## VIA ELECTRONIC MAIL

January 22, 2021

SYDNEY ROBERTS  
CHIEF ADMINISTRATOR  
CIVILIAN OFFICE OF POLICE ACCOUNTABILITY  
1615 WEST CHICAGO AVENUE, 4TH FLOOR  
CHICAGO, ILLINOIS 60622

Re: Log #2019-0002624

Dear Chief Administrator Roberts:

Pursuant to § 2-56-230(c)(ii) of the Municipal Code of the City of Chicago (MCC), the Office of Inspector General's (OIG) Public Safety section has conducted a preliminary review of the investigation conducted by the Civilian Office of Police Accountability (COPA) in Log #2019-0002624. OIG recommends that COPA re-open the investigation to account for the complete evidentiary record, to consider all relevant Chicago Police Department (CPD) directives, apply the prescribed standard for each of the available investigative findings, and pursue all allegations reported to COPA. Log #2019-0002624 is currently in a Command Channel Review status.

Log #2019-0002624 concerns allegations against CPD Officers Valente Lara, Star #13954 and Kashif Khan, Star #4471, and Sergeant Denis Vale, Star #1087. COPA opened the investigation following its receipt of an initiation report authored by CPD's Force Review Unit (FRU), which listed Lara and Vale as accused members.<sup>1</sup>

Lara, Khan, and Vale conducted a traffic stop of a driver, a 21-year-old black male, on May 22, 2019, at approximately 7:30pm. Khan pulled the driver over after observing him not wearing a seatbelt. As shown on body-worn camera (BWC) footage contained in COPA's investigative file, the driver told Khan he did not have a driver's license but was actively searching his wallet for his state identification card when

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<sup>1</sup> An allegation that Khan also used excessive force was drafted and served following COPA's interview with the alleged victim.

January 22, 2021

Khan first ordered him out of the vehicle, less than a minute after the traffic stop began. The driver stated he did not want to exit the vehicle, providing several reasons including that there were three CPD members present, that Khan's right hand was gripping his holstered firearm, and that Khan unholstered his taser and pointed it at the driver through the driver's side window.

At approximately one minute and 45 seconds into the traffic stop, Khan again ordered the driver to exit the vehicle, while his taser was still pointed at the driver through the open window of the running vehicle. Khan also directed the driver to turn off the vehicle's engine for the first time during the stop. The driver immediately shut off his engine but stated again that he would not exit. The doors to the driver's vehicle appear to have automatically unlocked when he turned the engine off, at which point Khan and Lara opened the driver and passenger door, respectively, and began to attempt to force the driver out of the vehicle.

While Khan attempted to pull the driver from the vehicle by his wrist and arm, Lara positioned himself partially on top of the driver. Lara appeared to place his arm around the driver's neck as he pushed Victim A backward into the driver's seat while shouting "Step the fuck out!" After approximately 30 seconds, Lara moved his arm from around the driver's neck and placed his hand in the area of the driver's throat. It appears from the BWC footage that Lara gripped and applied pressure to the driver's neck. The driver can be heard asking "What's your name?" followed by stating "I can't breathe." The driver's voice sounds distinctly different here than it did when he spoke earlier in the encounter when Lara's hand was not on his neck.

On July 11, 2019, CPD's FRU authored an initiation report listing the following reasons for referring the incident to COPA for investigation:

During the course of a review of BWC #30297 (approximate minute mark 2:38) it appears that Officer Lara has one hand pushing against the front of the subject's neck. The subject then asks, "What's your name?" and says, "I can't breathe." Officer Lara reported that he "performed pressure point to the upper shoulder/neck area of the offender." However, Officer Lara did not articulate anything further with regard to a "pressure point" technique. Sergeant Denis Vale was on scene and witnessed the entire incident. Sgt. Vale responded on the TRR that the force used was consistent to department policy for an active resister and did not recommend or obtain a CL number for investigation.

COPA served two allegations related to the investigation. The first allegation was that Lara used "used excessive force that was not proportional while detaining [the driver]." The second allegation was that Khan "committed misconduct by striking [the driver] on or about the face with his hand without justification." The allegation against Khan

arose during COPA's interview with the driver, in which he claimed that Khan punched him in the mouth at the 14<sup>th</sup> District station following his arrest. Although FRU listed Vale as an accused in its referral, COPA did not serve him with any allegations, and does not address FRU's observation that Vale had found Lara's use of force to be within policy and had failed to initiate a disciplinary investigation.

COPA found the allegation against Khan to be Not Sustained, due to the lack of video evidence to support the driver's claim. COPA also found the allegation against Lara to be Not Sustained.

OIG's preliminary review identified the following concerns regarding COPA's investigation documented under Log #2019-0002624:

1. COPA's legal analysis does not include any documented consideration and analysis of whether the force used by Lara was objectively reasonable, necessary, and proportionate based on the totality of the circumstances, as required by CPD directives.

CPD General Order G03-02: Use of Force (October 16, 2017 effective version)<sup>2</sup> states that "Department members may only use force that is objectively reasonable, necessary, and proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape." G03-02 also prohibits any use of force as punishment or retaliation.

CPD General Order G03-02-01: Force Options (October 16, 2017 effective version) requires CPD members to "continually assess situations and determine: (1) if any use of force is necessary; (2) the authorized force option based on the totality of the circumstances; (3) if the seriousness of the situation requires an immediate response or whether the member can employ other force options or the Force Mitigation Principles; and (4) if the level of force employed should be modified based upon the subject's actions or other changes in the circumstances. The level of force shall be de-escalated immediately as resistance decreases, provided that the member remains in control and as safety permits.

While COPA's legal analysis cites to these directives, there is no documentation to indicate if and how COPA applied these principles to its evaluation of the force Lara used against the driver. The first section of COPA's legal analysis of the allegation against Lara, which evaluates Lara's use of "stuns and pushes," reads as follows:

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<sup>2</sup> This version of the directive was in effect at the time of this incident.

January 22, 2021

In general, “pressure point” techniques, and open hand stuns are an authorized use of force option for passive resisters, active resisters, and assailants. The officers were justified in ordering [the driver] out of the car, and by both the officer’s reports, statements and the statement of [the driver] himself, [the driver] physically resisted the officers’ efforts to extract him from the car. Therefore, with respect to the stuns and pushes. The officers were justified in their actions.

COPA’s analysis does not reach whether Lara’s use of force was necessary or proportional, does not assess whether there was any change in circumstances which should have resulted in a modification of the level of force employed, and does not include an accounting of the facts which might demonstrate a consideration of the totality of the circumstances. Such facts might have included that less than two minutes elapsed from when Khan first greeted the driver until Khan and Lara entered the vehicle to forcefully remove him, that the driver was alone in the vehicle and there were three CPD members on scene, that the stop occurred in daylight, that the driver complied with the first instruction to turn off his vehicle, and that the driver kept his hands raised for most of his two minute interaction with Kahn.

2. The second section of COPA’s documented legal analysis of the allegation against Lara exclusively concerned whether Lara used a *chokehold* on the driver, which would not have been a permissible use of force against an active resister. COPA concluded that there was not clear and convincing evidence to prove whether or not the force used was a chokehold, leading to a finding of Not Sustained for the allegation that Lara used excessive force. COPA’s analysis did not consider whether the preponderance of the evidence supported a Sustained finding of excessive force based on Lara’s actions, even if it could not determine whether Lara used a chokehold based on clear and convincing evidence.

CPD General Order G03-02-01: Force Options (October 16, 2017 effective version) states that a chokehold is authorized only against an assailant when deadly force is permitted. G03-02-01 defines a chokehold as “applying direct pressure to a person’s trachea (windpipe) or airway (the front of the neck) with the intention of reducing the intake of air.”

COPA determined that it could not conclusively rule out the possibility that Lara intentionally applied a chokehold to the driver. COPA’s analysis does not, however, reach the question of whether Lara’s actions, which may or may not have constituted a chokehold, were within policy as a use of force that was objectively reasonable, necessary, and proportionate. COPA’s legal analysis rests largely on its assessment that the BWC videos did not provide clear, unobstructed images depicting “the full extent of Officer Lara’s hand position, finger location, grip, and localized pressure

applied to both sides of [the driver's] neck or throat." COPA's legal analysis on this point makes no mention of the audio captured in the BWC footage, which captures the driver's strained voice and exclamation, "I can't breathe." COPA's inability to rule out a chokehold should have prompted a second level analysis of the use of force, which considered the audio evidence and the totality of the circumstances, to determine whether the preponderance of the evidence may have supported a Sustained finding of excessive force, regardless of whether Lara's actions constituted a chokehold.

3. COPA found that the accounts of Khan, Lara, and Vale were not entirely "reliable," that the accused CPD members admitted to having watched the BWC footage together before their COPA interviews, and that there was a "likelihood" that the accused members had intentionally aligned their statements. COPA's analysis, however, provides no indication that this credibility determination factored into its overall findings regarding the use of force, and does not indicate whether COPA considered bringing any allegations related to potential false statements and/or collusion by the accused members.

COPA's legal analysis begins with the following credibility assessment:

"[I]n response to Investigators' questions regarding [the driver's] statement, 'I can't breathe,' uttered as Officer Lara's hand gripped [the driver's] neck, all three officers offered the explanation that [the driver] was likely experiencing shortness of breath or fatigue due to physical exertion from the choice to struggle with three police officers. Officers Khan and Lara both offered as supporting evidence for their explanation the assertion that they, too, had difficulty breathing due to the physical intensity of the struggle. Notably, all three officers admitted discussing the incident with one another prior to their interviews with COPA, including viewing body worn camera video together. Consequently, COPA does not find the officers' distinctly identical explanations for [the driver's] statement, 'I can't breathe,' to be reliable: more probable than the chance each officer independently derived the very same explanation for [the driver's] statement—and phrased it in markedly similar fashion—is the likelihood that the three officers came to the explanation during their admitted discussion(s) held prior to interview.

While COPA does reference the diminished credibility of Lara in its evaluation of whether Lara used a *chokehold*, it does not appear that COPA considered how the finding of diminished credibility may have affected an overall analysis of the use of force against the driver.

January 22, 2021

4. The electronic case file contains no evidence to suggest that COPA investigated or considered serving an allegation that Vale may have committed misconduct by approving Lara's TRR without initiating a disciplinary investigation regarding Lara's use of force, as reported to COPA by CPD FRU.

CPD's FRU reviewed Lara's use of force and determined the incident warranted investigation into both Lara's actions and Vale's supervisory approval of the TRR without initiating a disciplinary investigation. Neither COPA's SRI nor any other documentation in the electronic case file suggests that COPA considered serving an allegation against Vale, despite CPD FRU identifying Vale as an accused member.

Based on the foregoing, OIG recommends that COPA reopen its investigation in Log #2019-0002624 to account for the full evidentiary record, consider all relevant CPD directives, apply the prescribed standard for each of the available categories of findings, and to pursue all allegations reported to COPA. Especially in light of pressing public concern about use of force by police officers and COPA's critical role in fostering public trust in the police disciplinary system, OIG encourages COPA to ensure that its findings and analysis are thoroughly and meaningfully documented in its investigative record; gaps in that record leave room for suspicion and distrust of a critical accountability mechanism.

Please contact Chief Investigator Megan Carlson at [mcarlson@igchicago.org](mailto:mcarlson@igchicago.org) or (773) 478-8454 with any questions. Please send your response to this recommendation before a final disciplinary decision is made with respect to this investigation. OIG looks forward to COPA's response.

Respectfully,



Deborah Witzburg  
Deputy Inspector General for Public Safety  
Office of Inspector General

cc: Joseph Ferguson, Inspector General, OIG  
Megan Carlson, Chief Investigator, Public Safety, OIG  
Nathaniel Wackman, Associate General Counsel for Public Safety, OIG  
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Chief Karen Konow, Bureau of Internal Affairs, CPD