

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / Time of Incident:	June 28, 2019, approximately 3:41 a.m.
Location of Incident:	At or near 2202 N. Kimball Avenue, Chicago, Illinois
Date / Time of COPA Notification:	June 28, 2019, approximately 6:26 a.m.

On June 28, 2019, at approximately 3:41 a.m., Chicago Police Department (“CPD”) Officers Jose Troche-Vargas (“Officer Troche-Vargas”) and Victor Perez (“Officer Perez”) arrested [REDACTED] ([REDACTED]) at or near 2202 North Kimball Avenue in Chicago.¹ A CPD lieutenant initiated this investigation after he viewed body-worn camera (“BWC”) footage captured by Officer Perez.² According to the lieutenant’s Initiation Report, that footage depicted Officer Troche-Vargas verbally abusing [REDACTED].³ Following an investigation, The Civilian Office of Police Accountability (“COPA”) reached findings of sustained against Officer Troche-Vargas.

II. INVOLVED PARTIES

Involved Officer #1:	Jose Troche-Vargas Star #6430, Employee ID# 111659, Date of Appointment: October 31, 2012, Rank: Police Officer, Unit of Assignment: 014, DOB: March 14, 1982, M/WWH
Involved Officer #2:	Victor Perez Star #7383, Employee ID# 121393, Date of Appointment: August 16, 2017, Rank: Police Officer, Unit of Assignment: 014, DOB: April 17, 1995, M/WWH
Involved Individual #1:	[REDACTED] DOB: June 23, 1990, M/W

¹That altercation is depicted in body-worn camera footage. See Attachment #2. COPA has not alleged misconduct on the part of either officer in connection with that physical altercation or in connection with [REDACTED] resulting arrest.

²See Attachment #1.

³See id.

stated to [REDACTED] “fuck you,” and/or he called him “mother fucker” or words to that effect, and/or he called him “bitch.”
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IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6, CPD Rules of Conduct (prohibiting the violation of an order or directive)
2. Rule 8, CPD Rules of Conduct (prohibiting unjustified verbal altercations)
3. Rule 9, CPD Rules of Conduct (prohibiting disrespect or maltreatment)

Special Orders

1. Special Order S03-14 (effective date April 30, 2018)

V. INVESTIGATION

a. Interviews

Officer Jose Troche-Vargas

Officer Troche-Vargas gave an audio recorded statement to COPA investigators on October 3, 2019.⁴ Prior to posing any questions to Officer Troche-Vargas, COPA provided the officer with an opportunity to review relevant BWC footage. In material summary, Officer Troche-Vargas then responded to questions by admitting that he had stated the offending words at issue, as alleged, except that Officer Troche-Vargas denied that he had said the word, “nigger,” stating that he had instead stated the word “nigga.”⁵ Officer Troche-Vargas also admitted that he had been unprofessional, that his conduct violated CPD rules, and that he had mistreated or maltreated the person that he had been addressing.⁶ Officer Troche-Vargas also acknowledged that Officer Perez did not state any of the offending words at issue.⁷

Officer Troche-Vargas further stated that his conduct was “wrong totally.”⁸ Officer Troche-Vargas responded to questions seeking an explanation for his conduct by describing provocative threats of violence made by [REDACTED] which preceded Officer Troche-Vargas’s outburst.⁹ Officer Troche-Vargas also stated that that he was “in extreme pain” at the time that he berated [REDACTED] as he had only moments before injured a hand during his physical altercation with [REDACTED].¹⁰

⁴Attachments ## 13 & 14 comprise an audio recording of that statement; Attachment #15 is a transcript.

⁵Attachment #15, p. 10, line 12, through p. 12, line 20.

⁶*Id.*, p. 13, line 4, through p. 14, line 1.

⁷*Id.*, p. 11, line 21, through p. 12, line 1.

⁸*Id.*, p. 17, line 2.

⁹*Id.*, p. 18, line 1, through p. 19, line 1; p. 20, line 7 through p. 24, line 4.

¹⁰*Id.*, p. 18, lines 11 - 13.

Officer Troche-Vargas also stated that his “adrenaline was going” and that he was “exhausted” at the time.¹¹ According to Officer Troche-Vargas, all of those factors “took me out of my character.”¹²

Officer Troche-Vargas acknowledged that he failed to activate his BWC at any part of the events at issue.¹³ Officer Troche-Vargas responded to a question seeking an explanation for his failure to activate his BWC by claiming to have forgotten to do so, citing fast moving events, and by acknowledging that his failure was “an error.”¹⁴

Officer Jose Perez

Officer Perez gave an audio recorded statement on September 9, 2019.¹⁵ Prior to the commencement of the statement, COPA provided Officer Perez with an opportunity to review relevant BWC footage. In material summary, Officer Perez then responded to questions by denying that he had stated any of the offending words at issue.¹⁶

b. Digital Evidence

BWC Footage

BWC Footage captured by Officer Perez¹⁷ depicts Officer Perez and another uniformed CPD officer (later determined to be Officer Troche-Vargas) drive upon and stop at the scene of a street disturbance at 3:40:48 on June 28, 2019. The footage then depicts the officers engaging in a physical struggle with an arrestee (later determined to be ██████████) along with other CPD officers who have arrived at the scene. The footage then depicts Officers Perez and Troche-Vargas escort ██████████ to their CPD vehicle. At 3:41:52 a.m., as they walk with ██████████ one of the officers can be heard stating “fuck you” to the ██████████ and calling him “mother fucker” and a “bitch.” Subsequently, at 3:43:54 a.m., as Officers Perez and Troche-Vargas are transporting ██████████ one of the officers can be heard verbally engaging with ██████████ saying, among other things, “You’re lucky I have a camera on me or I would fuck you up,” “mother fucker,” “bitch,” “I don’t need no fucking badge; I don’t need no fucking gun; I will beat your mother fucking ass, bitch,” “shut the fuck up,” and “I’m not the one to fuck with, I’ll tell you that right now, nigger.

¹¹Id., p. 18, lines 11 - 13, 24.

¹²Id., p. 18, line 24, through p. 19, line 1.

¹³Id., p. 21, line 24, through p. 25, line 1; p. 24, lines 5 – 10.

¹⁴Id., p. 26, lines 4 -11.

¹⁵Attachments ##8 & 9comprise an audio recording of that statement.

¹⁶Id.

¹⁷Attachment #2.

c. Documentary Evidence

Initiation Report

In the Initiation Report that originated this investigation, CPD Lt. Andrew Block alleged that BWC footage captured by Officer Perez depicted Officer Troche-Vargas verbally abusing an arrestee during transport.¹⁸

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.

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

Officer Troche-Vargas

Allegation #1 against Officer Troche-Vargas is supported by a preponderance of the evidence, including the officer's admissions to have committed the conduct alleged, as well as his admissions

¹⁸Attachment #1.

that such conduct involved maltreatment and that such conduct was not justified. Allegation #1 against Officer Troche-Vargas is therefore sustained.

Allegation #2 against Officer Troche-Vargas is also supported by a preponderance of the evidence, including the officer's admission that he failed to activate his BWC at any time during the incident that led to this investigation. CPD Special Order S03-14 required activation of BWC during the incident because (1) the incident involved an encounter with the public that became adversarial,¹⁹ (2) it involved a use of force,²⁰ (3) it involved an arrest,²¹ and (4) it involved an arrestee transport.²² Allegation #2 against Officer Troche-Vargas is therefore sustained.

Officer Perez

Allegation #1 against Officer Perez is unfounded, in that, clear and convincing evidence shows that it was Officer Troche-Vargas alone who stated the offending words at issue. Both officers denied that Officer Perez had said any of the offending words. Their denials are particularly credible in that they are supported by Lt. Block's determination that it was Officer Troche-Vargas who stated the words at issue. According to his Initiation Report, Lt. Block made that determination after having reviewed the relevant BWC footage and after having interviewed both officers.²³

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Troche-Vargas

- i. **Complimentary and Disciplinary History:** Attendance Recognition Award, 1; Complimentary Letter, 2; Department Commendation, 1; Honorable Mention, 16. No applicable disciplinary history within the past 5 years.
- ii. **Recommended Penalty, by Allegation**

Allegation No. 1: Officer Jose Troche-Vargas verbally maltreated [REDACTED] in that: Officer Jose Troche-Vargas stated to [REDACTED] "you're lucky I have a camera on me or I would fuck you up," or words to that effect; and/or Officer Jose Troche-Vargas called [REDACTED] "mother fucker" or words to that effect; and/or Officer Jose Troche-Vargas called [REDACTED] "bitch" or words to that effect; and/or Officer Jose Troche-Vargas stated to [REDACTED] "I don't need no fucking badge; I don't need no fucking gun; I will beat your mother fucking ass, bitch," or words to that effect; and/or Officer Jose Troche-Vargas stated to [REDACTED] "shut the fuck up," or words to that effect; and/or Officer Jose Troche-Vargas stated to [REDACTED] "I'm not the one to fuck with, I'll

¹⁹CPD Special Order S03-14 (effective date April 30, 2018), Section III.A.2.p.

²⁰*Id.*, Section III.A.2.g.

²¹*Id.*, Section III.A.2.f.

²²*Id.*, Section III.A.2.q.

²³See Attachment #1.

tell you that right now, nigger,” or words to that effect. **Penalty:** 180 – Day Suspension

Allegation No. 2: Officer Jose Troche-Vargas failed to record a law enforcement activity with his body worn camera as required by Chicago Police Department Special Order S03-14. **Penalty:** Violation Noted

Officer Troche-Vargas’s verbal outburst was cruel, inexcusable, and unbecoming of a member of the Chicago Police Department. At the time of the outburst, [REDACTED] was detained, cuffed, and silently sitting in the back of a police vehicle during transport. Absent any provocation, Officer Troche-Vargas’ self-control was nonexistent as the officer shouted threats of violence and racial epithets at [REDACTED]. Such a defect in judgment by Officer Troche-Vargas requires our 180 – Day suspension, particularly when considering the officer’s outburst occurred at a time following ample opportunity to “cool down.” Finally, COPA asks that the department consider Officer Troche-Vargas’ current and future assignments and explore future training which may help Officer Troche-Vargas establish a level of self-control required by any officer.

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	stated to [REDACTED] "fuck you," and/or he called him "mother fucker" or words to that effect, and/or he called him "bitch."	
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Approved:



Andrea Kersten
Deputy Chief Investigator

February 27, 2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	3
Investigator:	Francis Tighe
Supervising Investigator:	Matthew Haynam
Deputy Chief Administrator:	Andrea Kersten