

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 9, 2021
Time of Incident:	5:50 p.m.
Location of Incident:	703 N. Austin Boulevard
Date of COPA Notification:	May 9, 2021
Time of COPA Notification:	9:32 p.m.

While conducting a Tactical Response report investigation, Lieutenant Samuel Muniz reviewed the body-worn camera footage of the officers on-scene during [REDACTED] arrest. The recordings from the body-worn cameras assigned to Officer Osvaldo Gonzalez and Kathleen Gribbon showed Sergeant Michael Holmes punching [REDACTED] three times while [REDACTED] was handcuffed and laying in the back of a police van.

II. INVOLVED PARTIES

Involved Officer #1:	Name: Michael Holmes; Star: 1599; Employee ID: [REDACTED]; Date of Appointment: August 28, 2006; Rank: Sergeant; Unit of Assignment: 015; DOB: [REDACTED], 1978; Gender: Male; Race: White.
Subject #1:	Name: [REDACTED] DOB: [REDACTED], 1992; Gender: Male; Race: Black.

III. ALLEGATIONS

Officer	Allegation	Finding
Sgt. Michael Holmes	1. It is alleged that on May 9, 2021, at approximately 5:50 p.m., at 703 N. Austin Boulevard, Sergeant Michael Holmes, #1599 repeatedly punched [REDACTED] about his face, while handcuffed, without justification.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

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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 to or maltreatment of any person.
 3. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
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General Orders

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

V. INVESTIGATION

a. Interviews

During a telephone conversation with COPA on May 17, 2021, ██████████ (██████████) declined to be interviewed.

During a telephone conversation with COPA on May 14, 2021, ██████████ mother, ██████████ (██████████) stated that on the day of this incident ██████████ was angry because of an earlier argument he had with his girlfriend, ██████████ also added that ██████████ was extremely intoxicated. Because of ██████████ hostility towards her, ██████████ told him he had to leave her home. ██████████ became angrier and damaged the door to her apartment and to her living room's window, at which point ██████████ telephoned 911 for help. ██████████ stated that a lot of uniformed police officers arrived in response to her 911 call. The officers attempted to speak to ██████████ but he directed his hostility toward the officers. ██████████ stated that the officers subsequently forced ██████████ to the ground, handcuffed him, and placed him into the back of a police van. ██████████ stated that she never saw any police officers strike or punch ██████████

In a statement to COPA on July 28, 2021, **Officer Bryan Casey**² stated that he and his partner, Officer Gribbon, responded to a call for assistance made by Officer Widmann and Officer Teper, who were assigned to a domestic disturbance. Officer Casey stated that Officer Widmann and Officer Teper broadcast over the police radio that ██████████ was at his mother's house and began destroying her property, including several apartment doors. Officer Casey stated that when he first arrived at the incident location, he saw several other police units already on scene. Officer Casey also saw ██████████ enter a family member's vehicle. ██████████ was then driven away from the scene by an unidentified family member. Officer Casey stated that as the officers spoke with ██████████ mother, the vehicle ██████████ was traveling in returned to the scene. Officer Casey stated that he and Officer Gribbon were about to leave the scene when he saw ██████████ return.

Officer Casey stated that ██████████ exited the vehicle and approached the officers. Officer Casey stated that ██████████ was aggressive and hostile towards the officers in that he threatened to kill the officers. Officer Casey stated that ██████████ family members had to hold him back to prevent him from getting at the officers. According to Officer Casey, none of the officers engaged verbally

¹ Attachment 41.

² Attachment 93.

or physically with █████ up to this point. Officer Casey explained that █████ mother told the officers she just wanted a report and did not want █████ arrested.

Officer Casey stated that Sergeant Holmes arrived on-scene, at which time █████ got past the family members holding him back and got into Sergeant Holmes' face. █████ was then pulled back by his family members. Officer Casey stated that █████ then fixated on him and explained, █████ fixated on me and, oh, you look tough, and started threatening me. He pushed past his family member and lunged towards me with closed fists. So I shoved him back and told him that he needed to get back. He came at me again with closed fists and verbatim said, 'I'm going to punch you in your shit.' And at that point Sergeant Holmes, myself, and probably a couple of other officers, we grabbed him to detain him at that point, he started, kind of, fighting back against us."³

Officer Casey stated that █████ continued to fight back and resist the officers' attempts to take him into custody by pulling away from them, swinging his arms, and grabbing onto a fence. Officer Casey stated that he, Sergeant Holmes, as well as other officers performed an emergency takedown and forced █████ to the ground. Officer Casey stated that he backed off at that point and saw █████ attempting to kick the officers as they attempted to pull his arms behind his back to handcuff him. Officer Casey added that other officers were able to place shackles onto █████ legs. Officer Casey stated that after █████ was forced to the ground, he did not have any further physical contact with █████ on the day of this incident.

Officer Casey stated that officers then escorted █████ to a police van that was parked nearby by on Austin Boulevard. Officer Case explained that as Sergeant Holmes and Officer Tomasz Sas struggled to place a still struggling █████ into the police van, █████ threatened and spit on them. Officer Casey stated that █████ spit on him, striking him on the right side of his face. As the officers struggled to get █████ into the police van, Officer Casey focused his attention on the civilians that had gathered nearby. Officer Casey stated that he was focused on keeping the family back. Officer Casey stated that Sergeant Holmes and Officer Sas were eventually able to get █████ into the police van, at which point █████ was transported from the scene directly to Loretto Hospital.

In a statement to COPA on May 27, 2021, **Officer Kathleen Gribbon**⁴ related essentially the same information that was contained in Officer Bryan Casey's statement. Officer Gribbon also stated that throughout the entire incident █████ was extremely agitated and hostile towards the officers on scene. Officer Gribbon stated that after other officers forced █████ to the ground, she and Officer Teper shackled his legs while the other officers handcuffed his hands behind his back. Officer Gribbon stated that █████ continued to fight with the officers and aggressively resisted the officers' attempts to place and secure him inside the police van. Officer Gribbon explained, "That's when he tries - - he tries to slide out, he wasn't getting in, I was trying to get his feet in. There was a crowd behind me yelling and screaming. That's when I was looking over, I was focused on not getting kicked by him because he was kicking his feet. And I was focused on somebody not coming up behind me. For officer safety."⁵ Officer Gribbon stated that █████ was eventually secured inside the police van. Sergeant Holmes directed officers to take █████ from the location

³ *Id.* at p. 13, Lines 3-14.

⁴ Attachment 72.

⁵ *Id.* at p. 23, Lines 15-22.

of incident to Loretto Hospital. Officer Gribbon stated that she and her partner, Officer Casey, followed the police van in a separate vehicle to the hospital.

Officer Gribbon explained that although her body-worn camera recorded when Sergeant Holmes punched ██████ she did not see him strike ██████ Officer Gribbon stated that she did not see ██████ strike Sergeant Holmes. Officer Gribbon added that she did not know why Sergeant Holmes struck ██████ Officer Gribbon later learned that ██████ spat on Sergeant Holmes.

In a statement to COPA on July 28, 2021, **Officer Tomasz Sas**⁶ related essentially the same information as Officer Casey and Officer Gribbons. Officer Sas stated that during the struggle to handcuff ██████ his and Sergeant Holmes' body-worn cameras were knocked off their vests. Officer Sas added, "And after he was restrained with handcuffs and the shackles is when he began to make threats that he was going to spit on us."⁷ Officer Sas stated that he and Sergeant Holmes attempted to place ██████ into the police wagon, but he resisted and refused to get in. During the struggle to get ██████ into the police van ██████ threatened to spit on Sergeant Holmes. Officer Sas stated that Sergeant Holmes responded to ██████ threat by saying, "Hey, man, don't spit or I'm going to have to hit you."⁸ ██████ then spit on Sergeant Holmes, at which point Sergeant Holmes struck him on his face. Officer Sas stated that ██████ spit on Sergeant Holmes a second time and Sergeant Holmes responded by striking him on his face a second time. ██████ then calmed down and allowed the officers to place him into the police van. Once the van's door was closed ██████ spit on Sergeant Holmes and Officer Sas through the window. Officer Sas explained that ██████ became an assailant when he pushed Officer Casey and when he repeatedly spit on Sergeant Holmes.

In a statement to COPA on August 5, 2021, **Officer Jesus Valdovinos**⁹ related essentially the same information as the other involved officers as well as the related Department reports. Officer Valdovinos stated that as ██████ resisted Sergeant Holmes' and Officer Sas' attempts to get him into the police van, he heard one of them repeatedly order ██████ to stop spitting. Officer Valdovinos did not know who told ██████ to stop spitting. Officer Valdovinos stated that he never saw ██████ spit on anyone, and he did not see Sergeant Holmes strike ██████ in any way. Officer Valdovinos and his partner, Officer Delannoy, transported ██████ from the location of his arrest to Loretto Hospital, and then subsequently to the 015th District Station for processing.

In a statement to COPA on August 4, 2021, **Officer Leopoldo Delannoy**¹⁰ related essentially the same as Officer Valdovinos and the other involved officers. Officer Delannoy stated that he did not see ██████ spit on Sergeant Holmes, nor did he see Sergeant Holmes punch ██████

In a statement to COPA on November 18, 2021, **Sergeant Michael Holmes**¹¹ stated that on the day of this incident he was assigned as 015th District Field Sergeant. According to Sergeant Holmes, he proceeded to 703 N. Austin Boulevard after Beat 1513¹² broadcast over the police radio for additional police units. Sergeant Holmes recalled that the officers responded to a domestic

⁶ Attachment 92.

⁷ *Id.* at p. 18, Lines 6-8

⁸ *Id.* at p. 22, Lines 23-24.

⁹ Attachment 94.

¹⁰ Attachment 95.

¹¹ Attachment 99.

¹² Officer Joshua Widmann and Officer Alicja Tepar.

altercation at the aforementioned address. Sergeant Holmes stated that several other units arrived on scene before he did, and those officers informed him that the incident involved ██████ causing property damage to his mother's property, that his mother did not want to sign a complaint against ██████ or have him arrested. Sergeant Holmes added that the officers informed him that an unidentified family member of ██████ was allowed to drive him away from the scene of this incident.

About three or four minutes later, without warning, ██████ returned to the location of incident and approached Sergeant Holmes. Sergeant Holmes stated that ██████ was shirtless and extremely agitated. As he approached Sergeant Holmes, ██████ had his fists clenched, directed profanity at Sergeant Holmes, and threatened Sergeant Holmes. Sergeant Holmes could not recall what ██████ said when he threatened him. Sergeant Holmes stated that ██████ got within arm's length of him, at which point he shoved ██████ with one hand to create distance from him. ██████ then backed away from Sergeant Holmes.

Sergeant Holmes stated that he then approached ██████ mother¹³ to ascertain whether ██████ was having a mental health crisis or if he was under the influence of a substance that could explain his hostile behavior. Sergeant Holmes stated that he wanted to determine whether ██████ needed some type of medical attention or if this situation was more criminal in nature. ██████ informed Sergeant Holmes that she believed ██████ to be bipolar and that he had been involved in a domestic altercation with his girlfriend. While Sergeant Holmes spoke with ██████ became combative with Officer Casey. Sergeant Holmes stated that ██████ threatened to physically harm Officer Casey and maneuvered his body in a such a way that led Sergeant Holmes to believe ██████ was about to attack Officer Casey. Sergeant Holmes stated that at that point ██████ needed to be secured and handcuffed to prevent him from harming anyone.

Sergeant Holmes stated that he and the other officers then grabbed ██████ who struggled against the officers' attempt to handcuff him. During the struggle Sergeant Holmes' body-worn camera was knocked from his protective vest. Sergeant Holmes was not sure how that occurred. Sergeant Holmes and the other officers were able to force ██████ to the ground and placed him in handcuffs. After he was handcuffed Sergeant Holmes and other officers positioned ██████ on his side to make it easier for him to breathe as they attempted to calm him down. Instead of calming down, ██████ threatened to spit on Sergeant Holmes. ██████ then maneuvered his head and made a motion as if he were about to spit on Sergeant Holmes, who responded by striking ██████ once on his mouth. According to Sergeant Holmes, ██████ immediately ceased his actions. Sergeant Holmes explained, "He stops. He resists for like a good minute. He's, I wouldn't say calm but shocked. Then we try to get him into the wagon, he's still kicking, trying to get free. We manage to get them towards the wagon, but unfortunately is a van style, it's not the big truck that we could walk somebody into. The van is - - it's problematic. It's a small compartment, it's hard to get him in, and he wedges himself into where the feet should be. The floor panel and he isn't cooperating enough to get into the van into a proper seated position."¹⁴

Sergeant Holmes described ██████ as extremely combative as he and the other officers attempted to get him into the police van. ██████ was able to wedge himself on his side between the

¹³ NKA ██████

¹⁴ Attachment 99 at p. 30, Lines 7-18.

front and rear bench seats of the van with his feet hanging out the side door. Sergeant Holmes explained that due to the size of the opening of the van's side door, only he and Officer Sas were able to get close enough to ██████ upper body to attempt to maneuver him into the van. As the officers continued to struggle with him, ██████ again threatened to spit on Sergeant Holmes. Sergeant Holmes explained that because he was near ██████ in a confined space with very little room to move to avoid being spat on, Sergeant Holmes struck ██████ mouth with a closed fist to prevent ██████ from making good on his threat to spit on him. Sergeant Holmes described the punch as a "very quick jab."¹⁵ Sergeant Holmes stated that ██████ repeated his attempts to spit on Sergeant Holmes two more times, and both times Sergeant Holmes punched him on his mouth. Sergeant Holmes stated that each time he punched ██████ he was only trying to get him to close his mouth to keep him from spitting on Sergeant Holmes. According to Sergeant Holmes, they were eventually able to get ██████ into the police van. After the van's doors were closed, ██████ spat on Sergeant Holmes through the grated window.

Sergeant Holmes stated that after ██████ was secured in the police van, he instructed the officers to transport him to Loretto Hospital because he had been struck and for a possible psychiatric evaluation. ██████ was subsequently medically cleared by Loretto Hospital's staff. Hospital personnel did not find any sign of ██████ having a mental health episode.

██████ was subsequently charged with battery for spitting on Sergeant Holmes. Sergeant Holmes stated that ██████ actions classified him as an assailant. Sergeant Holmes stated that the force he used against ██████ was to deter ██████ from battering him. Regarding his use of force, Sergeant ██████ added, "It wasn't to inflict pain or harm. It was just to - - it was the only way with the space and time I had to close his mouth to prevent the battery."¹⁶

b. Digital Evidence

According to the **Office of Emergency Management and Communications (OEMC) Recordings**,¹⁷ the first call to 911 came from a female subject who identified herself as ██████ mother. The caller stated that her son was drunk and tearing up her apartment. The caller explained that ██████ busted out her apartment's windows and damaged her apartment door. She informed OEMC that ██████ was wearing a blue shirt.

The second call to 911 came from an unidentified caller who reported that a male black subject was breaking the windows of an apartment building on Austin Avenue by throwing bricks at the windows. This caller stated that the male black subject was wearing a blue shirt and jeans.

A third unidentified caller to 911 reported that her neighbor's son broke her windows and was causing a commotion outside. The third 911 caller described her neighbor's son as a dark-skinned male black subject who was shirtless and wearing black pants with red and white stripes on the sides.

¹⁵ *Id.* at p. 36, Line 22.

¹⁶ *Id.* at p. 49, Lines 19-22.

¹⁷ Attachments 42, 44, 46, 48.

The recordings from the related **Body-Worn Cameras**¹⁸ showed unidentified civilians telling the responding officers that ██████ broke a window. ██████ could be heard repeatedly threatening and directing profanity at the civilians and responding officers. ██████ repeatedly threatened to batter the police officers, at which point the officers requested additional officers to respond to the scene. A woman who claimed to be ██████ mother repeatedly told him to stop directing profanity at the officers. The officers allowed ██████ to leave the scene with a person identified as his cousin. ██████ got into his cousin's car and was driven away from the scene.

After ██████ left the scene, his mother told the officers that he was diagnosed with ADD and that she believed he was also bipolar. Other civilians explained to the officers that ██████ was drunk and that he broke several windows and a door. They also told the officers that they appreciated the officers.

A few moments later, ██████ returned to the scene and continued his aggressively offensive behavior towards the officers. ██████ repeatedly threatened to kill the officers while his cousin had to again place himself between ██████ and the officers to prevent him from getting too close to the officers. ██████ mother told Sergeant Holmes that she did not want him arrested and only wanted him to leave her residence. ██████ broke free from his cousin's grasp and ran towards Officer Casey, who pushed him back. Officer Casey ordered ██████ to back away. ██████ then threatened to punch Officer Casey and continued to act in an aggressive and hostile manner. Several of the officers then grabbed ██████ and forced him to the ground on the parkway. ██████ resisted the officers' attempts to place him in handcuffs while repeatedly directing profanity and threats at the officers. Several times ██████ threatened to spit on the officers.

After ██████ was restrained, he continued to resist by refusing to allow the officers to place him into the police van. The officers repeatedly ordered him to stop resisting, but ██████ continued to jerk and push his body away from the officers. ██████ repeatedly threatened to spit on the officers. ██████ repeatedly made a hocking noise, indicating that he was attempting to produce enough saliva and phlegm to spit, at which point Sergeant Holmes punched him about his face. During this episode, ██████ threatened to spit on the officers, and Sergeant Holmes struck him about the face repeatedly. The officers were eventually able to secure ██████ inside the police van. Sergeant Holmes instructed the officers to take ██████ to the hospital.

Evidence Technician Photographs¹⁹ depict ██████ a small laceration to the left side of ██████ lower lip. The photographs did not show any obvious injury to Sergeant Michael Holmes.

c. Documentary Evidence

The related **Department Reports**²⁰ provided essentially the same account of events as the involved officers in their statements to COPA.

¹⁸ Attachments 14 – 38.

¹⁹ Attachments 52-66.

²⁰ Attachments 4-10.

In his **Tactical Response Report (TRR)**²¹, Sergeant Holmes indicated that ██████ did not follow verbal direction, made verbal threats, pulled away, presented an imminent threat of battery, and physically attacked without a weapon. Sergeant Holmes further indicated that he used member presence, verbal direction, move to avoid attack, handcuffs, a take down, closed hand strikes, and push/physical redirection when dealing with ██████ Lieutenant Robert Waterstraat reviewed Sergeant Holmes' TRR and found that his use of force was not in compliance with Department policy and directives.

VI. ANALYSIS

Allegation #1, that on May 9, 2021, at approximately 5:50 p.m., at 703 N. Austin Boulevard, Sergeant Michael Holmes repeatedly punched ██████ about his face, while handcuffed, without justification, is **Sustained**.

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable, necessary, and proportional in light of the totality of the circumstances faced by the officer.²² The factors to be considered in assessing the reasonableness of force include, but are not limited to: (1) whether the person was posing an immediate threat to the safety of officers or others; (2) what risk of harm and level of threat or resistance is presented by the person; (3) what is the person's proximity or access to weapons; (4) whether de-escalation techniques can be employed or would be effective; and (4) the availability of other resources.²³ In all uses of force, the goal of a Department member's response is to resolve the incident "with the foremost regard for the preservation of human life and the safety of all persons involved."²⁴

As mentioned above, the primary question in reviewing use of force incidents is whether an officer's actions were reasonable based upon the totality of the circumstances. The circumstances may further limit these permissible responses to only that which is necessary, by using "the minimum amount of force needed to provide for the safety of any person or Department member, stop an attack, make an arrest, bring a person or situation under control, or prevent escape."²⁵ Responses must also be "proportional to the threat, actions, and level of resistance offered by a person."²⁶

The force that Sergeant Holmes used is classified by the Chicago Police Department as a "direct mechanical technique," which is a "forceful, concentrated striking movement[] such as punching and kicking"²⁷ Pursuant to CPD Directives, direct mechanical strikes may only be used against a subject who is labeled as an "assailant."²⁸ An assailant is "a person who is using or threatening the use of force against another person . . . which is likely to cause physical injury."²⁹ When ██████ threatened to spit on Sergeant Holmes, he was unarmed, handcuffed and on his back

²¹ Attachment 7.

²² See General Order G03-02, Use of Force, § (III)(B)(1)-(3).

²³ *Id.* § (III)(B)(1).

²⁴ *Id.* § (II)(A).

²⁵ *Id.* § (III)(B)(2).

²⁶ *Id.* § G03-02(III)(B)(3).

²⁷ General Order G03-02-01, Response to Resistance and Force Options, § (IV)(C)(1)(a).

²⁸ *Id.* § (IV)(C).

²⁹ *Id.*

inside a police van. Any threat that could have been posed by him was substantially minimized. He was restrained and in the presence of Sergeant Holmes, with numerous other Department members standing nearby.

COPA recognizes that ██████ was criminally charged with battery for spitting at Department members. However, the battery committed by ██████ was not a use of force or threatened use of force which would render him an assailant as defined by the directives quoted above. Spitting can be considered a battery, but Illinois law recognizes two distinct categories of battery: the first type involves causing bodily harm to an individual, and the second type involves making contact of an insulting or provoking nature with an individual.³⁰ Only the first type of battery, involving bodily harm, implicates the definition of “assailant” found in the Department’s use-of-force directives. Illinois courts have consistently held that an offender spitting on a police officer has committed the “insulting or provoking” type of battery,³¹ and the United States Court of Appeals for the Seventh Circuit has held that the insulting-or-provoking form of the Illinois battery statute is not a crime of violence for purposes of a federal sentencing enhancement.³²

None of this suggests that Sergeant Holmes was obligated to allow ██████ to spit on him. To the contrary, Sergeant Holmes could use reasonable force to prevent ██████ from spitting and could have enlisted assistance from fellow officers on scene. However, ██████ conduct would properly be classified as active resistance, and direct mechanical techniques, such as punching with a closed fist, are not authorized for use against active resisters.³³ Further, even if Sergeant Holmes classified ██████ as an assailant, this would not automatically allow Sergeant Holmes to punch ██████. Instead, Sergeant Holmes actions would still be constrained by the requirement to use force in an objectively reasonable, necessary, and proportional manner, in light of the totality of the circumstances. Given that ██████ was handcuffed and laying on his back in the police van, punching him was not objectively reasonable, necessary, or proportional, regardless of his classification under the rubric created by the Department’s use-of-force directives.

Therefore, COPA concludes that Sergeant Holmes’ repeated closed-fist strike to ██████ face was excessive. It was an objectively unreasonable and unnecessary tactic that was disproportional under the totality of the circumstances. As such, Allegation #1 against Sergeant Holmes is **Sustained**.

³⁰ See 720 ILCS 5/12-3(a).

³¹ See *People v. Wrencher*, 2011 IL App (4th) 080619, ¶¶ 54-55; *People v. Peck*, 260 Ill. App. 3d 812, 814-15 (1994).

³² See *United States v. Hampton*, 675 F.3d 720, 730 (7th Cir. 2012).

³³ See General Order G03-02-01, § IV.B. This order defines a “resister” as “a person who is uncooperative,” and further defines an active resister as “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid physical control and/or defeat the arrest.” Within the framework created by General Order G03-02-01, ██████ is best characterized as an active resister because he was uncooperative when ordered to stop spitting inside the police van and because he spat at Sergeant Holmes with the apparent intent to either force Sergeant Holmes to retreat or to avoid physical control.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Sergeant Holmes

i. Complimentary and Disciplinary History

Sergeant Holmes has received seventy-three (73) various awards, including sixty-two Honorable Mentions. He has no disciplinary history in the last five years.

ii. Recommended Penalty

Sergeant Holmes used excessive force against [REDACTED] while he was restrained. Sergeant Holmes did not take responsibility for his misconduct and instead attempted to justify his actions. In addition, Sergeant Holmes was acting in a supervisory role at the time and committed this misconduct in front of officers he was responsible for supervising. In light of these circumstances, COPA recommends a minimum 90-day suspension for Sergeant Holmes.

Approved:

[REDACTED]

11/3/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date