

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 1, 2017
Time of Incident:	7:25 p.m.
Location of Incident:	1242 N. Harding Avenue, Chicago, IL (the address 1243 N. Harding Avenue is also used in CPD reports)
Date of COPA Notification:	October 16, 2018
Time of COPA Notification:	2:03 p.m.

On October 1, 2017, the Complainant, [REDACTED] allegedly trafficked drugs at 1148 N. Pulaski Road and was observed by officers conducting surveillance operations in the area. The officers approached [REDACTED] in their unmarked patrol car causing [REDACTED] to flee. In his flight, [REDACTED] allegedly battered an officer and began climbing on top of garage rooftops to elude the officers. Officers eventually found [REDACTED] lying on the garage rooftop of either 1242 or 1243 N. Harding Avenue. At some point thereafter, Officer Efrain Chavez climbed atop the garage rooftop and commanded [REDACTED] to stop.

Officers at ground level surrounded [REDACTED] while Officer Chavez drew and discharged his Taser. [REDACTED] fell onto the rooftop and started to slide off its edge. Officer Chavez grabbed [REDACTED] which slowed his falling momentum. The officers at ground level then grabbed [REDACTED] as he came off the roof. The officers handcuffed [REDACTED] and placed him under arrest. Subsequently, [REDACTED] initiated the complaint to COPA.

II. INVOLVED PARTIES

Involved Officer #1:	Efrain Chavez, Star #15159, Employee ID # [REDACTED], Date of Appointment: April 25, 2016, Police Officer, Unit of Assignment: 11 th District, DOB: [REDACTED], 1991, Male, Hispanic
Involved Officer #2:	Unknown
Subject #1:	[REDACTED] DOB: [REDACTED], 1989, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Efrain Chavez	1. It is alleged that on October 1, 2017, at approximately 6:35 pm, at or near the vicinity of 1148 N. Pulaski Road, Officer Chavez used	EXONERATED

	excessive force against the Complainant [REDACTED] [REDACTED] by discharging a Taser that struck his person while he was atop a garage, causing injury.	
Unknown Officer	1. It is alleged that on October 1, 2017, at approximately 6:35 pm, at or near the vicinity of 1148 N. Pulaski Road, an unknown officer used racially offensive language against the Complainant and threatened to throw the Complainant off the top of a garage.	NOT SUSTAINED

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
2. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
3. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
4. Rule 6: Disobedience of an order or directive, whether written or oral.
5. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
6. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

General Orders

1. General Order G01-01¹
2. General Order G03-02²
3. General Order G03-02-02³

Federal Laws

1. 4th Amendment to the U.S. Constitution

¹ Vision, Mission Statement, and Core Values, effective March 1, 2011

² Use of Force Guidelines, effective October 1, 2002

³ Force Options, effective January 1, 2016

State Laws

1. Illinois Constitution 1970, Art. I, §6

V. INVESTIGATION**a. Interviews**

In an interview with COPA on March 1, 2019,⁴ ██████████ the Complainant, said that on the date of the incident, he was standing on Pulaski Road and Division Street with his cousin and friends when several police officers, who had arrived in unmarked patrol cars, approached him. One of the officers attempted to grab him, but he evaded the officer's grab, causing the officer to fall onto the hood of a patrol car. The officer was injured. ██████████ then started running north along Pulaski Road and then back down Division Street going east towards the alley of the 1200 block of North Harding Avenue. He then jumped on top of a garage. The officers looked for him for about eight or ten minutes before he was found. When asked about how he was found, ██████████ stated that witnesses began filming him with their phones. The light from a phone's camera reflected off his shoes, alerting police to his location.

██████████ continued that police officers then cornered him on the roof, ordered him to come down several times, and went up to grab him. This led ██████████ to jump onto another rooftop as he was being pursued by Officer Chavez. At that point, ██████████ saw Officer Chavez draw his Taser and shout, "I'm going to Tase you, put your hands up!" Realizing that he could fall over the edge of the roof, ██████████ put his hands up to surrender. At that point he was Tased and fell to the ground. As he was falling, his hand was caught in the gutter. ██████████ asserted that the officers grabbed his legs as he was falling but failed to stop him from hitting the ground. He was then taken to a hospital to have the Taser probes removed and to be assessed for injuries. The hospital physician prescribed him muscle relaxers.

In an interview with COPA on August 21, 2020,⁵ **Officer Efrain Chavez** said that on the date of the incident, he was still in his probationary period and did not have an FTO (Field Training Officer) with him. He was in uniform and accompanied by a partner. Leading up to the incident, Officer Chavez was on routine patrol when he received a call for assistance for a foot pursuit. The message that came over the radio stated that the person being pursued was seen selling narcotics. Officer Chavez and his partner drove to the location, parked, and exited their car. Officer Chavez said he was approached by a citizen who informed him that the person the police were pursuing was "that way." Officer Chavez determined "that way" meant towards the back of the residential building to which they responded. Other officers discovered ██████████ on top of the garage of that residential building. Another officer wanted to climb on top of the garage, but subsequently refused to go up. Officer Chavez then volunteered to go up because he was equipped

⁴ Attachment #18

⁵ Attachment #14

with a Taser. Officer Chavez said he commanded ██████ to stop fleeing and come down. ██████ did not say anything and kept evading Officer Chavez's movements to apprehend him.

Officer Chavez said he determined that ██████ was an active resister at that point. Officer Chavez said he knew that he himself could be injured if he continued to pursue ██████. Officer Chavez said that before he drew his Taser, he warned ██████ saying, "Hey, you're going to get Tased, bro." ██████ disregarded the warning and was subsequently Tased. ██████ then fell face forward and was about to fall off the garage but was stopped by Officer Chavez. Officer Chavez stated that ██████ did not fall off the roof because he stopped the fall. Officer Chavez added that other officers were in position on the ground to catch ██████. Officer Chavez asserted that he understood the risk posed to ██████ when he was at that height. However, Officer Chavez said, when he and ██████ jumped onto the second garage, ██████ pushed him away as part of the evasion. When they both jumped back on the original roof, Officer Chavez stated, he believed that someone was going to fall if they continued. Officer Chavez stated that the safest way to stop the encounter was to use the Taser. Officer Chavez said ██████ was not injured during the encounter.

b. Digital Evidence

Officer Chavez' body-worn camera video⁶ begins at 18:58:49 and depicts him driving to the scene of the incident. Officer Chavez enters the location of the incident through the front gate of the property and makes his way to the back through the side gangway. Other officers are already on the scene. At 19:00:38, officers in the background can be heard shouting, "Let me see your hands!" Officer Chavez then turns towards the garage's roof, and ██████ can be seen wearing a red shirt with a white, long sleeve undershirt and black pants (19:00:45). At 19:01:45, Officer Chavez climbs on top of a car in order to get on top of the garage. Once on top of the garage, Officer Chavez states, "Let me see your hands." As Officer Chavez says that ██████ can be seen jumping to the next-door garage rooftop (19:01:52). Officer Chavez pursues ██████ but ██████ is able to evade him and jumps back to the original rooftop (19:02:02). Officer Chavez jumps back on to the original rooftop. At 19:02:07, Officer Chavez draws his Taser and states, "You're going to get Tased, brother." ██████ continues to walk around the rooftop. At 19:02:10, ██████ can be seen holding his cell phone in one hand and subsequently being Tased by Officer Chavez. ██████ then falls to the roof, and Officer Chavez rushes to grab ██████ by his right arm (19:02:15). ██████ then falls to ground level. However, it cannot be seen from this viewpoint if ██████ hits the ground. What can be seen is several officers on ground level arresting ██████ (19:02:20). Officer Chavez then jumps off the side of the garage to ground level. ██████ is seen standing upright as officers search him (19:03:38). The transmission ends at 19:04:13.

Officer Warren's body-worn camera footage⁷ begins with several officers standing in the alley of the garage that ██████ is standing on (19:01:34). At least one officer at ground level

⁶ Attachment #11

⁷ Attachment #11

can be seen aiming their pistol at [REDACTED] Audio is not captured until 19:02:06. The term “Taser” can be heard several times before the Taser is actually deployed (19:02:10). At 19:02:14, Officer Chavez can be seen holding [REDACTED] before he begins to drop to ground level. As he is falling, [REDACTED] legs hit a table at ground level. However, an officer at ground partially catches [REDACTED] upper body. No profane or racially charged language can be heard.

Body-worn camera video for Officers Sweezer⁸, Egan⁹, Carter¹⁰, and Dedo¹¹ indicates that profanities were used and directed towards [REDACTED] However, the profane language was not racially charge, nor was it discriminatory in nature. The identity of the officer or officers who used the profane language was not determinable from the videos.

A third-party Facebook video¹² begins with [REDACTED] standing atop a garage. Several officers can be seen at ground level. Officers can be heard commanding [REDACTED] to come down, but [REDACTED] refuses to comply. Subsequently, an unknown officer can be heard stating, “If I have to go up there, I’m throwing you down.” At this point, an officer begins to climb up the side of the garage. Once the officer climbs to the garage’s roof, [REDACTED] jumps to another rooftop. The officer follows [REDACTED] apparently causing [REDACTED] to jump back to the garage rooftop he originally was on. After [REDACTED] returns to the first roof, officers surround the ground level. Officer Chavez can be seen holding his Taser, pointing it at [REDACTED] and then deploying the Taser. Once the Taser is deployed, [REDACTED] is immobilized, causing him to fall onto the rooftop. The angle of the rooftop apparently causes [REDACTED] to start sliding down. Officer Chavez is able to grab [REDACTED] to stop him from falling off. The officers on the ground can be seen rushing to that section of the garage to apprehend [REDACTED] The Facebook video did not record an officer using racially offensive language against [REDACTED]

c. Physical Evidence

Medical records from Norwegian Hospital¹³ note that [REDACTED] was treated there for removal of the Taser probes.¹⁴ [REDACTED] stated that he suffers from chronic pain in his neck stemming from a gunshot wound he sustained in an unrelated incident. A bullet was still retained in his neck area. Another previous injury resulted in his left forearm being fractured. [REDACTED] did not complain of other injuries related to the incident involving the officers and the Taser usage.

The medical staff noted that [REDACTED] “Fell from fence, caught by re(s)ponding officers. Did not strike neck, back, chest, abd. Patient denies chest pain...” In the examination to remove the Taser probes, the staff noted that the probes were not attached to [REDACTED] one of them was in

⁸ *Id.*,

⁹ *Id.*,

¹⁰ *Id.*,

¹¹ Attachment #33

¹² Attachment #21

¹³ Attachment #9

¹⁴ Referred to as “prongs” in the records.

his jeans pocket. ██████ had two puncture wounds on his right pelvis area. No other signs of trauma were found. ██████ was discharged at approximately 8 p.m.

d. Documentary Evidence

██████ arrest report¹⁵ indicates that ██████ was arrested at 1242 N. Harding Avenue. He was charged with manufacturing or delivery of suspected heroin near a public school, hospital, or park¹⁶; resisting or obstructing an officer¹⁷; and aggravated battery of a peace officer¹⁸. The arrest report reflects that officers were conducting surveillance when they saw ██████ participate in drug transactions. Officers then initiated a stop, and ██████ fled. A pursuing officer, M. Bonnstetter¹⁹, attempted to stop ██████ but ██████ hit him in the chest.

The arrest report indicates officers eventually found ██████ on top of a roof and attempted to get him off the roof. Officer Chavez climbed the garage and gave ██████ commands to stop. The report states, “PO Chaves in fear of receiving a battery pulled his taser device again ordering the above (██████ to comply...the above (██████ continued noncompliance at which time PO Chavez deployed taser striking the above in the lower abdomen area.” Reportedly found on the ██████ was \$10. While pursuing ██████ officers noted that he tossed an object. The officers recovered the tossed object, which contained 19 purple zip lock bags containing a white powdery substance.

The Original Case Incident Report²⁰ contains essentially the same information as does the arrest report.

The Case Supplementary Report²¹ was generated by Detective Joseph Martorano and includes his interview with Officer Chavez. Officer Chavez said he was conducting a routine patrol when he heard of the chase. He arrived at the 1200 block of Harding Avenue and began assisting in the search. The officers found ██████ on the garage rooftop and Officer Chavez volunteered to climb the garage in order to bring down ██████. Officer Chavez climbed the roof, gave verbal commands, briefly chased ██████ from rooftop to rooftop, and subsequently used his Taser. Officer Chavez said he thought ██████ was going to fall off the roof, so he grabbed him and was able to “pass him off the roof to waiting officers on the ground.”

Officer Chavez’ Tactical Response Report²² indicates ██████ did not follow verbal directions, fled, and pulled away. The tactics used by Officer Chavez were using his presence,

¹⁵ Attachment #7

¹⁶ 720 ILCS 570.0/407-B-1

¹⁷ 520 ILCS 5.0/1.22

¹⁸ 720 ILCS 5.0/12-3.05 D-4

¹⁹ Star #15963

²⁰ Attachment #8

²¹ Attachment #30

²² Attachment #15

issuance of verbal commands, and a Taser discharge. Officer Chavez noted that the usage of the Taser did not lead to any injuries to [REDACTED]. Officer Chavez was injured during the incident. Lieutenant Haro reported that Officer Chavez was injured trying to protect [REDACTED].

Officer Chavez' Injury On Duty report²³ reflects that Officer Chavez was injured when he touched one of the Taser wires, and also scraped his right knee while preventing [REDACTED] from falling.

The Taser deployment data sheet²⁴ indicates the duration of the discharge was approximately five seconds. No other deployments or discharges are noted.

The Ambulance Report²⁵ states that Ambulance #15 was dispatched at 19:04 (7:04 p.m.) to the address of the incident. This unit arrived on scene at 19:12 (7:12 p.m.) to transport [REDACTED]. [REDACTED] refused to be transported by stretcher and sat in the ambulance of his own accord. He was taken to Norwegian Hospital and arrived at 19:24 (7:24 p.m.).

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 occurred and violated 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 misconduct occurred, 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

²³ Attachment #16

²⁴ Attachment #19

²⁵ Attachment #26

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

Regarding the allegation against **Officer Chavez**, that he used excessive force against ██████ by discharging the Taser that struck him and caused injury, General Order G03-02-02, Force Options, which was in effect at the time of the incident, governed the use of a Taser. The Order defined an Active Resister as “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest.”²⁶ Such resistance included “full flight by running.”²⁷ The Order continued that among the options deemed appropriate when dealing with an active resister was use of a Taser. No specific restrictions on the use of a Taser were in the Order.

As already discussed, ██████ actions were that of an Active Resister at the time he was Tased. He had run from officers, went up on different roofs, refused to come down and, in Officer Chavez’ opinion, posed a threat to Officer Chavez if the rooftop pursuit continued. Officer Chavez’ use of the Taser was within Department guidelines. It is recommended that the finding for this allegation be **Unfounded**. There is clear and convincing evidence that the allegation is false or not factual.

Additional discussion of the case in light of case law is also appropriate.

An excessive force case is classified as involving a type of seizure to be examined under text of the 4th Amendment and the objective reasonableness standard that includes, but is not limited to, several factors: 1. The severity of the crime at issue; 2. Whether the suspect poses an immediate threat to the safety of the officers or others; 3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.²⁸ Rather than examining one factor individually, the totality of the circumstances, when viewed from the perspective of the officer who used the force, is the focus of the analysis.²⁹ Under the objective reasonableness standard, an officer may escalate the use of force based on the officer’s own assessment on the needs of the specific situation at hand.³⁰ Although “...tasering a person may result in serious injuries when intense pain and loss of muscle control cause a sudden and uncontrolled fall,” Taser usage is still considered a form of non-lethal force.³¹

²⁶ Attachment #25, Part IV, B, 2.

²⁷ *Ibid.*

²⁸ *Graham v. Connor*, 490 U.S. 386, at 396 (1989)

²⁹ *Plumhoff v. Richard*, 134 S.Ct. 2012, 2020 (2014); *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003); *Wertish v. Krueger*, 433 F.3d 1062, 1066 (8th Cir. 2006).

³⁰ *Smith v. Ball State University*, 295 F.3d 763, 770 (7th Cir. 2002); *Baird v. Renbarger*, 576 F.3d 340, 344 (7th Cir. 2009)

³¹ *Bryan v. MacPherson*, 630 F.3d 805, 825 (9th Cir. 2010)

The underlying crimes allegedly committed by ██████ were: 1. Possession with intent to sell of a suspected illegal substance; and 2. Three counts of aggravated battery against a police officer. Although selling or possessing illegal substances can be considered a serious crime, neither is, in and of itself, a violent crime. However, aggravated battery against a police officer is both a serious and violent crime. Furthermore, there is clear and convincing evidence indicating that ██████ was given a lawful order to stop, yet he disregarded this order and fled from officers.

██████ fled into the nearby residential area, where officers eventually found him on a garage’s roof. Even though ██████ was cornered by the police and was ordered to come down peacefully, he continued to actively resist and fled. He continued to jump between the rooftops when pursued by Officer Chavez. Officer Chavez stated that as he pursued ██████ on the rooftop, ██████ pushed him, nearly knocking him off the roof. Officer Chavez feared he might be injured. Fearing that the situation could get worse, Officer Chavez drew his Taser. At this point, multiple officers were heard in the background shouting, “Do it, Tase him.” This indicates it is possible other officers on the scene believed that Tasing ██████ was reasonable, given the circumstances at hand. To minimize the potential of injury, Officer Chavez reasonably believed that discharging his Taser was the most appropriate tactic at that moment. As shown in the BWC footage and the 3rd party witness’ Facebook video, as ██████ fell, Officer Chavez grabbed his arm, mitigating ██████ possible impact to the ground.

Given the aforementioned analysis under the General Order and informed by the factors outlined in *Graham*, as well as the other cited cases, Officer Chavez’s Taser usage on ██████ was justified and reasonable.

Regarding the allegation against the **Unknown Officer**, that he used racially offensive language against ██████ and threatened to throw him off the top of a garage, it is recommended that the finding be **Not Sustained**, given that no accused officer was identified. Without an identified accused officer, there is no officer account to compare to that of ██████. Even though body-worn camera audio does indicate clearly that profanities were used and directed towards ██████ the profane language was not racially charge, nor was it discriminatory in nature. There is insufficient evidence to prove the allegations by a preponderance of the evidence.

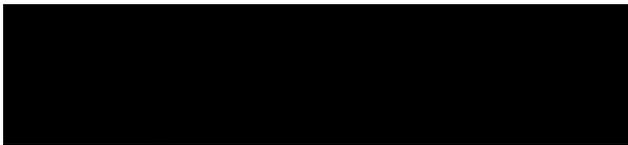
VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer Efrain Chavez	1. It is alleged that on October 1, 2017, at approximately 6:35 pm, at or near the vicinity of 1148 N. Pulaski Road, Officer Chavez used excessive force against the Complainant ██████	EXONERATED

	<p>██████████ by discharging a Taser that struck his person while he was atop a garage, causing injury.</p>	
<p>Unknown Officer</p>	<p>1. It is alleged that on October 1, 2017, at approximately 6:35 pm, at or near the vicinity of 1148 N. Pulaski Road, an unknown officer used racially offensive language against the Complainant and threatened to throw the Complainant off the top of a garage.</p>	<p>NOT SUSTAINED</p>

Approved:



 Angela Hearts-Glass
 Deputy Chief Investigator

12-13-2022

 Date