

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	September 4, 2021/ 2:27 p.m./ 3207 N. Austin Ave.
Date/Time of COPA Notification:	September 4, 2021/ 4:05 p.m.
Involved Officer #1:	Miguel Maxinez, Star #10831, Employee ID# [REDACTED], Date of Appointment: July 27, 2018, PO, 015, DOB: [REDACTED], 1993, Male, Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 2000, Male, Hispanic
Case Type:	Displayed Weapon

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Miguel A. Maxinez	1. Displaying your weapon, without justification.	Not Sustained
	2. Engaged in a verbal altercation with [REDACTED] and called him words to the effect of a "pussy."	Not Sustained

II. SUMMARY OF EVIDENCE

On September 4, 2021, [REDACTED] was driving northbound on Austin Avenue, while off-duty Officer Maxinez was in his vehicle in the middle of the intersection facing eastbound on Belmont Avenue waiting to make a left turn northbound onto Austin Ave. The light changed from yellow to red for Officer Maxinez as he made the left turn onto Austin. Simultaneously, [REDACTED] proceeded to drive north on Austin through the intersection. At some point, the left front bumper of [REDACTED] car collided with the right front passenger side of Officer Maxinez's vehicle.¹

At the scene, [REDACTED] claimed the vehicles collided at the intersection, and that Officer Maxinez did not stop.² So, according to [REDACTED] he pulled up to the side of Officer Maxinez's vehicle to try to get his attention, and when Officer Maxinez continued to drive down the street, [REDACTED] went in front of the officer's vehicle and cut him off.³ According to [REDACTED] Officer Maxinez then struck [REDACTED] vehicle a second time.⁴ However, when Officer Schumack asked [REDACTED] at the scene if the vehicles collided again, [REDACTED] said that the vehicles had struck at the corner after the light⁵ and did not indicate that the vehicles struck twice as he told COPA in his statement.

¹ Att. 11 at 2:55 and 4:55; Att. 25 at 14:26

² Att. 12 at 5:25

³ Att. 12 at 5:34

⁴ Att. 12 at 5:35

⁵ Att. 11 at 8:32

Also, according to ██████ when Officer Maxinez exited his vehicle, Officer Maxinez purposely lifted his shirt and flashed his gun at ██████. In his interview to COPA, ██████ further said that Officer Maxinez called him a “pussy,”⁶ and never identified himself as a Chicago Police Officer.

According to Officer Maxinez, there was no collision at the intersection of Belmont and Austin. Officer Maxinez stated that the only time the vehicles collided was when ██████ “came out of nowhere” and side-swiped Officer Maxinez’s vehicle when ██████ cut in front of him.⁷ According to Officer Maxinez, this occurred after Officer Maxinez made his left turn from Belmont and was already driving northbound on Austin near an alley far north of the intersection.⁸

Officer Maxinez did not know why ██████ got out of his car and began directing profanities at him, such as calling him an “asshole,”⁹ and threatening him with physical harm while balling his fist.¹⁰ Officer Maxinez thought he was being highjacked.¹¹ Then, ██████ accused Officer Maxinez of turning left on a red light, cutting ██████ off, and striking ██████ vehicle twice.¹²

Both parties called 911. Officer Schumack responded and obtained the details of the traffic accident from both parties, which were conflicting. Officer Schumack told ██████ to calm down because ██████ was extremely loud and appeared upset and irate as he accused Officer Maxinez of flashing his weapon.¹³ Sergeant Podkowa also responded. He interviewed both parties, viewed the slight damage on both vehicles, and decided that he could not determine who was at fault. A Traffic Crash report was completed which reflected each party’s version of events.¹⁴

In his interview to COPA, Officer Maxinez stated that he never retrieved, displayed, nor pointed his weapon at ██████.¹⁵ To the officers at the scene and to COPA, Officer Maxinez explained that once he pulled his car over to the side of the street and exited his vehicle, his shirt was riding up due to the gun in the holster on his waistband.¹⁶ Officer Maxinez suggested that if his gun was visible, it was unintentional due to the position of his shirt, but he immediately lowered his shirt down to cover the weapon.¹⁷ Officer Maxinez further related that he identified himself as a police officer to ██████ when ██████ made threats to shoot Officer Maxinez and to cause him physical harm.¹⁸

⁶ Att. 12 at 12:08

⁷ Att. 25 at 3:19, 32:11, and 32:53

⁸ *Id.* at 10:38

⁹ *Id.* at 15:13

¹⁰ *Id.* at 15:10, 16:25

¹¹ *Id.* at 11:13

¹² Att. 12 at 8:47

¹³ Att. 11 at 2:55, 6:00

¹⁴ Att. 6

¹⁵ Att. 25 at 29:00

¹⁶ *Id.* at 17:35

¹⁷ *Id.* at 6:48

¹⁸ *Id.* at 21:10-21:35

COPA reviewed all the related Department reports,¹⁹ POD²⁰ and BWC²¹ videos that were obtained. The POD video captured a glimpse of Officer Maxinez's vehicle on Belmont making a left turn onto Austin Avenue on a yellow light.²² The collision with [REDACTED] vehicle was not captured in the POD video. [REDACTED] told COPA that he was on the far right when he went in front of another motorist while on Austin, after the light turned green. He entered the intersection as Officer Maxinez made the left turn northbound on Austin and their vehicles collided a few feet north of the intersection.²³

The BWC videos captured the conversations between all the parties, including [REDACTED] accusing Officer Maxinez of flashing his gun and striking his vehicle when he made a left turn onto Austin. [REDACTED] stated that he did not threaten Officer Maxinez, but did tell him, "If you flash that gun, you better use it."²⁴ Officer Maxinez told Sgt. Podkova that he was making a left turn on a yellow light when the light changed, and [REDACTED] cut him off striking the side of his vehicle.²⁵ Officer Maxinez repeated that he did not flash his gun at [REDACTED] and explained that his shirt was raised up when he exited his vehicle. He immediately lowered the shirt to cover his weapon which he never drew or pointed. Officer Maxinez accused [REDACTED] of directing profanities and making threats at him stating words to the effect of that [REDACTED] was going to "beat [Officer Maxinez's] ass."²⁶

III. 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; or
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.²⁷ If the evidence gathered in an

¹⁹ Atts. 1-6.

²⁰ Att. 9

²¹ Atts. 10, 11

²² Att. 9 at 2:26:45

²³ Att. 9 at 5:55

²⁴ Att. 10 at 17:02

²⁵ Att. 9 at 7:20; Att. 25 at 13:30

²⁶ Att. 10 at 13:55, 14:08; Att. 11 at 25:39, 25:53

²⁷ *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).

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.²⁸ 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."²⁹

IV. ANALYSIS AND CONCLUSION

COPA finds that allegation #1 against Officer Maxinez that he displayed his weapon, without justification is **Not Sustained**. Officer Maxinez told Officer Schumack and Sergeant Podkova at the scene, and COPA during his interview, that when he exited his vehicle, his weapon was unintentionally displayed because his shirt was raised up from being seated in the vehicle.³⁰ Officer Maxinez also stated that he immediately brought his shirt down to cover the weapon and did not retrieve or point his weapon at [REDACTED] confirmed Officer Maxinez's statement that he did not retrieve or point the weapon at him, although [REDACTED] felt that the weapon had been "flashed."³¹ There is no objective evidence confirming or disputing either version. Therefore, this claim cannot be established by a preponderance of the evidence. As such, COPA finds that his allegation is **Not Sustained**.

COPA finds that allegation #2 against Officer Maxinez that he engaged in a verbal altercation with [REDACTED] and called him words to the effect of a "pussy," is **Not Sustained**. [REDACTED] made this allegation to COPA but did not inform Sgt. Podkova or Officer Schumack of this allegation at the scene. During his statement to COPA, Officer Maxinez stated that he and [REDACTED] did engage in a verbal altercation, but did not recall if he called [REDACTED] a "pussy." Officer Maxinez said that [REDACTED] made threats to physically harm him and directed profanities.³² Officer Maxinez stated that he identified himself as a police officer and immediately called the police, as a result of which, the altercation ceased. There is no objective evidence confirming or disputing either version. Therefore, this claim cannot be established by a preponderance of the evidence. As such, COPA finds that his allegation is **Not Sustained**.

²⁸ *People v. Coan*, 2016 IL App (2d) 151036.

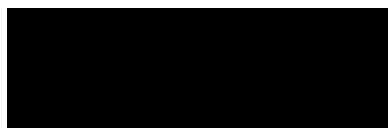
²⁹ *Id.* at ¶ 28.

³⁰ Att. 25 at 11:33

³¹ Att. 9 at 6:28; Att. 12 at 6:30–6:45

³² Att. 25 at 29:30.

Approved:



Matthew Haynam
Deputy Chief Investigator

3/30/2023

Date