

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	July 25, 2017
Time of Incident:	1:45 p.m.
Location of Incident:	1101 W. Jackson Boulevard
Date of COPA Notification:	July 27, 2017
Time of COPA Notification:	12:17 a.m.

██████████ was apprehended for shoplifting at a Target store. The involved officers responded to the location and placed Mr. ██████████ under arrest. Video footage of the incident depicts Officer Scott Martin apply pressure to Mr. ██████████ neck area and kick Mr. ██████████ who is handcuffed and seated on a restraint bench. COPA finds that the allegations against the involved officers are Sustained.

II. INVOLVED PARTIES

Involved Officer #1:	Scott Martin, star# 16449, employee ID# ██████████, Date of Appointment: June 29, 1992, rank: Police Officer, Unit of Assignment: 012 th District, DOB: ██████████, 1968, male, white.
Involved Officer #2:	Thomas Povsner, star# 9104, employee ID# ██████████, Date of Appointment: November 22, 1993, rank: Police Officer, Unit of Assignment: 012 th District, DOB: ██████████, 1968, male, white.
Involved Individual #1:	██████████ DOB: ██████████, 1991, male, black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Scott Martin	1. It is alleged that Officer Scott Martin utilized excessive force when he applied pressure to ██████████ neck.	Sustained

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

	2. It is alleged that Officer Scott Martin kicked Mr. [REDACTED] without justification.	Sustained
Officer Thomas Povsner	1. It is alleged that Officer Thomas Povsner observed misconduct and failed to report it.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

-
1. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
 2. Rule 6: Disobedience of an order or directive, whether written or oral.
 3. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
-

General Orders

-
1. G03-02: Use of Force Guidelines
 2. G08-01-02: Specific Responsibilities Regarding Allegations of Misconduct
-

State Laws

-
1. Illinois Compiled Statutes, Chapter 720, Article 5, Section 7-5
-

Federal Laws

-
1. Graham v. Connor, 490 U.S. 386 (1989)
-

V. INVESTIGATION²

a. Interviews

In an interview with COPA on April 27, 2018, ██████████ loss prevention agent for Target, stated that ██████████ is a known shoplifter in the store. Mr. ██████████ recalled that on the date of this incident, Mr. ██████████ attempted to exit the store with unpaid merchandise. Mr. ██████████ recalled that he, ██████████ and ██████████ apprehended Mr. ██████████ and handcuffed him to a restraint bench in the security office. Mr. ██████████ stated that at some point Mr. ██████████ became upset and spit on Mr. ██████████ and Mr. ██████████. Mr. ██████████ and Mr. ██████████ stood behind a file cabinet at one point to avoid being spit on. Mr. ██████████ sat at the computer typing up paperwork and waited for the police to arrive. Two police officers arrived, and Mr. ██████████ commenced spitting at Mr. ██████████. Mr. ██████████ and the officers. Mr. ██████████ believes that one of the officers may have told Mr. ██████████ to stop spitting but Mr. ██████████ continued. Mr. ██████████ believes that spit landed on one of the officers because the officer who was closest to Mr. ██████████ desk walked over to Mr. ██████████. Mr. ██████████ said the officer's back was to him and he did not see what happened because he was focused on the computer. During Mr. ██████████ interview with COPA, he watched the video and noted that the officer apparently grabbed Mr. ██████████ neck and kicked at him; however, Mr. ██████████ stated that he did not have any independent memory of that prior to viewing the video. He does not believe that Ms. ██████████ was there when the police arrived.⁴

In an interview with COPA on April 27, 2018, ██████████ Assets Protection Manager for Target, stated that on the date of this incident he and members of his team, ██████████ and ██████████ observed Mr. ██████████ known to them from previous theft incidents, conceal a laptop down his pants. Mr. ██████████ attempted to flee and pulled away when Mr. ██████████ and his team tried to apprehend him, but the team ultimately handcuffed Mr. ██████████ and secured him to a bench in the security office. Mr. ██████████ stated that Mr. ██████████ became very aggressive during questioning; he threatened and spit at Mr. ██████████ multiple times. Mr. ██████████ directed obscenities at the security team and urinated on the floor. Mr. ██████████ kicked ██████████ on her buttocks, after which Mr. ██████████ directed ██████████ to leave the security office for her personal safety. Mr. ██████████ said that when the police arrived, he informed them that Mr. ██████████ spit at Mr. ██████████ and he wanted Mr. ██████████ charged with Assault. Mr. ██████████ then spit at one of the officers, now identified as Officer Martin.⁵ According to Mr. ██████████ Officer Martin asked Mr. ██████████ to stop spitting but Mr. ██████████ spit again. Officer Martin then grabbed Mr. ██████████ around the neck area and pushed him down—demanding Mr. ██████████ to stop. Mr. ██████████ did not recall observing Officer Martin kick or attempt to kick Mr. ██████████ until Mr. ██████████ watched the video. Mr. ██████████ then spit at Officer Martin, repeatedly. Mr. ██████████ stated he and the officers then convened outside the office while the officers discussed how they would bring Mr. ██████████ to the squad car with the least amount of resistance. Mr.

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Mr. ██████████ stated that he does not believe ██████████ was in the security office when the police arrived.

⁴ Attachment 28

⁵ Later in the interview, Mr. ██████████ watched the video recording and stated that it appeared that Mr. ██████████ was actually spitting toward him (Mr. ██████████ not Officer Martin).

██████████ stated that he returned to the security office to get something and Mr. ██████████ continued to spit at him. Other officers arrived and escorted Mr. ██████████ to a squad car.⁶

Attempts to contact ██████████ met with negative results.⁷

In an interview with COPA on May 23, 2018, **Officer Scott Martin** stated that he responded to Target for a reported shoplifter. Officer Martin spoke with a Target security guard in the vestibule and learned that the subject, ██████████ was in the security office. Officer Martin entered the security office and observed Mr. ██████████ seated and handcuffed to a restraint bench. Upon viewing video of the incident during his statement, Officer Martin explained that as he was standing in the office next to the security desk, Mr. ██████████ spit at him. According to Officer Martin, he gave Mr. ██████████ verbal commands to stop spitting and then applied pressure behind Mr. ██████████ ear for pain compliance⁸. Officer Martin stated that as he stepped back, he kicked Mr. ██████████ in the shin area because Mr. ██████████ spit at him again. Officer Martin related, “I was just being defensive because he assaulted me—by spitting.”⁹ Officer Martin characterized Mr. ██████████ as an assailant and stated that he wanted to stop Mr. ██████████ from spitting on him. Officer Martin stated that Mr. ██████████ spit landed on his face, vest, arm and shoulders. Officer Martin added that the security guards informed him that Mr. ██████████ also spit on them prior to the officers’ arrival.¹⁰

In an interview with COPA on May 23, 2018, **Officer Thomas Povsner** stated that Mr. ██████████ spit repeatedly while he and Officer Martin were in the security office. According to Officer Povsner, Officer Martin told Mr. ██████████ “Knock it off. Stop it. Stop spitting.”¹¹ Officer Povsner stated that Mr. ██████████ ignored Officer Martin, at which time Officer Martin grabbed Mr. ██████████ and applied a pain technique to stop Mr. ██████████ from spitting on him and the other people in the room. When Officer Martin released Mr. ██████████ Mr. ██████████ spit again. In response, Officer Martin kicked Mr. ██████████ According to Officer Povsner, Mr. ██████████ spit on Officer Martin’s face and body during the encounter. Officer Povsner radioed for assistance due to Mr. ██████████ spitting. Officer Povsner and Officer Martin then exited the security office to devise a strategy to remove Mr. ██████████ without being further spit on. Officer Povsner stated that he did not report the incident because he believed that Officer Martin’s actions were reasonable in order to prevent himself and the other parties in the room from being further spit on by Mr. ██████████ Additionally, Officer Povsner stated that Mr. ██████████ actions and Officer Martin’s response were documented in Department reports. Officer Povsner said that he never moved from the side of the table closest to Mr. ██████████ because he felt that Mr. ██████████ spitting was directed at the security officers and Officer Martin.¹²

b. Digital Evidence

⁶ Attachment 31

⁷ Attachments 6, 7, 49

⁸ Earlier in the interview, Officer Martin stated that he administered the pain compliance after Mr. ██████████ ignored his verbal commands and continued to spit.

⁹ Transcribed statement of Officer Scott Martin, attachment 45, page 15, lines 5-8

¹⁰ Attachments 37, 45

¹¹ Transcribed statement of Officer Thomas Povsner, attachment 46, page 11, lines 17-18.

¹² Attachments 42, 46

The video from Target depicts Mr. [REDACTED] being brought into the security office by three Target staff members now identified as Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED]. Mr. [REDACTED] was seated and handcuffed to a restraint bench inside the room. Mr. [REDACTED] spit multiple times in the direction of Mr. [REDACTED] and Mr. [REDACTED]. At one point, Mr. [REDACTED] urinated on the floor. At approximately 1:42 p.m., a uniformed officer, now identified as Officer Martin, entered the room. Moments later, a second uniformed officer, now identified as Officer Povsner, entered the room. At approximately 1:44 p.m., Mr. [REDACTED] spat in the direction of Officer Martin. Officer Martin approached Mr. [REDACTED] and appeared to grab Mr. [REDACTED] upper neck area for approximately eighteen seconds¹³ before releasing him. Officer Martin then kicked at Mr. [REDACTED] lower extremities¹⁴. Mr. [REDACTED] repeatedly made spitting motions and spit at Officer Martin as he exited the security office. At approximately 1:55 p.m., Officer Povsner uncuffed Mr. [REDACTED] from the restraint bench and escorted Mr. [REDACTED] out of the security office with two other officers.¹⁵

A search for **In-Car Video** met with negative results. The 012th District station was not equipped with Body Worn Cameras at the date of this incident.¹⁶

c. Physical Evidence

A search for **medical records** relative to Mr. [REDACTED] visit to Mercy Hospital¹⁷ met with negative results.¹⁸

d. Documentary Evidence

In an **Initiation Report** dated July 26, 2017, Sgt. Michael Fitzgerald, #1738, stated that he was made aware that [REDACTED] had been arrested at Target for Aggravated Battery to a Peace Officer, Retail Theft, Assault, and multiple counts of Battery. Detective Juan Salazar, #20497, pursued felony charges against Mr. [REDACTED] but the State's Attorney's Office rejected felony charges. Detective Salazar then provided Sgt. Fitzgerald with a synopsis of the investigation along with video footage. Sgt. Fitzgerald reviewed the footage and documented that the video depicts Officer Martin kick in Mr. [REDACTED] direction while he is seated and handcuffed on a bench in the Target Loss Prevention Office. Sgt. Fitzgerald indicated that due to the positioning of Officer Martin and Mr. [REDACTED] he was unable to determine whether Officer Martin's actions were made in effort to defeat [REDACTED] attempts to spit on him, or if Officer Martin's actions were reactionary. As a result, Sgt. Fitzgerald initiated this Log Number.¹⁹

¹³ Officer Martin maintained his pressure hold on Mr. [REDACTED] from 1:44:52 to 1:45:10 p.m.

¹⁴ Officer Povsner was standing at the side of the table closest to Mr. [REDACTED]. Officer Povsner remained in that spot during Officer Martin's contact with Mr. [REDACTED] and at some point Officer Povsner stepped closer to where Mr. [REDACTED] was seated.

¹⁵ Attachment 9

¹⁶ Attachment 25

¹⁷ According to the Arrest Report, Mr. [REDACTED] was transported to Mercy Hospital on July 25, 2017 at 11:49 p.m., and returned to the lockup on July 26, 2017 at 12:31 a.m.

¹⁸ Attachment 32

¹⁹ Attachment 5

The **Arrest and Case Reports** document that [REDACTED] was arrested and charged with Retail Theft, Battery, and Assault. It is reported that Target security staff apprehended Mr. [REDACTED] for purportedly shoplifting an Acer Computer from the store. Security staff detained Mr. [REDACTED] in the security office and waited for the police to arrive. Officers Scott Martin and Thomas Povsner arrived and observed Mr. [REDACTED] handcuffed to a bench. As the officers gathered information about the theft, a verbal altercation ensued between Mr. [REDACTED] and [REDACTED]. Mr. [REDACTED] began spitting at Mr. [REDACTED] and Mr. [REDACTED]. Officer Martin gave Mr. [REDACTED] verbal commands to cease and desist, at which time Mr. [REDACTED] spit on Officer Martin, striking him in the face and body. Officer Martin then restrained Mr. [REDACTED] by pushing Mr. [REDACTED] down with his hand, applying pressure to a sensitive area and warned him to stop. Mr. [REDACTED] spit on Officer Martin again, at which time Officer Martin kicked Mr. [REDACTED]. Mr. [REDACTED] purportedly spit on Officer Martin again as Officer Martin escorted Mr. [REDACTED] to the police vehicle. Security staff told the officers that prior to the officers' arrival, Mr. [REDACTED] kicked Target Security Officer [REDACTED].²⁰

Officer Scott Martin's **Tactical Response Report** documents that Mr. [REDACTED] did not follow verbal direction and attacked without a weapon by repeatedly spitting on Officer Martin. Officer Martin responded with verbal commands, pressure sensitive areas, and kicks.²¹

Officer Thomas Povsner's **Tactical Response Report** documents that Officer Povsner responded to Mr. [REDACTED] actions with verbal commands.²²

The **Officer's Battery Reports** document that Mr. [REDACTED] made verbal threats and used his mouth (spit) as a weapon/ threat against Officers Martin and Povsner.²³

The **Case Supplementary Report** documents that [REDACTED] told Detectives that while waiting for CPD to arrive and place Mr. [REDACTED] into custody, Mr. [REDACTED] became angry and started spitting on Mr. [REDACTED]. When the responding officers arrived, Mr. [REDACTED] shouted profanities and spit in Mr. [REDACTED] and the officers' direction.

[REDACTED] told Detectives that Mr. [REDACTED] repeatedly ejected saliva at him, Mr. [REDACTED] and the responding officers.

Officer Martin told Detectives that while he and Officer Povsner were gathering information related to the theft, Mr. [REDACTED] began yelling profanity at the officers. Officer Martin stated that Mr. [REDACTED] then forcibly ejected saliva from his mouth in Officer Martin's direction. Officer Martin told Mr. [REDACTED] to stop, but Mr. [REDACTED] again ejected saliva from his mouth. Officer Martin told Detectives that in response, he performed a control technique while advising Mr. [REDACTED] to stop spitting. Officer Martin related that once he released Mr. [REDACTED] from the control hold, Mr. [REDACTED] again ejected saliva from his mouth in Officer Martin's direction. Officer Martin stated that he "directed a strike" at Mr. [REDACTED] lower calf area to stop Mr. [REDACTED] actions because Officer Martin was in fear of receiving a communicable disease.

²⁰ Attachments 10, 11, 20

²¹ Attachment 12

²² Attachment 16

²³ Attachments 13, 17

Officer Martin then observed Mr. [REDACTED] spit in the direction of Officer Povsner and Mr. [REDACTED]. Mr. [REDACTED] then spit on Officer Martin's vest.

Officer Povsner told Detectives that Mr. [REDACTED] repeatedly spit on him and Officer Martin. Officer Povsner related that while he had his back turned, he heard Mr. [REDACTED] forcibly eject saliva from his mouth; Officer Povsner felt saliva on his left hand and the back of his head. Officer Povsner requested additional units to assist him and Officer Martin. Officer Povsner stated that Mr. [REDACTED] spit on Officer Martin again as they escorted Mr. [REDACTED] to the squad car.

The Case Supplementary Report documents that Mr. [REDACTED] invoked his Fifth Amendment right and chose not to speak with Detectives.²⁴

The **Target Incident Report** completed by [REDACTED] documents that once Mr. [REDACTED] was apprehended and placed in the Assets Protection office, Mr. [REDACTED] became aggressive and began to spit at Mr. [REDACTED]. Mr. [REDACTED] eventually calmed down but started spitting at the police officers once they arrived. The police told Mr. [REDACTED] to stop spitting. The officers then gathered the information relative to the investigation and escorted Mr. [REDACTED] out of the building without further incident.²⁵

e. Additional Evidence

Court records document that Mr. [REDACTED] was found guilty of one count of Battery. The additional charges against Mr. [REDACTED] were stricken off the docket with leave to reinstate.²⁶

VI. ANALYSIS

COPA recommends a finding of **Sustained** for **Allegation #1** against **Officer Scott Martin**, that he utilized excessive force when he applied pressure to [REDACTED] neck. While it is apparent in the video that Mr. [REDACTED] spits, Mr. [REDACTED] was handcuffed to a restraint bench; therefore, Mr. [REDACTED] spitting did not pose an immediate threat of bodily harm. Officer Martin and the other individuals in the security office had a spatial advantage and could have backed away from Mr. [REDACTED] especially since Mr. [REDACTED] was secured to a bench. Officer Martin's decision to get closer to Mr. [REDACTED] to apply pressure for pain compliance did not stop Mr. [REDACTED] from spitting. In fact, it put Officer Martin in closer proximity of Mr. [REDACTED] and a more imminent position to be spit on. Officer Martin's actions were not consistent with him being fearful of contracting a communicable disease; his actions were punitive in nature. Officer Martin applied pressure to Mr. [REDACTED] neck/ ear region and maintained the pressure for eighteen seconds. Officer Povsner was in the same room, similarly situated, and standing at the side of the table closest to Mr. [REDACTED] as Mr. [REDACTED] spit, yet Officer Povsner did not perceive the threat in the same manner as alleged by Officer Martin. This is evident because Officer Povsner did not move or initiate physical contact with Mr. [REDACTED]. *Graham v. Connor*, 290 U.S. 386 (1989) cites that the reasonableness of a particular use of force will be judged under the totality of the circumstances viewed from the perspective of a reasonable officer on the scene. Additionally,

²⁴ Attachment 22

²⁵ Attachment 44

²⁶ Attachment 23

CPD General Order G03-02 dictates that officers will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury. In the instant case, Officer Martin's use of force was not reasonably necessary.

COPA recommends a finding of **Sustained** for **Allegation #2** against **Officer Scott Martin**, that he kicked Mr. [REDACTED] without justification. Immediately after Officer Martin released his hold of Mr. [REDACTED] he stepped back and kicked Mr. [REDACTED]. According to Officer Martin, he kicked Mr. [REDACTED] because Mr. [REDACTED] spit on him as he stepped back. Officer Martin further explained that he was being defensive because Mr. [REDACTED] assaulted him. As stated above, the evidence suggests that Officer Martin's decision to kick Mr. [REDACTED] was punitive and retaliatory. Kicking Mr. [REDACTED] could not stop or prevent him from spitting at Officer Martin. As cited above for Allegation #1, Officer Martin's use of force was not reasonably necessary.

COPA recommends a finding of **Sustained** for **Allegation #1** against **Officer Thomas Povsner**, that he observed misconduct and failed to report it. General Order G03-02 dictates that if a Department member knows that another Department member is using excessive force against a subject, the member will take appropriate action. The action required by the member will depend upon the circumstances of the incident. However, appropriate actions may include, but are not limited to, verbal or physical intervention, immediate notification to a supervisor, or a direct order by a supervisor to cease the use of excessive force. Additionally, General Order G08-01-02 cites that when misconduct is observed or an allegation of misconduct is received by a non-supervisory member, the member will immediately notify a supervisory member and prepare a written report to their unit commanding officer containing the information received, observations made, and any action taken. Officer Povsner did not report Officer Martin's use of force to a supervisor or take any action. Officer Povsner acknowledges that he observed Officer Martin's actions, but contends that Officer Martin's actions do not constitute misconduct. Mr. [REDACTED] was handcuffed to a restraint bench in the security office and did not pose an immediate threat to anyone. Officer Martin's use of force against Mr. [REDACTED] was not reasonably necessary and therefore Officer Povsner was required to report the incident.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Scott Martin

i. Complimentary and Disciplinary History

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

ii. Recommended Penalty, by Allegation

1. Allegation No. 1

The officer freely admitted to his conduct though he believed it was justified. It is clear from viewing the video that the officers conduct was intended for punitive purposes rather than subject control as articulated by the officer. As such COPA believes a 10 day suspension along with de-escalation tactic training is appropriate.

2. Allegation No. 2

For the reasons articulated above, COPA finds a 10 day punishment with de-escalation tactic training is appropriate.

b. Officer Thomas Povsner

i. Complimentary and Disciplinary History

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

ii. Recommended Penalty, by Allegation

1. Allegation No. 1

While COPA finds Officer Povsner credible when he stated he observed the conduct but believed his partner was justified, the conduct was clearly punitive and thus in violation of department orders. In fact, the log was generated after Sgt. Fitzgerald reviewed the security footage and questioned the reasonableness of the force used. Clearly if the Sgt. reviewing the footage initiated a COPA case then Officer Povsner should have reported the incident. COPA recommends a 3 day suspension.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Scott Martin	1. It is alleged that Officer Martin utilized excessive force when he applied pressure to Mr. [REDACTED] neck.	Sustained
	2. It is alleged that Officer Martin kicked Mr. [REDACTED] without justification.	Sustained
Officer Thomas Povsner	1. It is alleged that Officer Povsner observed misconduct and failed to report it.	Sustained

Approved:



Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

9/27/18

Appendix A

Assigned Investigative Staff

Squad#:	4
Investigator:	Theresa Davis
Supervising Investigator:	James Murphy-Aguilu
Deputy Chief Administrator:	Andrea Kersten

