

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

| | |
|----------------------------|------------------------------|
| Date of Incident: | February 26, 2012 |
| Time of Incident: | 3:00 pm |
| Location of Incident: | ██████████ Chicago, IL 60655 |
| Date of IPRA Notification: | February 27, 2012 |
| Time of IPRA Notification: | 4:58 am |

On February 26, 2012, Officer David Montes was ██████████ to ██████████ and both resided at ██████████. That day, they engaged in a verbal altercation that culminated in Officer Montes throwing a bag, containing a Tupperware container, apple, and fork across the residence. This bag struck ██████████ in the head. After learning that ██████████ was struck, Officer Montes left the residence and took no steps to determine the presence or extent of an injuries to ██████████. ██████████ transported herself to a local hospital where she received three staples to treat the laceration to her forehead.

While at the hospital, Department members, to include Sergeant Michael Dougherty, arrived and spoke with ██████████. ██████████ relayed to the members that during the verbal altercation, Officer Montes poked her in the chest, pushed her against a refrigerator, and threw a bag at her causing the injuries to her head. ██████████ was unclear with members if she wanted Officer Montes arrested but did express a desire for him to get assistance. Sgt. Dougherty provided ██████████ with Department resources to assist her, requested an Evidence Technician (ET) to photograph her injuries, notified IRPA, obtained this log number, and completed an Initiation Report.

During a statement to IPRA, ██████████ alleged that she and Officer Montes engaged in a verbal altercation during which she was struck in the head with a bag. COPA's investigation determined that the verbal altercation allegation is **not sustained**, and that the striking allegation is **sustained**.

II. PROCEDURAL HISTORY

On February 26, 2012, IPRA was notified, by Sgt. Dougherty, of this incident and opened 1052141. On April 30, 2012, IPRA administratively closed 1052141 after being unable to obtain an affidavit from ██████████.

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.

On November 17, 2015, IPRA was notified, by Sgt. Monique Washington, of the February 26, 2012, incident a second time and opened 1078091.²

On December 1, 2015, IPRA was notified of an unrelated domestic incident between [REDACTED] and Officer Montes that occurred on December 1, 2015. IPRA closed 1078091 and investigated both the February 26, 2012, and December 1, 2015, incidents under 1078263.

Once the investigation under 1078263 was completed, it was submitted to the Department for Command Channel Review (CCR). During CCR, the Department identified concerns related to the closure status of 1052141 and the merged investigations of both incidents.³ After discussions with the Department, it was determined that COPA would reopen 1052141 and 1078263, and investigate the February 26, 2012, incident under 1052141 and the December 1, 2015, incident under 1078263.

On April 29, 2019, both 1052141 and 1078263 were reopened, and COPA sought and received authorization from the Department to investigate the February 26, 2012, incident as it was beyond the 5-year-time frame.⁴

III. INVOLVED PARTIES

| | |
|-------------------------|--|
| Involved Officer #1: | Officer David Montes / Star #18570 / Employee ID# [REDACTED] / DOA: May 17, 1993 / Unit: 008 / DOB: [REDACTED], 1968 / Male / Hispanic |
| Involved Individual #1: | [REDACTED] / DOB: [REDACTED], 1980 / Female / Black. |

IV. ALLEGATIONS⁵

| Officer | Allegation | Finding / Recommendation |
|----------------------|---|--|
| Officer David Montes | 1. Engaging [REDACTED] in a verbal altercation, in violation of Rule 9. | Not Sustained. |
| | 2. Striking [REDACTED] in the head with a bag containing items, causing a laceration to her head, in violation of Rule 8. | Sustained / 60-day Suspension and Training |

² This notification was made after Sgt. Washington received an anonymous outcry reporting of the indecent. Att. 35. In a phone conversation with [REDACTED] on November 23, 2015, IPRA confirmed that the only instance in which [REDACTED] was injured by Officer Montes throwing a bag at her occurred on February 26, 2012. Att. 42.

³ Att. 31.

⁴ Atts. 24 and 25.

⁵ COPA notes that prior to his April 19, 2016, statement Officer Montes was served with two additional allegations, related to physical contact with [REDACTED] Atts. 40 and 41. During our review of the original 1078263 investigation, COPA determined that there was insufficient cause to serve those allegations for the 1052141 investigation. Therefore, those two allegations were not served in 1052141 and were removed from the system for 1078263.

V. APPLICABLE RULES AND LAWS

Rules

1. Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.
2. Rule 9: Prohibits engaging in any unjustified verbal or physical altercation, while on or off duty.

VI. INVESTIGATION⁶

a. Interviews

In a **statement to IPRA**⁷ on December 15, 2015, ██████████ ██████ stated she had been in a relationship with Officer David Montes since February 1999, they ██████████ in August 2011, and have two children in common.⁸

████████ explained that at around 3:00 p.m. on February 26, 2012, while in the kitchen of their residence just before Officer Montes left for work, they were discussing the status of their relationship and it escalated into a verbal altercation. It was during this verbal altercation Officer Montes struck her on the right side of her head with a lunch bag containing objects. After striking ██████████ Officer Montes quickly left the residence. ██████████ locked all the doors and windows to prevent him from returning. At some point Officer Montes returned to and entered the residence and apologized to ██████████ for his actions.⁹ ██████████ left and sought medical treatment at Little Company of Mary Hospital. The strike resulted in injury that required staples to repair.¹⁰ ██████████ explained that while at the hospital two Department members spoke to her about what had occurred at the residence.¹¹ Finally, at no point during her statement, did ██████████ allege that Officer Montes poked her in the chest or pushed her in any manner.

In **statements to IPRA** and **COPA** on April 19, 2016,¹² and November 13, 2019,¹³ respectively, **Accused Officer David Montes** stated that he has been in a relationship with ██████████ since late 1999, they ██████████¹⁴

⁶ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁷ As discussed in Section II above, this statement was taken under 1078263 and contains recounting of two distinct incidents. Atts. 21 (audio) and 36 (transcript) relevant pages from 27 to 39 (Att. 36).

⁸ ██████████ and Officer Montes began to cohabitate in February 2000. Att. 36, at 3-4.

⁹ *Id.*, at 30.

¹⁰ *Id.*, at 27 to 29.

¹¹ *Id.*, at 30.

¹² As discussed in Section II above, this statement was taken under 1078263 and contains recounting of two distinct incidents. Atts. 22 and 39, relevant pages from 53 to 77.

¹³ Officer Montes waived his right to counsel (Att. 52). His statement on November 13, 2019, provided no additional details. Att. 53.

¹⁴ Att. 39, pgs. 7 and 8.

Officer Montes stated that on February 26, 2012, he was in the kitchen packing his meal for work.¹⁵ He had an argument with ██████ during which he may have pointed his finger at ██████ but did not recall poking her in the chest.¹⁶ Officer Montes explained that at no time during the argument did he push ██████¹⁷ At some point, Officer Montes walked towards the front door to leave, but out of frustration, he threw his packed lunch into the kitchen from the front room despite not knowing where ██████ was in the kitchen.¹⁸ After throwing the bag, Officer Montes learned it had hit ██████ in the head.¹⁹ After learning that ██████ was struck with the bag, Officer Montes entered his vehicle and drove away without checking if ██████ was injured or in need of assistance.²⁰ Officer Montes eventually learned that ██████ was injured and sought medical treatment at a local hospital.²¹

Officer Montes acknowledged that arguments with ██████ can get heated to the point that he throws items but has never directed them toward ██████²² Finally, Officer Montes explained that once this case was initially closed No Affidavit, Lt. Magiveny scolded him for his involvement in this incident.²³

b. Documentary Evidence

An **Original Case Incident Report**²⁴ and **Initiation Report**²⁵ details that Department members responded to Little Company of Mary Hospital after receiving information about a domestic incident involving a fellow Department member. Upon arrival members spoke with ██████ and she alleged that while at their residence her husband (Officer Montes) struck her on the right side of her head with a plastic bag containing his lunch. Additionally, ██████ alleged Officer Montes poked her in her chest and pushed her against a refrigerator. After the incident Officer Montes left the residence to report for duty and ██████ eventually transported herself to the hospital for treatment. While speaking to ██████ Sgt. Dougherty observed a small laceration and swelling to ██████ right temple area. Sgt. Dougherty learned that Officer Montes was not present at the hospital, ██████ was unsure if she wanted to pursue criminal charges but she wanted Officer Montes to get help. Sgt. Dougherty informed ██████ of available Department resources for assistance. Finally, an ET was requested to take photographs of ██████ injuries.

ET Photographs²⁶ detail a laceration and puncture (Figure 1) on the right side of ██████ face just above and behind her eyebrow.

¹⁵ Officer Montes explained that he recalled packing “pig in the blanket” in Tupperware, an apple, and a fork. *Id.* at 57.

¹⁶ Officer Montes could not recall what the agreement was about. *Id.* at 54 to 55.

¹⁷ *Id.* at 56.

¹⁸ Officer Montes was clear his intent was to throw the bag at the wall to make a mess in the kitchen. *Id.* at 59 and 60.

¹⁹ *Id.* at 60.

²⁰ Officer Montes explained the he left the residence to avoid any further confrontation. *Id.* at 61.

²¹ Officer Montes explained that he learned this via phone conversation with ██████ but could not recall if it was prior to, during, or after her medical treatment. *Id.* at 63.

²² *Id.* at 64.

²³ The spelling of Lt. Magiveny’s name is unknown and COPA could not determine the identity of the Department member Officer Montes was referencing. *Id.* at 67 and 68.

²⁴ Att. 5.

²⁵ Att. 4.

²⁶ It is unknown if these photographs were taken prior to or after treatment. Att. 14.



Figure 1 – Att. 14, pg 5.

██████ **Medical Records**²⁷ detail that she presented in the emergency room with a complaint of bleeding and swelling to the right side of her face after being struck with a bag during a domestic dispute. ██████ was diagnosed with a scalp laceration which was repaired with three staples.²⁸

VII. 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;

²⁷ Att. 45.

²⁸ *Id.* at 7.

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 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.

VIII. ANALYSIS

COPA finds that Allegation #1 against Officer Montes is **not sustained**. While it is undisputed that a verbal altercation occurred, COPA was unable to determine the genesis, context and exact nature of the altercation. Therefore, COPA cannot determine if the verbal altercation was unjustified.

COPA finds that Allegation #2 against Officer Montes is **sustained**. It is undisputed that Officer Montes threw his lunch bag, containing objects that could cause injury (a Tupperware container, an apple, and a fork) into the kitchen where [REDACTED] was located, and that it struck [REDACTED] in the head causing a laceration that required medical treatment. While Officer Montes asserts that he did not intend to strike [REDACTED] with the bag, COPA finds his assertion, at best, questionable, because once Officer Montes learned [REDACTED] had been struck, he took no steps to inquire about injuries. Rather, entered his vehicle and left the location. Officer Montes' actions are seemingly inconsistent – even when considering his expressed desire to reduce the likelihood of further altercation – with someone who accidentally struck a spouse with an object. Even if Officer Montes' specific intention was not to strike [REDACTED] COPA still finds his actions placed [REDACTED] in danger of harm and were improper; especially considering Officer Montes was aware the bag contained items that could cause injury, and that he was uncertain of [REDACTED] location within the kitchen when he threw the bag. Any reasonable person possessing the same information as Officer Montes, prior to throwing the bag, would reasonably believe there was a likelihood [REDACTED] would be struck and possibly be injured. It is for these reasons that COPA finds Allegation #2 is **sustained**.

IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer David Montes

i. Complimentary and Disciplinary History

1. **Complimentary:** 3 Department Commendation; 7 Complementary Letters; 76 Honorable Mentions; and 1 Problem Solving Award.

2. **Disciplinary History:** None

ii. Recommended Penalty, by Allegation

1. **Allegation No. 4** – 60-day Suspension and De-Escalation Training

Officer Montes admitted to the conduct but denied the intent. However, as discussed above, COPA is skeptical of his assertion regarding his intent and finds his rational to serve his own purpose of minimizing his conduct. Regardless of Officer Montes’ intent, COPA still finds his actions improper and concerning, especially considering Officer Montes’ admission that he has a history of throwing objects while frustrated.

X. CONCLUSION

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

| Officer | Allegation | Finding / Recommendation |
|----------------------|--|---|
| Officer David Montes | 1. Engaging ██████ in a verbal altercation, in violation of Rule 9. 2. Striking ██████ in the head with a bag containing items, causing a laceration to her head, in violation of Rule 8. | Not Sustained. Sustained / 60-day Suspension and Training. |

Approved:



November 19, 2019

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|------------------------------|
| Squad#: | 5 |
| Investigator: | Leon Stiles / Garrett Schaaf |
| Supervising Investigator: | Loren Seidner |
| Deputy Chief Administrator: | Andrea Kersten |