

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

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| Date / Time / Location of Incident: | January 8, 2017 / 1:42 am / 5303 S. Fairfield Ave., Chicago, IL 60632   |
| Date / Time of IPRA Notification:   | February 3, 2017 / 9:44 am  |
| Involved Sergeant #1:               | Sgt. Richard Heger / Star #1783 / Employee # [REDACTED] / DOA: March 8, 1999 / Unit: 019 / DOB: [REDACTED], 1965 / White / Male.                        |
| Involved Sergeant #2:               | Sgt. Delon Freund / Star #2502 / Employee # [REDACTED] / DOA: August 25, 2003 / Unit: 001/018 / DOB: [REDACTED], 1967 / White / Male.                   |
| Involved Officer #1:                | Officer Kevin Barbee / Star #12695 / Employee # [REDACTED] / DOA: October 27, 2003 / Unit: 014 / DOB: [REDACTED], 1972 / Black / Male.                  |
| Involved Officer #2:                | Officer Farah Baqai / Star #8536 / Employee # [REDACTED] / DOA: December 2, 2002 / Unit: 009 / DOB: [REDACTED], 1967 / Asian/Pacific Islander / Female. |
| Involved Individual #1:             | [REDACTED] / DOB: [REDACTED], 1997 / Hispanic / Female  |
| Case Type:                          | 05B – Excessive Force (On Duty – No Injury)   |

**I. ALLEGATIONS**

| Officer                | Allegation  | Finding / Recommendation |
|------------------------|---|--------------------------|
| Sergeant Richard Heger | 1. Referred to Ms. [REDACTED] as “pathetic” or words of similar effect, in violation of Rule 9. | Not Sustained.           |
|                        | 2. Pushed Ms. [REDACTED] in violation of Rules 6 and 8.   | Not Sustained.           |
| Sergeant Delon Freund  | 1. Referred to Ms. [REDACTED] as “pathetic” or words of similar effect, in violation of Rule 9. | Unfounded.               |

<sup>1</sup> 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.

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|----------------------|--|---|
|                      | 2. Pushed Ms. ██████████ in violation of Rules 6 and 8.  | Unfounded.  |
| Officer Kevin Barbee | <ol style="list-style-type: none"> <li>1. Struck Ms. ██████████ in the face, in violation of Rules 6 and 8.</li> <li>2. Failed to capture the interaction with Ms. ██████████ on Body Worn Camera, in violation of Rule 6.</li> <li>3. Failed to properly document the force used while interacting with Ms. ██████████ in violation of Rule 6.</li> <li>4. Referred to Ms. ██████████ as a “crazy fucker” or words of similar effect, in violation of Rules 6 and 9.</li> </ol> | <p>Exonerated.</p> <p>Sustained /<br/>Written<br/>Reprimand<br/>Not Sustained.</p> <p>Sustained / 1-day<br/>suspension.</p> |
| Officer Farah Baqai  | 1. Failed to capture the interaction with Ms. ██████████ on Body Worn Camera, in violation of Rule 6.  | Sustained /<br>Written<br>Reprimand.  |

## II. SUMMARY OF EVIDENCE<sup>2</sup>

Officer Kevin Barbee was providing scene security during an arrest when Ms. ██████████ approached and attempted to move passed him. Officer Barbee ordered ██████████ to “back up” several times. However, she failed to comply and continued her attempts to move passed Officer Barbee. While issuing commands to ██████████ Officer Barbee extended his arm towards ██████████<sup>3</sup> ██████████ responded by reaching for and making physical contact with Barbee’s forearm.<sup>4</sup> Officer Barbee responded by delivering one open hand push/strike to ██████████<sup>5</sup> ██████████ reacted to the open hand push/strike by stepping back and screaming. As ██████████ stepped back, other officers on scene placed her in handcuffs. Sgt. Jennifer Oswald approached and asked officers what had occurred. A male voice (likely a police officer) is heard saying “she hit him.” ██████████ screamed “I didn’t hit him!” Officer Barbee responded with “you did me! Crazy fucker!”<sup>6</sup> ██████████ was searched by a female officer on scene and placed in the rear of a CPD vehicle and transported to the 009th District Station for processing.<sup>7</sup>

<sup>2</sup>COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

<sup>3</sup> ██████████ stated that Officer Barbee pushed her (Att. 6).

<sup>4</sup> ██████████ characterized her physical contact as “tap.” (Att. 6.) Officer Barbee characterized it as a “grab,” “push,” or “strike.” (Atts. 62, 63 and 96.) The physical contact is depicted on cellular phone telephone footage provided by ██████████ (Att. 21), and COPA finds that the contact appears to be a brief grab or push.

<sup>5</sup> Officer Barbee explained that he intended the push/strike to land on ██████████ shoulder (Atts. 62, 63 and 96), while ██████████ asserts that the push/strike landed on her face (Att. 6). COPA was unable to determine where in fact the push/strike landed. However, COPA did determine that where the push/open-hand-strike landed was inconsequential.

<sup>6</sup> This dialogue can be heard at 18:46 – 18:51 of file Oswald - AXON\_Body\_2\_Video\_2017-01-08\_0124 in Att. 34.

<sup>7</sup> ██████████ Arrest Report (Att. 10) and Booking Photograph (Att. 38) detail that she had no complaints of injury and that there were no visible signs of injury, redness, or swelling to her face.

In a statement to IPRA, ██████ alleged that Officer Barbee struck her without justification, and an unidentified tall white male sergeant on scene pushed her and referred to her as “pathetic.” During our investigation, COPA identified two sergeants who matched the description provided by ██████. COPA also identified the procedural allegations against Officers Barbee and Baqai and the language allegation against Officer Barbee. COPA determined that the force allegation against Officer Barbee is **exonerated**, the allegations against the sergeants are **not sustained** (Sgt. Heger) and **unfounded** (Sgt. Freund), the procedural allegations are **sustained** (BWC) or **not sustained** (TRR), and the language allegation against Officer Barbee is **sustained**.

### 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;
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.

### IV. ANALYSIS AND CONCLUSION

#### a. Verbal Abuse

COPA finds that Allegation #1 against Sgt. Heger is **Not Sustained**. Here, COPA was unable to locate any evidence, other than her statement, to support ██████ allegation. Additionally, COPA was unable to locate any evidence, other than Sgt. Heger’s statement, to refute ██████ allegation. Therefore, COPA is unable to determine if the alleged conduct occurred.

COPA finds that Allegation #1 against Sgt. Freund is **Unfounded**. Here, COPA located Assignment and Attendance Records that demonstrate that Sgt. Freund was not working at the time of the alleged conduct occurred. Additionally, Sgt. Freund explained that according to his records, he was not scheduled to work when the alleged conduct occurred.

COPA finds that Allegation #4 against Officer Barbee is **Sustained**. Department members are required to “treat all persons with the courtesy and dignity which is inherently due every person as a human being[,]” to “act, speak and conduct themselves in a professional manner ... and maintain a courteous, professional attitude in all contacts with the public.”<sup>8</sup> Here, BWC footage clearly captures Officer Barbee referring to ██████ as a “crazy fucker.” This comment was made after ██████ refused to comply with his commands to step back, responded to a physical redirect by reaching for and making contact with Officer Barbee’s forearm, and being pushed/struck by Officer Barbee. Officer Barbee’s comment was made after ██████ screamed “I didn’t hit him.” Further, Officer Barbee does not dispute that he made the comment.

#### **b. Use of Force**

COPA finds that Allegation #2 against Sgt. Heger is **Not Sustained**. Here, COPA was unable to locate any evidence, other than her statement, to support ██████ allegation. Additionally, COPA was unable to locate any evidence, other than Sgt. Heger’s statement, to refute ██████ allegation. Furthermore, both parties presented plausible versions of the event and neither was determined more credible than the other. Therefore, COPA is unable to determine if the alleged conduct occurred.

COPA finds that Allegation #2 against Sgt. Freund is **Unfounded**. Here, COPA located Assignment and Attendance Records that demonstrate that Sgt. Freund was not working at the time of the alleged conduct occurred. Additionally, Sgt. Freund explained that according to his records he was not scheduled to work when the alleged conduct occurred.

COPA finds that Allegation #1 against Officer Barbee is **Exonerated**. A Department member is permitted to use force to overcome resistance.<sup>9</sup> When a Department member encounters “a subject who is *using* ... force against ... another person” that person is an assailant.<sup>10</sup> When an assailant’s use of force is without a weapon, a Department member is permitted to use direct mechanical techniques (e.g. punching, impact weapons, impact munitions) and any force option permitted for a lesser resister, including diffused-pressure strikes or slapping.<sup>11</sup> A diffused-pressure strike or slap is used “to increase control by disorienting the subject and interfering with the subject’s ability to resist.”<sup>12</sup> Further, Department policy imposes no limit against slapping an assailant in the face. Finally, “[m]embers will continually assess the situation” and determine “if

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<sup>8</sup> G02-01(III)(B) (eff. 7/4/92 – 10/5/17).

<sup>9</sup> G03-02-02 (eff. 1/1/16 – 10/16/17).

<sup>10</sup> *Id.* at (IV)(C) (emphasis added.)

<sup>11</sup> *Id.* at (IV)(C)(1)(a-c).

<sup>12</sup> *Id.* at (IV)(B)(2)(a).

any use of force option is necessary” and “the appropriate level of force option based on the *totality of the circumstances*.”<sup>13</sup>

Here, it is indisputable that ██████ responded to Officer Barbee’s attempts to redirect her by reaching for and making physical contact with his forearm. ██████ actions occurred after her refusal to comply with numerous orders to backup and being physically redirected. ██████ actions are partially detailed in her cellular telephone video and documented in her and Officer Barbee’s statements to IPRA/COPA. Further, ██████ actions were contemporaneously detailed by Officer Barbee as he briefed Sgt. Oswald on what occurred. Additionally, Officer Barbee detailed ██████ actions in a TRR, where he identifies her actions as those of an assailant. Further, Officer Barbee details ██████ actions in his OBR as strike/blunt force attack by pushing him. Finally, ██████ actions were a battery under Illinois law, and she was arrested and charged in accordance with the law.<sup>14</sup> Despite the differences in the characterization / description of Officer Barbee’s force – specifically that he “slapped” ██████ as she asserts; or if he “pushed” her with an open hand, as he asserts – Officer Barbee’s action was a permissible response to ██████ actions as an assailant. COPA determined that Officer Barbee’s action, based on the *totality of the circumstances*, was a reasonable use of force in response to ██████ refusal to comply with numerous verbal directions to backup, and her response to Officer Barbee’s physical redirect – specifically her reaching for and making contact with his forearm. ██████ actions, in their *totality*, would cause any reasonable officer to believe ██████ contact with Officer Barbee was an escalation of resistance and an attack rather than a benign action. This determination was made even after considering the differences in how ██████ actions were characterized / described – specifically a “tap” as ██████ asserts or a “grab / push / hit” as Officer Barbee asserts.<sup>15</sup> Since ██████ was an assailant, Officer Barbee’s use of an open hand push / strike was proper and within the limits imposed by Department policy. Finally, even if ██████ was only an active resister,<sup>16</sup> Officer Barbee’s action would still have been permissible to address her active resistance.<sup>17</sup>

#### a. Body Worn Camera

COPA finds that Allegation #1 against Officer Baqai and Allegation #2 against Officer Barbee are **Sustained**. Department Members are required to active their BWC for “all routine calls for service” or “any encounter with the public that becomes adversarial after the initial contact.”<sup>18</sup>

Here, it is undisputed that Officers Barbee and Baqai responded to a “call for service,” that the encounter with ██████ became “adversarial after the initial contact,” and that they failed to

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<sup>13</sup> *Id.* at (II)(F)(2) (emphasis added.)

<sup>14</sup> Per Illinois law, a battery occurs when “a person ... knowingly without legal justification ... makes physical contact of an insulting or provoking nature with an individual” 720 ILCS 5/12-3(a). Further, an aggravated battery occurs when a “person commits ... a battery ... [on] a peace officer ... who is performing his ... official duties, ... to prevent performance of his ... official duties ....” 720 ILCS 5/12-3.05(d)(4).

<sup>15</sup> COPA believes that the characterization / description of ██████ actions does not impact the reasonableness of Officer Barbee’s response because both, when viewed in the *totality* of ██████ actions, are a physical attack and actions of an assailant. Additionally, there is an immeasurable difference to when a push/tap will become a strike.

<sup>16</sup> An active resister is lower level of resistance than an assailant and is defined as “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control....” G03-02-02(IV)(B)(2).

<sup>17</sup> G03-02-02(IV)(B)(2)(a).

<sup>18</sup> S03-14(V)(E)(1)(a), (k) (eff. 5/10/16 – 6/9/17).

active their BWC. Officer Barbee explained that this failure occurred because of the need for an immediate response to assist the officers attempting to make an arrest and his relative inexperience with the BWC at the time of the interaction. Officer Baqai did not recall if she was equipped with a BWC, she did accept responsibility of her failure after learning that the 009th District was issued BWC on August 18, 2016. Based on this information, COPA determined that Officers Barbee's and Baqai's failures to activate his BWC was a violation of Department Policy. Additionally, COPA determined that Officer Barbee's failure directly impacted the ability to fully evaluate his interaction with [REDACTED]

### **b. Reporting**

COPA finds that Allegation #3 against Officer Barbee is **Not Sustained**. Here, COPA was unable to determine if Officer Barbee struck [REDACTED] with an open hand – as asserted by [REDACTED] – or if he pushed [REDACTED] – as asserted by Officer Barbee. This inability is a result of limited evidence to include the lack of BWC footage from Officer Barbee. Therefore, COPA is unable to determine if Officer Barbee's TRR "clearly [and] reliably ... describe[s] the facts and circumstances" relating to his use of force.<sup>19</sup>

## **II. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. Officer Kevin Barbee**

#### **i. Complimentary and Disciplinary History**

- 1. Complimentary:** 17 Honorable Mentions, 5 Complimentary Letters
- 2. Disciplinary:** None

#### **ii. Recommended Penalty, by Allegation**

- 1. Allegation No. 2** – Written Reprimand
- 2. Allegation No. 4** – 1-day Suspension

Officer Barbee admitted to failing to capture his interaction with [REDACTED] on BWC. Officer Barbee explained this failure occurred in part because of his limited experience with the BWC at the time of the incident. Additionally, Officer Barbee stated that had the incident occurred at the time of his statement, he would have captured the interaction because he is more accustomed to the BWC. At the time of this incident the 009th District had been issued BWC for less than 6-months. COPA believes Officer Barbee's failure to active his BWC can be attributed, in part, to the relative short period of time he had been issued a BWC. Despite the relative recent implementation of the BWC in the 009th District, Officer Barbee's failure to activate his BWC directly impacted COPA's ability to thoroughly investigate the incident. Additionally, Officer Barbee explained that his "crazy fucker" remark was in response to [REDACTED] assertion she did not

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<sup>19</sup> G03-02-05(II)(A).

commit a battery and the he made it “in the heat of the moment.” While COPA acknowledges that nature of the language is unprofessional, it also acknowledges that [REDACTED] did not complain about the language – despite her complaints of other language used by other Department members. However, COPA cannot ignore that this unprofessional conduct was directed at [REDACTED]. It is based on these considerations, that COPA recommends a 1-day suspension for Allegation #4.

**b. Officer Farah Baqai**

**i. Complimentary and Disciplinary History**

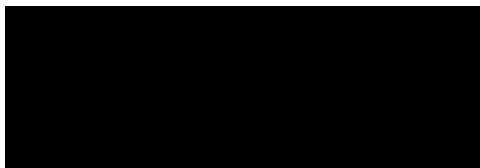
- 1. Complimentary:** 25 Honorable Mentions, 1 Complimentary Letter
- 2. Disciplinary:** None

**ii. Recommended Penalty, by Allegation**

**1. Allegation No. 1 – Written Reprimand**

Officer Baqai admitted to failing to capture her interaction with [REDACTED] on BWC. Officer Baqai could not independently recall if she was equipped with a BWC but acknowledged she was provided one after learning that the 009th District was issued BWC on August 18, 2016. At the time of this incident the 009th District had been issued BWC for less than 6-months. COPA believes Officer Baqai’s failure to active her BWC can be attributed, in part, to the relative short period of time she had been issued a BWC.

Approved:



Andre Kersten  
*Deputy Chief Administrator – Chief Investigator*

October 29, 2019

Date

Appendix A

Assigned Investigative Staff

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|                                    |                |
|------------------------------------|----------------|
| <b>Squad#:</b>                     | 5              |
| <b>Investigator:</b>               | Garrett Schaaf |
| <b>Supervising Investigator:</b>   | Loren Seidner  |
| <b>Deputy Chief Administrator:</b> | Andrea Kersten |