

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 7, 2017
Time of Incident:	Approximately 9:34 p.m.
Location of Incident:	321 N. Central Avenue, Chicago, Illinois
Date of IPRA ¹ Notification:	May 9, 2017
Time of IPRA Notification:	Approximately 10:01 a.m.

Chicago Police Officer (“CPD”) Officer Demond J. Sykes (“Officer Sykes”) used pepper spray to effect an arrest. COPA has determined that the Officer Sykes’ use of pepper spray constituted excessive force under the circumstances presented to him.

II. INVOLVED PARTIES

Involved Member:	Demond J. Sykes, Star #13871, Employee # [REDACTED] Date of Appointment: December 18, 2006; Rank: Police Officer; Unit of Assignment: 015; DOB: [REDACTED], 1976, M/B
Involved Individual:	[REDACTED] DOB: [REDACTED], 1968, M/B

III. ALLEGATIONS

Member	Allegation	Finding/ Recommendation
Officer Sykes	1. On May 7, 2017, at approximately 9:34 p.m., at or near 321 N. Central Avenue, Chicago, Illinois, the accused used pepper spray without justification in effecting the Complainant’s arrest.	Sustained / 5 Day Suspension

IV. APPLICABLE RULES

Rules
1. Rule 8, CPD Rules of Conduct (prohibiting maltreatment).

¹On 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.

General Orders

1. CPD General Order G03-02 *Use of Force Guidelines* (effective October 1, 2002) (rescinded October 16, 2017).
2. CPD General Order G03-02-02 *Force Options* (effective January 1, 2016) (rescinded October 16, 2017).

V. INVESTIGATION²

A. Interviews

██████████

██████████ (“██████████ gave recorded interviews on May 9, 2017 and on January 4, 2019.³ In his interviews, ██████████ complained about Officer Sykes’ use of pepper spray against him in connection with ██████████ May 7, 2017 arrest. In material summary: (1) ██████████ denied that he had resisted arrest or that he did anything to justify Officer Sykes’ use of pepper spray against him; (2) ██████████ denied that Officer Sykes touched him or attempted to grab or grasp him prior to spraying him; and (3) ██████████ also denied that he attempted to evade Officer Sykes’ grasp or that he flailed his arms prior to Officer Sykes’ use of pepper spray against him.

Officer Demond Sykes

Officer Sykes gave an audio recorded statement on February 5, 2019.⁴ Prior to the commencement of his statement, COPA permitted Officer Sykes to view body-worn camera footage that depicted the arrest in question.⁵ The following is a summary of the material things that Officer Sykes said during that statement.

The incident under investigation began when Officer Sykes heard a loud disturbance directing his attention to Ms. ██████████ (“██████████ who flagged down Officer Sykes and his partner, Officer Anna Malarski (“Officer Malarski”), near 345 N. Central Avenue in Chicago seeking police assistance.⁶ The disturbance involved ██████████ and ██████████. Officer Sykes did not know either participant.⁸ ██████████ stated in Officer Sykes’ presence that ██████████ had kicked her in the face about two hours earlier at 101 N. Central Avenue, approximately two blocks away from the disturbance scene.⁹ ██████████ stated that their disagreement stemmed from a business

²The following is a summary of the material evidence relied upon by COPA in our analysis.

³Attachment 6 is an audio recording of an interview given by ██████████ on May 9, 2017. Attachment 40 is an audio/video recording of an interview given by ██████████ on January 4, 2019.

⁴Attachments 37 – 39 comprise an audio recording of that statement. Attachment 43 is a transcript.

⁵That footage is described below at pages 4 and 5. BWC footage depicting a disturbance that preceded the arrest was not available to COPA at the time that Officer Sykes gave his Audio Recorded Statement. That footage is described below at page 4.

⁶Attachment #43, p. 8, line 14, through p. 9, line 7.

⁷*Id.*, p. 9. Line 5, lines 23 – 24.

⁸*Id.*, p. 10, lines 6 – 7.

⁹*Id.*, p. 22, line 2, through p. 24, line 22. The Original Incident Case Report (Attachment #11) confirms that the offense was alleged to have taken place at 6:50 p.m. Body-worn camera footage demonstrates that the subsequent disturbance took place at approximately 9:16 p.m.

arrangement that had gone wrong.¹⁰ [REDACTED] was yelling profanities loudly at the time, hindering Officer Sykes' ability to communicate with [REDACTED] was "squaring up" during the disturbance, closing distance between himself and Officer Sykes.¹² Officer Sykes did not then pat [REDACTED] down at the time, because he had no reason to believe that [REDACTED] was armed.¹³ According to Officer Sykes, [REDACTED] stated that she wanted to sign complaints.¹⁴ Officer Sykes stated that he called for assistance, and that he intended to arrest [REDACTED] and pat him down after assistance arrived.¹⁵ Officer Sykes further stated that [REDACTED] walked away from the scene after Officer Sykes called for assistance.¹⁶

Officer Sykes then left the disturbance scene to search for [REDACTED] leaving Officer Malarski at the scene with [REDACTED].¹⁷ After Officer Sykes returned to the disturbance scene, Officer Malarski and he was preparing paperwork relating to the incident when [REDACTED] reappeared at the scene on foot.¹⁸

Officer Sykes then told Officer Malarski that they were going to have to arrest [REDACTED].¹⁹ Officer Sykes then walked toward [REDACTED] radioing for assistance as he walked behind [REDACTED] with Officer Malarski walking behind Officer Sykes.²⁰ According to Officer Sykes, [REDACTED] then abruptly stopped and faced Officer Sykes, and Officer Sykes then told [REDACTED] that he was under arrest and directed [REDACTED] to put his hands behind his back, while Officer Sykes simultaneously grabbed [REDACTED] right arm.²¹ According to Officer Sykes, his grip on [REDACTED] arm was "firm, but not too firm, didn't want to hurt him."²² Officer Sykes stated that [REDACTED] then pulled away, "flail[ing] his arm up in the air."²³ Sykes then deployed pepper spray into [REDACTED] face.²⁴

According to Officer Sykes, he grabbed that pepper spray from his duty belt with his right hand when he had gotten to be approximately within arm's reach of [REDACTED].²⁵ Officer Sykes grabbed [REDACTED] with his left hand.²⁶ Officer Sykes stated that he stands 6'4½."²⁷ Officer Sykes stated that he could not see whether [REDACTED] made any movement with his left arm at the time.²⁸ Officer Sykes addressed the timing of his decision as follows:

¹⁰*Id.*, p. 23, lines 12 – 15.

¹¹*Id.*, p. 10, lines 1 - 3.

¹²*Id.*, p. 32, lines 13 – 18.

¹³*Id.*, p. 30, line 7, through p. 31, line 22.

¹⁴*Id.*, p. 25, lines 6 – 10.

¹⁵*Id.*, p. 31, line 23, through p. 32, line 7.

¹⁶*Id.*, p. 11, lines 8 - 11.

¹⁷*Id.*, p. 12, lines 12 - 16.

¹⁸*Id.*, p. 13, lines 1 – 21.

¹⁹*Id.*, p. 13, line 23, through p. 14, line 1.

²⁰*Id.*, p. 14, lines 7 – 14.

²¹*Id.*, p. 14, line 15, through p. 15, line 1.

²²*Id.*, p. 37, lines 20 - 21.

²³*Id.*, p. 15, lines 1 – 3.

²⁴*Id.*, p. 15, lines 13 – 14.

²⁵*Id.*, p. 35, line 33, through p. 35, line 17.

²⁶*Id.*, p. 35, lines 18 – 21.

²⁷*Id.*, p. 35, line 9.

²⁸*Id.*, p. 40, lines 6 – 24. Officer Sykes acknowledged that he had written, in the arrest report relating to the incident, that [REDACTED] "began flailing his *arms* wildly" prior to Officer Sykes' use of pepper spray. See Attachment #9 (the Arrest Report) (emphasis added). Officer Sykes attributed the discrepancy between that statement and his more

“At that moment, he walks away from me. He’s walking off. We already went through this before where he walked away. We already relocated around the corner looking for him. We’re not going to play games with him all night. He’s got to go to jail. He’s got to go to jail now.”²⁹

B. Digital Evidence

Body-worn Camera (“BWC”)

COPA reviewed BWC footage captured during the incident³⁰ That footage is in two segments.

The first segment depicts a disturbance of about three minutes in length occurring at 9:16 p.m. on a sidewalk in front of a grocery store having an address of 345 N. Central Avenue. That footage shows ██████████ accompanied by two small children, calmly and quietly advising Officers Sykes and Malarski that ██████████ had previously kicked her. The footage depicts no evidence showing that ██████████ is suffering from any apparent physical or emotional distress. The footage shows ██████████ shouting with animation and apparent anger towards ██████████ and Officer Sykes, denying ██████████ accusations, as Officers Sykes and Malarski stand nearby. At times, Officer Sykes had to extend his arm to keep ██████████ away from ██████████ and at a distance from him. The disturbance ends when ██████████ departs the scene on foot.

The second segment depicts ██████████ reappearing at the scene on foot at approximately 9:33 p.m., and it shows ██████████ walking past Officer Sykes, southbound on Central Street’s sidewalk. The footage then shows Officer Sykes’ view as he walks behind ██████████ southbound on the same Central Street sidewalk, in apparent pursuit of ██████████ appears to be about fifty feet ahead at the beginning of Officer Sykes’ pursuit of him. Approximately twenty seconds after Officer Sykes started to pursue ██████████ the footage depicts ██████████ stop and turn toward Officer Sykes, and ██████████ can then be heard, apparently asking Officer Sykes, “Are you following me?” The footage shows that Officer Sykes has closed the distance between ██████████ and him at this point, and Officer Sykes can be heard stating on his radio, “Can we get another unit over here? The offender is back. Over here on Central.” Officer Sykes can then be heard talking to ██████████ apparently walking as he does so, stating, “You’re under arrest. Turn around. Put your hands behind your back.” The footage shows that ██████████ is approximately five feet away from Officer Sykes as Officer Sykes gives those commands, and that ██████████ resumes his southbound walk as

recent statement to the effect that he could not see ██████████ left arm at the time to a “typo.” Attachment #43, p. 44, line 8, through p. 47, line 13. That attribution is doubtful. In the Original Incident Case Report relating to the incident, Officer Malarski likewise wrote that ██████████ “began flailing his *arms* wildly” prior to Officer Sykes’ use of pepper spray. See Attachment #11 (the Original Incident Case Report) (emphasis added). In Officer Malarski’s Audio Recorded Statement, given on January 23, 2019, Officer Malarski stood by that description of ██████████ behavior, stating that ██████████ had, in fact, flailed *both* of his arms wildly, likening ██████████ arm movements to the making of a backstroke swimming motion. Attachments ## 28 – 31 comprise an audio recording of that statement. COPA has determined that it cannot credit or rely upon Officer Malarski’s Audio Recorded Statement, as we consider it to be materially in conflict with Officer Sykes’ revised claim, which is that ██████████ made a movement with only one of his arms.

²⁹Attachment #43, p. 53, line 24, through p. 54, line 7.

³⁰Attachments 19 and 40 are itemizations of that footage.

Officer Sykes does so. [REDACTED] then disappears from view, to the left, but shadows depicted in the footage suggest that Officer Sykes and [REDACTED] are then walking nearly parallel to each other, with [REDACTED] several feet to Officer Sykes' left. The footage shows that Officer Sykes continues to walk, and Officer Sykes can be heard, as he walks, stating more loudly, "Turn around. Put your hands behind your back! Dude, turn around! Put your hands behind your back!" [REDACTED] disappears from and reappears into view as Officer Sykes gives those commands. [REDACTED] is then shown to be walking to Officer Sykes' left, slightly ahead of Officer Sykes and only a few feet away from Officer Sykes. At 9:34 p.m., approximately thirty seconds after Officer Sykes began to follow [REDACTED] Officer Sykes can be heard shouting, "Dude, turn around put [sic]." The footage shows that Officer Sykes has stopped at that moment and that he is turning to his left with an arm extended toward [REDACTED] as he gives that aborted command. [REDACTED] is then depicted in view, with his arms at his sides, standing just out of Officer Sykes' reach. The footage shows that Officer Sykes is then spraying [REDACTED] and that [REDACTED] is turning away from the spray, towards a wall that abuts the Central Avenue sidewalk. [REDACTED] then puts his hands on the wall. As [REDACTED] stands with his hands on the wall, Officer Sykes is shown pointing his pepper spray can at [REDACTED] continuing to order [REDACTED] to put his hands behind his back and warning [REDACTED] that he will spray [REDACTED] again if he does not do so. Officer Malarski is shown to have arrived, and Officer Sykes demands that she give him a can of spray. She complies. Officer Sykes continues to yell at [REDACTED] telling him to put his hands behind his back. Officer Sykes then commands Officer Malarski to handcuff [REDACTED] and she does so. No other pedestrians are depicted to be nearby.

V. 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.

VI. ANALYSIS

To determine whether Officer Sykes’ use of pepper spray in arresting ██████ was justified, COPA analyzed the facts shown by the evidence and applied the pertinent CPD directives to that evidence.

CPD General Order G03-02 then prohibited CPD officers from using any force that was “unwarranted.”³¹ BWC evidence and Officer Sykes’ statement demonstrate that Officer Sykes made little effort to use a lesser amount of force to arrest ██████. Even if COPA were to give full credit to Officer Sykes’ description of the events, that description shows that Officer Sykes’ non-verbal efforts to place ██████ in custody after closing the distance on him were limited to a single one-handed grab of one of ██████ arms, made by Officer Sykes as he was holding pepper spray in his free hand. Even if COPA were to accept Officer Sykes’ claim that ██████ then pulled away from that grab with a one-armed flailing motion, Officer Sykes’ description of the event offers COPA no reason to conclude that Officer Sykes was justified in failing to make further arrest efforts prior to resorting to pepper spray.

BWC evidence also suggests that Officer Sykes had no reason to believe that ██████ posed an immediate threat to Officer Sykes’ safety or to the safety of others at the moment. Though the evidence shows that ██████ had behaved aggressively during a disturbance earlier in the evening, the evidence also shows that Officer Sykes didn’t then arrest ██████ but that he instead permitted ██████ to walk away from the scene. The evidence also shows that ██████ was calm as Officer Sykes approached him. Officer Sykes has not suggested that he had reason to believe that ██████ was armed at the time. BWC evidence also suggests that Officer Sykes had no reason to believe that ██████ posed a flight risk - ██████ had made no effort to run from Officer Sykes, even after having seen that Officer Sykes was pursuing him. And though ██████ was suspected of having committed the offense of battery at the time, the evidence shows that Officer Sykes knew facts raising questions concerning the seriousness of that suspected crime – ██████ alleged victim had claimed that ██████ had kicked her over two hours prior to making a report of that crime, at a place over two blocks away from the place of that report, under circumstances suggesting that she had come to that place with ██████. She showed no sign of injury or distress. Therefore, the evidence does not permit a convincing argument that Officer Sykes could have reasonably believed that using pepper spray was necessary to effect ██████ arrest. Instead, we find that the evidence shows that Officer Sykes could have used “time as a tactic” and/or other force mitigation options as required by a CPD directive in effect at the time.

That directive, General Order G03-02-02, describes the “time as a tactic” method as involving the “advantageous use of time, distance, and cover by isolating and containing a subject and continuously evaluating the member’s positioning and force options.”³² General Order G03-02-

³¹CPD General Order G03-02 *Use of Force Guidelines* (effective date October 1, 2002) (rescinded October 16, 2017), Section III.A.

³²CPD General Order G03-02-2 *Force Options* (effective January 1, 2016) (rescinded October 16, 2017), Section III.E.

02 further provides that “time as a tactic may permit the de-escalation of emotions, as well as the arrival of additional Department members and tactical resources.”³³ BWC evidence shows that Officer Sykes had called for assistance and that his partner, Officer Malarski was only steps behind him. BWC evidence also shows that no other pedestrians were nearby, and that, therefore, the two officers could have continued to walk with [REDACTED] monitoring him, securing him, containing him, and warning him that he would be pepper sprayed if he did not stop. In doing so, the officers would have thereby used “time as a tactic” and other force mitigation tactics as required by General Order G03-02-02.

Although General Order G03-02-02 then included a provision authorizing officers to use pepper spray in making arrests of assailants and persons attempting to avoid arrest with evasive limb movements,³⁴ that provision is subject to General Order G03-02’s separate force mitigation provisions that prohibits the use of unwarranted physical force.³⁵ To conclude otherwise would rendered these force mitigation provisions meaningless.

For the above reasons COPA finds that Officer Sykes failed to adhere to General Order G03-02-02 force mitigation provisions which resulted in his use of excessive force; therefore, COPA reached a finding of sustained for allegation 1.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Demond Sykes

i. Complimentary and Disciplinary History – Attendance Recognition Award,1; Presidential Election Deployment Award, 1; Emblem of Recognition – Physical Fitness, 2; Honorable Mention, 24; Complimentary Letter, 2; NATO Summit Service Award, 1; and a 2009 Crime Reduction Award, 1. Officer Sykes as one relevant prior sustained log: 1083227. This log concerned an altercation at CPS school and involved unprofessional and rude conduct by Officer Sykes coupled with poor judgment. Outcome: Reprimand.

ii. Recommended Penalty, by Allegation

1. Allegation 1 – 5 Day Suspension

³³*Id.*


³⁴*Id.*, Section IV.B.2.b(2)(b).


³⁵CPD General Order G03-02 *Use of Force Guidelines* (effective date October 1, 2002) (rescinded October 16, 2017), Section III.A.

VIII. CONCLUSION

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

Member	Allegation	Finding/ Recommendations
Officer Sykes	1. On May 7, 2017, at approximately 9:34 p.m., at or near 321 N. Central Avenue, Chicago, Illinois, the accused used pepper spray without justification in effecting the Complainant's arrest in violation of Rules 1 and 8 of the CPD Rules of Conduct.	Sustained / 5 Day Suspension

Approved: 


Andrea Kersten
Deputy Chief Investigator

5/30/19
Date

Appendix A

Assigned Investigative Staff

Squad#:	Squad #3
Investigator:	Francis Tighe
Supervising Investigator:	Matthew Haynam
Deputy Chief Administrator:	Andrea Kersten