



Log # 2021-2408

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On or about June 21, 2021, the Civilian Office of Police Accountability (COPA) received a written notification from court-appointed Independent Monitor Maggie Hickey bringing certain body-worn camera [BWC] video recordings to COPA's attention, including footage depicting an incident that occurred at about 12:15 am on May 30, 2020, near 557 S State St. in Chicago.<sup>2</sup> Upon review of that footage, COPA served a written notification upon Chicago Police Department (CPD) Officer Dominic R. Merola, alleging that he had used excessive force during the incident.<sup>3</sup> Following its investigation, COPA reached a sustained finding regarding the allegation.

### II. SUMMARY OF EVIDENCE<sup>4</sup>

In the wake of George Floyd's death at the hands of police officers in Minneapolis, Minnesota on May 25, 2020, Chicago experienced a period of significant civil unrest which resulted in thousands of police and civilian encounters, many of which were fraught with emotion and hostility.<sup>5</sup> The incident giving rise to this investigation involved one of those encounters.

The BWC video recording that depicts the incident shows a large group of CPD officers assembled near the east side of the intersection of Harrison Street and S State Street in Chicago at about 12:12 am on May 30, 2020.<sup>6</sup> The recording shows that the officers were facing a large group of civilians who were standing within the intersection.<sup>7</sup> It shows that the officers began moving west, forward into that intersection and towards the group of civilians.<sup>8</sup> The footage shows that the officers then moved southward within the intersection, as they apparently tried to move the

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<sup>1</sup> Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

<sup>2</sup> Att. 1 is an image of that written notification. Att. 2 is a copy of that footage; the incident is depicted from about 1:51:00 (elapsed time) to about 1:54:00. Hickey had been appointed by the United States District Court for the Northern District of Illinois on March 1, 2019, to assess the City's compliance with a Consent Decree that had been entered in *State of Illinois v. City of Chicago*, Case No. 17-cv-6260 (N.D. Ill.). See Att. 3, a Special Report submitted by Hickey in that litigation, dated July 20, 2021, at pg. 2 thereof.

<sup>3</sup> One or more of these allegations fall within COPA's jurisdiction pursuant to Chicago Municipal Code § 2-78-120. Therefore, COPA determined it would be the primary investigative agency in this matter.

<sup>4</sup> The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including video footage and COPA's interview of Officer Merola.

<sup>5</sup> That unrest and CPD's response to it is addressed in Att. 3, the Special Report referenced *supra* at n.2.

<sup>6</sup> Att. 2 at 1:51:00.

<sup>7</sup> Att. 2 at 1:51:00.

<sup>8</sup> Att. 2 at 1:52:46 and immediately following.

civilians to the south and clear of the intersection,<sup>9</sup> meeting some resistance from civilians as they did so.<sup>10</sup> The footage shows that at about 12:15 am, Officer Merola took hold of one of those civilians, who was standing amid and close to other officers, from behind and by the civilian's upper body, as depicted in Figure 1 below, which is a screenshot taken from the footage.<sup>11</sup>



Figure 1: Screenshot taken from Att. 2, BWC footage at 1:53:52, showing Officer Merola taking hold of a civilian.

The footage shows that Officer Merola then swung the civilian hard and downward to the left, and that he released the civilian, who fell to the ground as a result.<sup>12</sup> The footage shows that Officer Merola apparently lost his balance as he took that action, but that Officer Merola did not fall to the ground as a result.<sup>13</sup>

COPA interviewed Officer Merola, who acknowledged that he is the officer depicted in the footage.<sup>14</sup> In summary, Officer Merola told COPA that he did not intend to direct the civilian to the ground.<sup>15</sup> Officer Merola said that he took hold of the civilian and swung him around while trying to create distance between the civilian and other officers.<sup>16</sup> Officer Merola said that he then

<sup>9</sup> Att. 2 at 1:53:00 and immediately following.

<sup>10</sup> See Att. 2 at 1:53:00 and immediately following.

<sup>11</sup> Att. 2 at 1:53:52.

<sup>12</sup> See Att. 2 at 1:53:52 and immediately following.

<sup>13</sup> See Att. 2 at 1:53:52 and immediately following.

<sup>14</sup> See Att. 15, pg. 9, ln. 1, to pg. 10, ln. 15.

<sup>15</sup> See Att. 15, pg. 9, ln. 1, to pg. 10, ln. 15; pg. 25, lns. 10 to 24.

<sup>16</sup> See Att 15, pg. 10, lns. 8 to 11.

lost his balance, and that the momentum then swung the civilian to the ground.<sup>17</sup> Officer Merola further said that he “was just trying to keep everyone safe, officers including, and the subject including.”<sup>18</sup> There is no recording of this incident from Officer Merola’s BWC.<sup>19</sup>

### III. ALLEGATIONS

#### Officer Dominic R. Merola:

1. Took hold of a person and threw that person to the ground without justification and/or by using an amount of force that was not objectively reasonable, necessary, and/or proportional.
  - Sustained, Rules 2, 3, 6, 8, and 9

### IV. CREDIBILITY ASSESSMENT

The video evidence shows the involved civilian was standing amid and close to other officers at the moment that Officer Merola took hold of him, thereby supporting Officer Merola’s claim that he took action to create distance between the civilian and those officers. However, COPA finds that that the video evidence does not support Officer Merola’s claim that he did not intend to direct the civilian to the ground or his claim that he “was just trying to keep everyone safe . . . the subject including.” The video evidence’s depiction of Officer Merola swinging the civilian hard and downward and then releasing him belies those claims. And though the video evidence does show that Officer Merola lost his balance, it suggests that it was the officer’s own throwing motion that caused him to do so.

### V. ANALYSIS<sup>20</sup>

COPA finds that the allegation is **Sustained**. CPD’s Use of Force directive then in effect provided, in part:

Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.<sup>21</sup>

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<sup>17</sup> See Att. 15, pg. 10, Ins. 13 to 15.

<sup>18</sup> See Att. 15, pg. 12, Ins. 3 to 4.

<sup>19</sup> The audit trail for Officer Merola’s BWC demonstrates that the BWC was activated continuously for over 2 hours during Officer Merola’s tour of duty prior to this incident. The BWC stopped recording suddenly at 12:04:57 am on May 30, 2020, because of a low battery. See Att. 121. Also, on that recording, Officer Merola can be heard saying that the battery is low immediately before the recording ends. See Att. 6. Because the audit trail demonstrated that the BWC battery was depleted prior to this incident, COPA did not bring an allegation against Officer Merola for failing to activate his BWC.

<sup>20</sup> For a definition of COPA’s findings and standards of proof, see Appendix B.

<sup>21</sup> See Att. 16, G03-02 Use of Force (effective February 29, 2020, to December 30, 2020), Section III.B.

As noted above, the video evidence shows the involved civilian was standing amid and close to other officers who had their backs turned to the subject when Officer Merola took hold of him, thereby demonstrating circumstances that might have justified the use of some force by Officer Merola to create distance between the civilian and those officers. However, that same evidence shows that the amount of force used by Officer Merola when he took that action was excessive, not necessary, and therefore prohibited by the directive. COPA therefore finds that Officer Merola's action violated CPD policy and Rules 2, 3, 6, 8, and 9.

## **VI. DISCIPLINARY RECOMMENDATION**

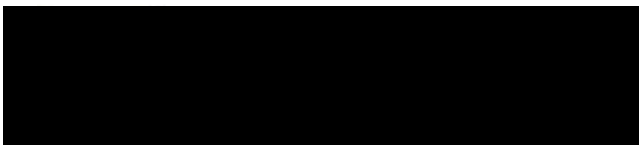
### **A. Complimentary and Disciplinary History<sup>22</sup>**

Officer Merola has received 3 Department Commendations, the Life Saving Award, 100 Honorable Mentions, 5 complimentary letters, and at least 9 other awards and commendations. Officer Merola has no sustained complaint registers within the past five years. Officer Merola has been reprimanded twice through the summary punishment process, once in February 2023 for an inventory procedure infraction, and once in January 2022 for a preventable motor vehicle accident.

### **B. Recommended Discipline**

Here, COPA has found that Officer Merola violated Rules 2, 3, 6, 8, and 9 by using excessive force against an unknown subject. While Officer Merola asserts that he meant only to move the subject away from other officers and that he did not intend to throw the subject to the ground, COPA does not accept this explanation; instead COPA finds that Officer Merola act of throwing the subject to the ground was deliberate. COPA has not been able to identify or interview the subject, and there is no evidence indicating that the subject was injured by Officer Merola's actions. Based on this information, and considering Officer Merola's history, COPA recommends a 10-day suspension.

Approved:



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Angela Hearts-Glass  
*Deputy Chief Investigator*

5-31-2023

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Date

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<sup>22</sup> Att. 17.

**Appendix A**

**Case Details**

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Date/Time/Location of Incident:	May 30, 2020, approximately 12:15 am, at or near 557 S State St., Chicago, Illinois
Date/Time of COPA Notification:	June 21, 2021, approximately 8:56 am
Involved Member #1:	Officer Dominic R. Merola, Star #7221, Employee ID #██████, Date of Appointment: April 30, 2001, Unit of Assignment: 001, Male, White

**Applicable Rules**

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- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.
- Rule \_\_:** *[Insert text of any additional rule(s) violated]*

**Applicable Policies and Laws**

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- G03-02 Use of Force (effective February 29, 2020, to December 30, 2020)

## Appendix B

### **Definition of COPA’s Findings and Standards of Proof**

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 a proposition is proved.<sup>23</sup> For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD policy than that it did not, 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. 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.”<sup>24</sup>

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<sup>23</sup> 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 is found to be more probably true than not).

<sup>24</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> ed. 2000)).

**Appendix C**

**Transparency and Publication Categories**

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation