SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

TT! 0.T ! !	
Time of Incident:	4 pm
Location of Incident:	1038 N. Ridgeway Ave.
Date of COPA Notification:	April 30, 2018
Time of COPA Notification:	3:22 pm
Complainant stop. While following a car, and be speaking with the driver. After stop and observed the stop. sinstructed. Officer Tohatan instructed officer Tohatan instructed. Within seconds, Officer resisted, prompting Officer Officer Tohatan's aide. After officer Tohatan, who decided to arrect COPA sustains allegations against	had been handcuffed, he threatened to beat est and charge him with aggravated assault. Officer Tohatan that he detained without
used excessive force on	in an unjustified verbal altercation, and that he COPA also sustains an allegation against Officer complete a Tactical Response Report ("TRR").
used excessive force on Tohatan that he failed to accurately	COPA also sustains an allegation against Officer complete a Tactical Response Report ("TRR").

Involved Individual #1:

DOB: ______, 1995

Male / Black

Involved Individual #2:

Female / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Tohatan	It is alleged that, on April 29, 2018, near 103 N. Ridgeway Ave., at around 5:48 pm, Office Tohatan:	
	1. Unlawfully detained Complainant, in violation of Rules 1 and 2.	SUSTAINED/ 10- day suspension
	 Engaged in an unjustified verbal altercation with Complainant, using profanity, in violation of Rules 8 and 	SUSTAINED/ 3-day suspension 9.
	3. Used excessive force on Complainant by forcefully grabbing his jaw and/or neck, in violation of Rules 6, 8, and 9	day suspension
	 It is further alleged that, after the incident above, Officer Tohatan failed to accurately complete a Tactical Response Report, in violation of Rule 10 and 11. 	

IV. APPLICABLE RULES AND LAWS

Rules – The following acts are prohibited:

Rule 1: Violation of any law or ordinance.

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 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 11: Incompetency or inefficiency in the performance of duty.

General Orders

- 1. General Order G03-02: Use of Force
- 2. General Order G03-02-01: Force Options
- 3. General Order G03-02-02: Incidents Requiring the Completion of a Tactical Response Report

Special Orders

- 1. Special Order S04-13-09: Investigatory Stop System
- 2. Special Order S08-01-02: Special Situations Involving Allegations of Misconduct

Federal Laws

1. Fourth Amendment to the United States Constitution

State Laws

1. Constitution of the State of Illinois, Article I, Section 6

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V. INVESTIGATION¹

a. Digital Evidence

COPA reviewed video evidence consisting of in-car and body-worn footage.^{2,3} Put together, three recordings ("the videos") capture the interaction from multiple angles, providing a good picture of what happened between and Officers Tohatan and Ortiz.

The videos show the officers driving behind a black two-door car after it passes in front of them. As they follow it, the car makes a right turn and slows down. While it is still moving, approaches the car on the driver's side then turns around and walks back to the sidewalk. The car then pulls into a parking spot on the left side of the one-way street, apparently without using a turn signal. The police car stops behind the black car.

Officer Ortiz approaches the driver's side of the car while Officer Tohatan stands further back on the passenger side of the car. appears to be walking on the sidewalk and he stops approximately 15-20 feet⁴ away from Officer Ortiz with his hands in his pockets. stops, Officer Tohatan states, "Keep on moving, man. Keep Immediately after on moving. Don't stay here; go ahead, walk."5 asks if the officer will "lock [him] up for standing right here." Officer Tohatan repeats his demand. As talks, he alternates between gesturing with his hands and putting them in his pockets. Officer Tohatan and instructs him to take his hands out of his pockets. takes a few steps towards immediately complies. As a raises his hands, Officer Tohatan seemingly reaches for his gun and says, "Take your fucking hands out of your pocket." Officer Ortiz turns his head to observe what is happening then turns his attention back to the driver, who says, "Tell your partner to calm down; we ain't doing shit, man."



Figure 1: (green) observing Officer Ortiz (blue)

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Att. 22.

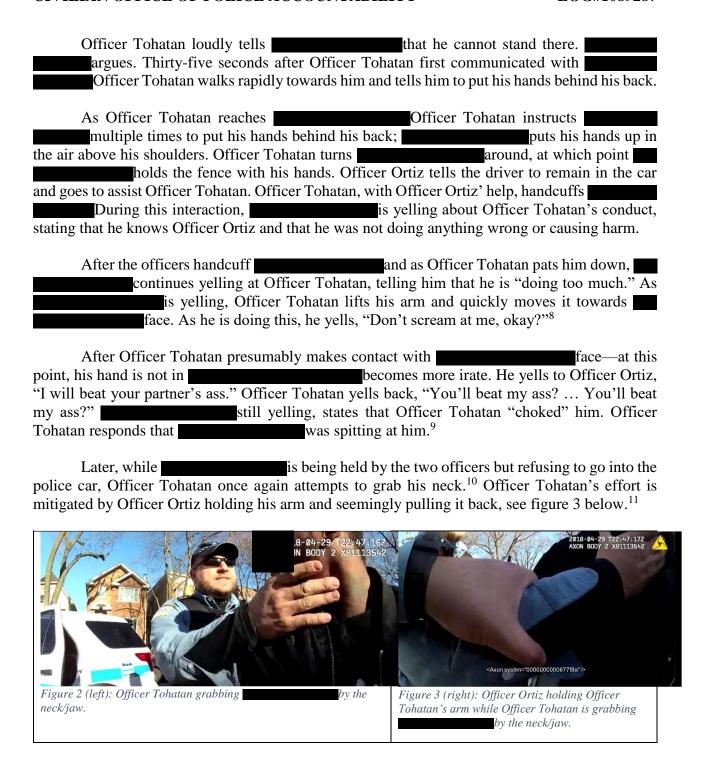
³ COPA also obtained third-party video which did not add anything to the other videos and which captured only a short portion of the interaction.

⁴ This distance is based on the estimations of Officers Ortiz and Tohatan. See Sec. V.B.

⁵ Att. 22, Tohatan BWC at 00:55.

⁶ Id., Tohatan BWC at 1:10; Id., Ortiz BWC at 1:10; Id., In-Car Camera at 2:18.

⁷ *Id.*, Ortiz BWC at 1:10.



At the same time, the driver of the vehicle exits his car and stands within a short distance of the officers.

⁸ Att. 22, Ortiz BWC at 2:00.

⁹ *Id.*, Ortiz BWC at 2:09.

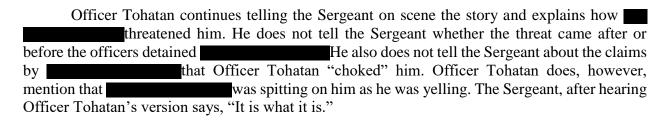
¹⁰ It should be noted that this grab was obviously not a control technique intended to, for example, get into the police vehicle.

¹¹ Att. 22, Ortiz BWC at 22:47:17z

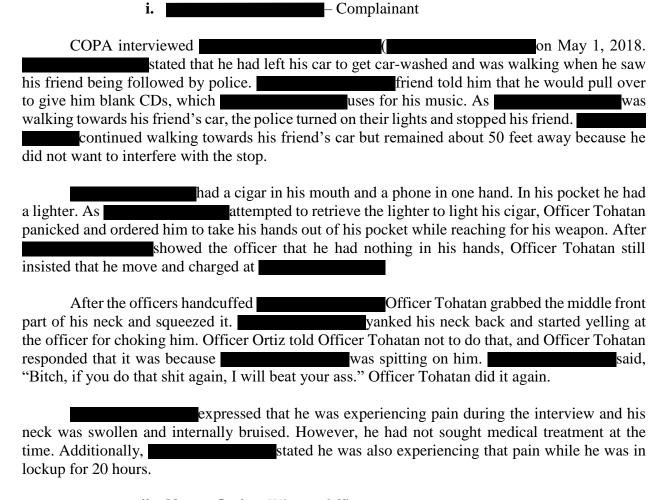


When Sergeant Thomas Herrick arrives, Officer Tohatan tells him what happened.

This guy here walked here, with this hands like this in his pocket. And he stood here, like stopped here. I'm like, "Sir, you can't stay here, we're conducting a traffic stop; please walk away." And he started like, screaming, like, "Hey wha wha wha." I'm like, "Sir, take your hand out of your pocket," you know. He still had his hand in his pocket, you know. "Sir, you have to—" I told him three or four times, "you have to go from here," you know, "we're conducting a traffic stop."



b. Interviews



ii. Nestor Ortiz – Witness Officer

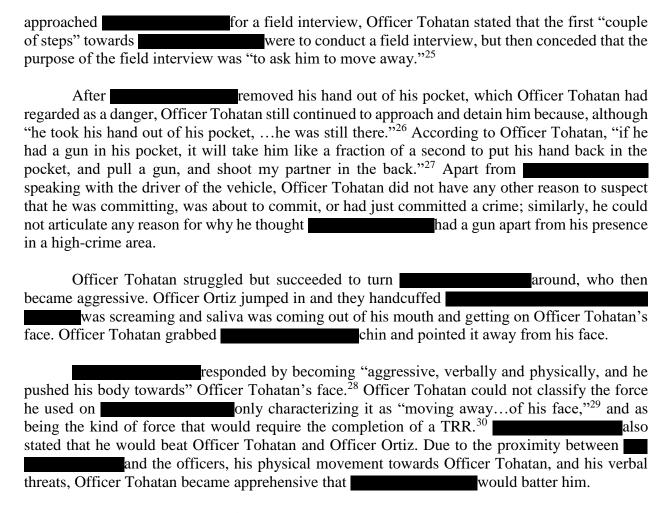
COPA interviewed Officer Nestor Ortiz on August 6, 2018.¹² Officer Ortiz was Officer Tohatan's partner for approximately a year, though not at the time of the interview. Officer Ortiz viewed Officer Tohatan as a good officer, though described him as "a bit more aggressive than me, when it comes to, uh, handling a situation...[but] nothing out of proportion."¹³ Officer Ortiz could not remember details of the stop and he was given a chance to review the arrest report and the tactical response report. According to Officer Ortiz, it seemed like he would have been the author of the arrest report. The "entire arrest report," however, was based on what Officer Tohatan told Officer Ortiz, not based on Officer Ortiz' own observations, because Officer Ortiz was more concentrated on the driver.¹⁴

¹² Att. 19.

¹³ *Id.* at 7:19-21.

¹⁴ *Id.* at 14:18-21.

Officer Ortiz did not recall seeing before the incident, and he did not hear him threaten Officer Tohatan. He did not recall at what point during the incident threatened Officer Tohatan. After reviewing the tactical response report, Officer Ortiz concluded that the first page of the TRR did not show that Officer Tohatan "exerted any physical force against"
While reviewing video footage, Office Ortiz saw that complied with the order to remove his hands from his pockets. When asked whether Officer Tohatan's actions in grabbing by the jaw were appropriate, Officer Ortiz stated that, in his judgement, it was not something that he would have done unless he had to; for example, he would instead have moved out of the way. However, Officer Ortiz maintained that Officer Tohatan's actions simply constituted a different technique, not an improper one.
Towards the end of the interview, Officer Ortiz conceded that Officer Tohatan "probably escalated [the situation] a little more than he was supposed to." ¹⁶
iii. Nicu Tohatan – Accused Officer
COPA interviewed Officer Nicu Tohatan ¹⁷ on August 9, 2018. ¹⁸ Officer Tohatan stated that his partner and he observed a vehicle that had evaded a traffic stop about two weeks prior. ¹⁹ They stopped the vehicle and Officer Tohatan considered it to be a high-risk traffic stop. While conducting the stop, Officer Tohatan observed who had exchanged words with the driver earlier, walking and stopping approximately 15 to 20 feet away from Officer Ortiz. had his hands in his pockets. Officer Tohatan considered to "already be a suspect when he approached the vehicle." Officer Tohatan told to take his hands out of his pockets "[b]ecause, we were suspecting, not that we're suspecting, we want to make sure that he's not concealing a firearm, or a knife." when the sure that he's not concealing a firearm, or a knife."
did not comply with Officer Tohatan's instructions to walk away and to get his "fucking hands" out of his pockets. "started screaming and cursing." Officer Tohatan decided to detain for obstruction of justice and for interfering with the traffic stop. Officer Tohatan approached and told him to turn around; when refused, Officer Tohatan "had to go hands on." Later in the interview, when shown the narrative of the arrest report that stated that Officer Tohatan
15 <i>Id.</i> at 24:5-9. 16 <i>Id.</i> at 63:11-14. 17 Att. 21. 18 This report will summarize the interview of Officer Tohatan as necessary, for example, where he provides additional or contradictory information. For the sake of concision, where Officer Tohatan's testimony is substantially similar to other accounts of the incident, it will not be discussed. 19 Although Officer Tohatan said multiple times that the vehicle had taken off from him and his partner (<i>see</i> , <i>e.g.</i>). Att. 21 at 7; <i>id.</i> at 29), he would later admit that he was not there during that incident (<i>id.</i> at 67:19-23). 20 Att. 21 at 71:3-6. 21 <i>Id.</i> at 71:15-20. 22 <i>Id.</i> at 34:16-18. 23 <i>Id.</i> at 9:1-2. 24 <i>Id.</i> at 9:1-1.



c. Documentary Evidence

COPA reviewed multiple documents generated by the Chicago Police Department ("CPD"). An **Original Case Incident Report** (RD #JB202224), authored by Reporting Officer Nestor Ortiz, states that on March 27th, 2018, a car described as a 2000 Chevrolet Monte Carlo automobile sped off after being curbed for a traffic violation. Once the car sped off, the officers disengaged with the vehicle.³¹

A **Traffic Stop Summary** states that on April 29, 2018, at the time of the incident in question, Officer Ortiz stopped a vehicle described as a 2000 Chevrolet.

²⁵ *Id.* at 17:19 – 18:13.

²⁶ *Id.* at 18:19 – 19:5.

²⁷ *Id*.

²⁸ *Id.* at 21:15-17.

²⁹ *Id.* at 24:2-3.

³⁰ *Id.* at 24:4-8.

³¹ General Order G03-03-01 prohibits officers from engaging in a motor vehicle pursuit if "the most serious offense for which the motor vehicle is wanted is a non-hazardous traffic offense." (Sec. III.A.)

which Office Aggravated	er Ortiz attested. The reports attested. The report Assault and Obstruction. I and to the offender to take the offender	ort charges The narrative states that 0	with two misdem Officer Tohatan "gave n	nultiple
of force again or leave other 'describe, w	ers unchecked, as well as ith specificity, (1) the use Member's response, includ	e TRR includes a portion v a narrative section filled e of force incident, (2) th	where officers check some out by the reporting off e subject's actions, and	e boxes ficer to (3) the
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o C	IMMINENT THREAT OF BATTERY - NO WEAPON GRAB/HOLO/RE: OTHER (DESCRIBE) OTHER (DESCRIBE) OTHER (DESCRIBE) SUBJECT ACTIVITY DID THE SUBJECT Drug-Related? Gang-Related? BATTERY AGAINST	PILE USED FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM T COMMIT AN ASSAULT OR NO IF YES, MADEST THE INVOLVED MEMBER NO INVESTIGATION OF THE INVOLVED MEMBER NO INCOMPTEY OF THE INVOLVED MEMBER NO INCOMPTER NO INCOMPTEY OF THE INVOLVED MEMBER	DNA Used - Attempt to Attack Member Used - Attacked Member	Member at Gunpoint Obtained Member's Weapon Stunt Force (Including Attempt) ncluding Verbal Threats)
	TYPE OF Ambush - No Warning Disturbance - Do ACTIVITY? Traffic Stop Man with a Gun Investigatory Stop Disturbance - Mo REASON FOR RESPONSE?	Action/Civil Disorder Charge Disturbance - Other ental Health Other - Describe in Narrative IUCR	e: Charge: CODE: IUCR CODE	
DNA UNK	FORCE MITIGATION MEMBER ZONE OF MOVEMENT TO AVOID ATTACK I SAFETY AVOID ATTACK I SAFETY CONTROL TECHNIQUES WERSL DIRECTION SPECIALIZED UNITS	TACTICAL NONE ES	CONTROL TACTICS CONTROL INSTRUMENT RISTLOCK PRESSURE SENSITIVE ARE.	OTHER AS DNA
MEMBER'S RESPONSE (Check all that apply)	RESPONSE WITHOUT WEAPONS OPEN HAND STRIKE KICKS TAKE DOWN		ANDARIE	REVOLVER SEMI-AUTO PISTOL RIFLE SHOTGUN OTHER
As se follow verbal an assault or responded to nowever, un	een in the snapshot above, directions and made verbattery by "other (including and der Control Tactics, Office)	Officer Tohatan indicated al threats. He indicated than yerbal threats)." Office ctions with verbal direct	control tech	did not nmitted that he niques;
As se follow verba an assault or responded to nowever, un	ELBOW STRIKE CLOSED HAND STRIKE/PUNCH KNEE STRIKE COMMANDS CHARADOME TWEADOM TYPE The in the snapshot above, and the snapshot above, battery by "other (including) Commands Comman	Officer Tohatan indicated al threats. He indicated than yerbal threats)." Office ctions with verbal direct	that control tech	did not nmitted that he niques;

³² Att. 10.

circumstances of the stop, stating that the vehicle they curbed was one that "matched the

In the narrative section, Officer Tohatan elaborates further. He first discusses the

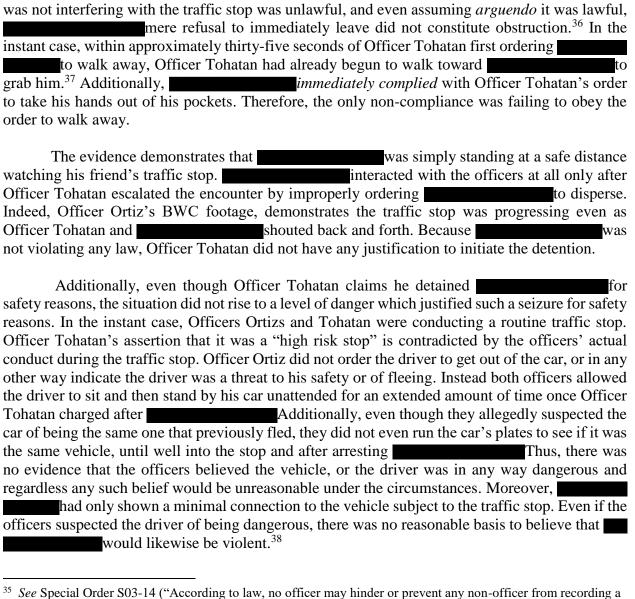
³³ Att. 8.

description of a vehicle that recklessly took off on the officers on a prior traffic stop." Officer Tohatan stated that the officers elevated the stop to a high-risk traffic stop "considering all the facts including but not limited to the vehicle taking off on officers before, multiple occupants in the vehicle at the time of the stop, tinted windows all-around the vehicle and the high crime area." After explaining his initial interaction with
VI. ANALYSIS
The facts underlying the allegations are not disputed: Officer Tohatan detained engaged in a verbal altercation with and used force on The pertinent inquiry is whether those actions were justified and reasonable under applicable law and Department policy. COPA finds that Officer Tohatan's actions were not justified.
a. Officer Tohatan unlawfully detained
COPA finds that the detention of was unjustified at its inception, and therefore, was unlawful even though Officer Tohatan eventually developed probable cause to arrest for assault when stated that he would "beat [Officer Tohatan's] ass."
Officer Tohatan purports that he detained because he was obstructing and interfering with a traffic stop by watching the traffic stop, arguing, and not leaving when ordered to do so. Officer Tohatan also asserted that he believed may have had a firearm or a knife because he was standing with his hands in his pockets and refused to remove his hands from his pocket.
The offense of Resisting or Obstructing a Peace Officer, Firefighter, or Correctional Institution Employee, 720 ILCS 5/31-1, is committed when a "person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity." The offense does not encompass mere argument with a police officer, but does not necessarily require a physical act of obstruction. ³⁴ "The legislative focus of section 3101(a) is on the tendency of the conduct to interpose an obstacle that impedes or hinders the officer in the performance of his authorized duties. That inquiry is for the trier of fact, based upon the facts and circumstances of each case."
There is no evidence thatobstructed Officers Tohatan and/or Ortiz in any way. The video evidence demonstrates that was walking on the sidewalk (<i>i.e.</i> a public place) and he stopped approximately 15-20 feet away from Officer Ortiz with his hands in his pockets. The United States Constitution, Illinois Constitution, and Department

11

directives permit civilians to observe Department members performing their official duties in

³⁴ See, People v. Baskerville, 2012 IL 111056 at ¶¶22-25.



public.³⁵ Officer Tohatan's order for to disperse from a public place when he

³⁵ See Special Order S03-14 ("According to law, no officer may hinder or prevent any non-officer from recording a law enforcement officer who is performing his or her duties in a public place or when the officer has no reasonable expectation of privacy.")

and Indeed, conduct far more invasive than conduct does not rise to the level of obstruction. See, e.g., Kies v. City of Aurora, 156 F.Supp.2d 970, 982 (N.D. Ill. 2001)). To be clear, officers can order civilians to disperse from a scene when their presence legitimately impedes or hinders officers' ability to perform their official duties. See, e.g., People v. Gordon, 408 Ill. App. 3d 1009, 1017 (officer lawfully arrested defendant for obstruction when she walked in the street and began yelling and threatening the officers performing a traffic stop and refused to leave despite being ordered to do so 5 to 15 times while another person tried to escape police custody). However, Gordon is clearly distinguishable from this case.

³⁷ See *People v. Kotlinski*, 2011 IL Ap (2d) 101251 ¶¶48-49 (finding that ignoring an officer's orders for 47 seconds was insufficient to show obstruction)

³⁸ Officers can seize bystanders in some circumstances. *See, e.g., United States v. Howard*, 729 F.3d 655 (7th Cir. 2013). *Howard* is clearly distinguishable. In that case, an officer was acting alone to arrest a man that the man had recently pistol-whipped someone and was also a suspect in a shooting. The officer observed the man exit a car and went to apprehend him, but subsequently observed another man exit the car and ordered the man to the ground at gunpoint.

For these reasons, COPA finds that Officer Tohatan had no justification to seize or detain and Allegation #1 is **Sustained.** b. Officer Tohatan engaged in an unjustified verbal altercation with The second allegation against Officer Tohatan is that he engaged in an unjustified verbal Officer Tohatan's BWC footage shows that he aggressively altercation with yelled at from the outset of the encounter. Additionally, Officer Tohatan escalated to profanity even while was complying. The use of profanity by Officer Tohatan is in addition to the generally insolent tone he took was a bystander watching a traffic stop. Officer with Tohatan seemingly readily assumed was a threat and proceeded to talk to him as such. While Officer Tohatan claimed to the responding sergeant that he was speaking calmly and using words like "sir" and "please," the video directly contradicts those assertions. Even after took his hands out of his pockets after being told once to do so, Officer Tohatan made profane remarks to Officer Tohatan continued engaging in an argument with yelling out questions and explanations even after deciding to arrest him for assault. When Officer Ortiz stepped in to attempt to deescalate the situation, Officer Tohatan kept interrupting to continue to engage in unnecessary arguments with Officer Tohatan did not act professionally in his interaction with fact, his own partner, Officer Ortiz, acknowledged that Officer Tohatan had escalated the incident too far. Officer Tohatan engaged in an unjustified verbal altercation with including yelling, arguing, and using profanity. Therefore, Allegation #2 against Officer Tohatan is **Sustained**.³⁹ c. Officer Tohatan used excessive force against | The third allegation against Officer Tohatan is that he used excessive force against by forcefully grabbing his jaw and/or neck. Officer Tohatan asserts that he chin" in an effort to avoid coming into contact with "grabbed [saliva. CPD directives delineate when and how officers may use force. 40 According to Department directives, a subject may be classified as a cooperative subject, a passive resister, an active resister, ³⁹ Even during the interview, Officer Tohatan referred to as having been non-stop "screaming"

and bitching." Att. 21.

⁴⁰ See G03-02 (Use of Force); see also G-03-02-01 (Force Options).

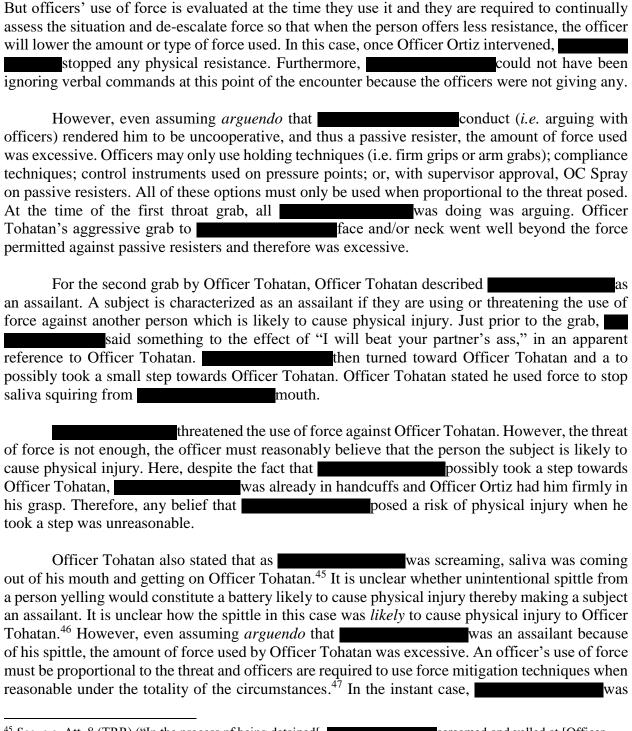
proportional."41 asserted that Officer Tohatan grabbed him by the neck twice as they were standing along the fence. COPA finds credible and his allegations are supported by available video footage. The BWC footage demonstrates that contemporaneously asserted multiple times that Officer Tohatan put his hands on his neck and "choked" him.42 The BWC footage also supports assertions. It appears that the first grab occurred at 2:09 of Officer Ortiz's body-worn camera footage, 43 when Officer Tohatan moves neck in a manner consistent with grabbing it. his hand aggressively towards While the video does not conclusively show the grab, COPA finds by a preponderance of the by the neck at this point of the evidence that Officer Tohatan in fact grabbed says he's going to beat encounter. Then about six seconds later, right after Officer Tohatan's ass, there is a brief scuffle during which asserts he was grabbed the second time. Neither officers' body-worn camera videos capture what Officer Tohatan is doing with his hands during this part of the scuffle, but when they can next be seen, he is by the collar suggesting his hands were in area. COPA finds by a preponderance of the evidence that Officer Tohatan also grabbed by the neck and/or jaw at this point of the encounter. Furthermore, Officer Tohatan then a third time after leading towards the police clearly grabbed vehicle. This was captured on Officer Ortiz's body-worn camera footage and screenshots appear as Figure 2 above. On all three occasions. was already handcuffed and being held from behind by Officer Tohatan and from the front by Officer Ortiz, who had one hand on arm as Officer Ortiz attempted to talk with him. At the time of the first grab, COPA finds that was at most a passive resister. To be considered a resister, the person must be uncooperative, in that they fail to be compliant without the need for physical force. If the resisting party is merely failing to comply (through non-movement) with verbal or other direction they are considered to be passive resisters. If they attempt to create distance between themselves and the officer's reach, then they are considered to be active resisters. Moreover, officers are required to use principles of force mitigation, such as continual communication with the subject, in order to avoid using force and they are instructed to consider use of verbal force mitigation when encountering subjects who are not complying with verbal directions.⁴⁴ Earlier in the encounter, refused to follow verbal directions from Officer Tohatan and may have physically struggled as Officer Tohatan attempted to subdue him. ⁴¹ G03-02 (Use of Force). ⁴² Available BWC footage shows that spittle came out of mouth during parts of the encounter

or an assailant. At all times the use of force must be "objectively reasonable, necessary, and

⁴³ Att. 22, Ortiz video at 22:43:15z.

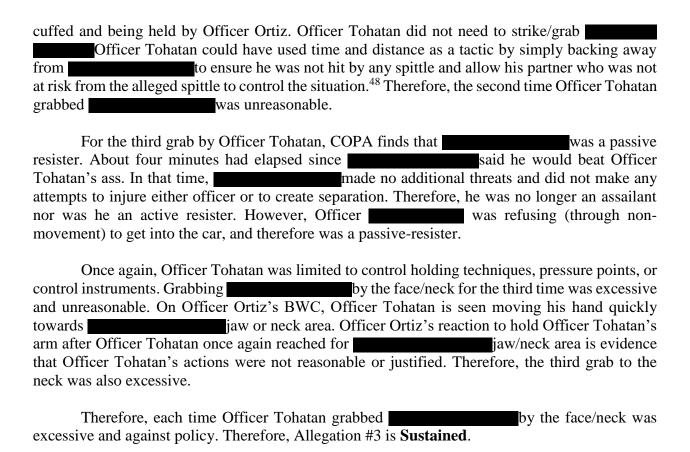
⁴⁴ G03-02-01 III.A.

CIVILIAN OFFICE OF POLICE ACCOUNTABILITY



⁴⁵ See, e.g. Att. 8 (TRR) ("In the process pf being detained[, screamed and yelled at [Officer Tohatan] causing saliva out of his mouth to squirt toward [Officer Tohatan]."); see also Att. 19 at 43:16-22 (Officer Ortiz Interview) ("[S]aliva was coming out of his mouth. Whether it was intentional or not, I don't know.")/
⁴⁶ A subject who knowingly and/or intentionally spits on an officer is likely committing a battery (i.e. intentionally or knowingly without legal justification making physical contact of an insulting or provoking nature). See People v. Peck, 260 Ill. App. 3d 812, 815 (4th Dist. 1994). However, physical contact of an insulting or provoking nature is not always likely to cause physical injury.

⁴⁷ See G03-02-01.III.B.



d. Officer Tohatan failed to accurately complete a Tactical Response Report ("TRR")

The last allegation against Officer Tohatan is that he failed to complete the TRR accurately. Officer Tohatan claimed that he completed the TRR and that he did so accurately. Officer Tohatan insists that the first page of it, which has certain boxes checked for certain actions taken by the officer or the civilian, is accurate, and that it is properly supplemented by the narrative and the BWC footage. But the BWC footage does not obviate the need to complete all parts of the TRR accurately. And the narrative section does not substitute the requirement that the first page of the TRR be filled out accurately.

CPD directives dictate that CPD members "truthfully and completely" describe the "facts and circumstances concerning any incident involving the use of force." It further instructs members to "report and thoroughly document *each reportable use of force incident*" (emphasis added). 50

The TRR was not completed accurately.

16

⁴⁸ See G03-02-01.III.B.

⁴⁹ G03-02-02, II.A.

⁵⁰ *Id*.

First, the first page of the TRR does not indicate that Officer Tohatan grabbed neck, he merely selected "other" and stated that he used "DNA" control tactic and "utilized members presence and verbal commands" as a response without weapons.

Second, the narrative section states that Officer Tohatan "pushed" "chin...in the opposite direction to stop the saliva out of his mouth." As mentioned above, COPA finds that the grab to the face which is clearly depicted once and was more likely than not done two other times which are not referenced in the TRR at all.

Thus, Officer Tohatan's TRR does not completely and accurately describe the incident and fails to document each reportable use of force. Therefore, Allegation #4 against Officer Tohatan is **Sustained**.⁵¹

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Tohatan

i. Complimentary and Disciplinary History

Officer Tohatan's complimentary history consists of 31 honorable mentions, one trafficstop-of-the-month award, and one emblem of recognition for physical fitness. Officer Tohatan has one reprimand for a court appearance violation.

ii. Recommended Penalty, by Allegation

1. Allegation No. 1

Officer Tohatan unreasonably and unnecessarily escalated the encounter and interfered with constitutionally protected right to observe the police performing their police duties in a public place. Accordingly, COPA recommends a 10-day suspension for Allegation No. 1.

2. Allegation No. 2

Officer Tohatan engaged in a verbal altercation with the Complainant. First, this entire situation would have been avoided if Officer Tohatan had allowed the Complainant to simply stand on the sidewalk. Second, the use of profanity is simply not acceptable, even in stressful situations. Third, even after Officer Tohatan had detained and handcuffed the Complainant, he continued arguing with him in a loud voice, thereby hurting the image of the Department and hindering Officer Ortiz's attempts to de-escalate the encounter. Accordingly, COPA recommends a 3-day suspension for Allegation No. 2.

17

⁵¹ To be clear, while the evidence supports that Officer Tohatan did not complete the TRR completely and accurately based on his incorrect belief that this BWC footage could be used to supplement the TRR, there is no evidence that Officer Tohatan made any intentional false statements.

3. Allegation No. 3

Officer Tohatan used excessive force on the Complainant by grabbing his jaw and/or neck three times. The use of force was not such that it caused much pain or injury, but it was unwarranted and excessive nonetheless. Officers should strictly follow the Use of Force model when using force and should never, under any circumstances, use force to punish behavior they deem inappropriate. In addition, using force in the same way more than once within minutes of each other compounds the gravity of the sustained allegation. Accordingly, COPA recommends a 5-day suspension for Allegation No. 3.

4. Allegation No. 4

Officer Tohatan did not accurately complete the Tactical Response Report. Officer Tohatan's refusal to admit to this allegation and his insistence that the BWC sufficiently supplements the TRR shows a lack of willingness to accept responsibility for his actions. It further demonstrates a lack of understanding of the purpose of a TRR and the importance of making sure it is complete and accurate, even if it documents an incident that was captured on camera. Accordingly, COPA recommends a 1-day suspension for Allegation No. 4.

VIII. CONCLUSION

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

Officer	Allegation	Finding /
		Recommendation
Officer Tohatan	It is alleged that, on April 29, 2018, near 1038 N. Ridgeway Ave., at around 5:48 pm, Officer Tohatan:	
	1. Unlawfully detained Complainant, in violation of Rules 1 and 2.	SUSTAINED/ 10- day suspension
	 Engaged in an unjustified verbal altercation with Complainant, using profanity, in violation of Rules 8 and 9 	SUSTAINED/ 3-day suspension
	3. Used excessive force on Complainant by forcefully grabbing his jaw and/or neck, in violation of Rules 6, 8, and 9.	SUSTAINED/ 5- day suspension
	 It is further alleged that, after the incident above, Officer Tohatan failed to accurately complete a Tactical Response Report, in violation of Rules 10 and 11. 	

Approved:

11		

November 22, 2019

Andrea Kersten

Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#: 4

Investigator: Tamer Abouzeid

Supervising Investigator: James Murphy-Aguilu

Deputy Chief Administrator: Andrea Kersten