SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 3, 2018
Time of Incident:	At approximately 2:40 p.m.
Location of Incident:	At or near 901 W. 63 rd St., Chicago, IL 60621
Date of COPA Notification:	July 3, 2018
Time of COPA Notification:	Approximately 3:28 p.m.
her partner Officer Daniel R. M. (which he car, and which he car, and the car, and	imately 2:40 p.m., Officer Vicky Perez ("Officer Perez") and IcNicholas ("Officer McNicholas") curbed St. in Chicago and conducted a traffic stop. was driving was in the front passenger seat. Officer Perez and vehicle because his license plate had expired. cer Perez approached the driver's side of the vehicle and Officer enger side. When Officer Perez asked for his driver's produced his driver's license and handed her his phone, which ence. After Officer Perez told that he needed to have a linot look on his phone, rolled his window up. Officer
Perez then opened car doo	or so that she could see into the vehicle, because the windows ents from both and and officer Perez engaged
conduct. After investigating the al	he incident, complaining of Officer Perez's unprofessional legations against Officer Perez, The Civilian Office of Police rmined that there is sufficient evidence to sustain a finding as

II. INVOLVED PARTIES

Accused Officer Vicky Perez	Officer Vicky Perez, Star #15656, Employee # Unit of Assignment: 7 th District, Date of Appointment: May 19, 2008, Rank: Police Officer, DOB: 1983, Gender: Female, Race: Hispanic
Witness Sergeant Danial R. McNicholas	Sergeant Danial R. McNicholas, Star #12550, Employee # Unit of Assignment: 7 th District, Date of Appointment: October 5, 2012, DOB: 1987, Male, Race: Caucasian

Complainant:	DOB 2977, Male African-American
Civilian Witness	DOB , 1989, Male
	African-American

III. ALLEGATIONS¹

Officer	Allegation	Finding/
		Recommendation
the occupants of a vehicle during a traffic stop;		
	J	Sustained/ 5 day Suspension
	2. Arrested without justification	Sustained 10 day Suspension

4t

IV. APPLICABLE RULES AND LAWS

Chicago Police Department Rules and Regulations

Rules

Rule 2: Any action of 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 9: Engaging in any unjustified verbal or physical altercation with any person while on or off duty.

State Laws

 $1.\ 720\ ILCS\ 5/12-2-Aggravated\ Assault$

¹ While made the additional allegation that CPD personal at a district office failed to take his complaint, COPA did not advance this complaint due to identification issues surrounding exactly whom made his complaint to and to avoid further timely delays in closing this investigation.

V. INVESTIGATION

a. Interviews COPA interviewed on July 5, 2018, about the incident that occurred on July 3, 2018. stated that while he and were driving around at or near 6300 S. Peoria Dr., Chicago, Officer Perez and her partner Officer McNicholas pulled them over. was in the front passenger seat. said that when the police pulled him over, Officer Perez approached the car and asked him for his license and insurance card. said that he rolled down the rear driver's side window so Officer Perez could see that there was no one in the back seat. He got his license and insurance information out for Officer Perez, but she would not take his phone, which had his proof of insurance. said that Officer Perez kept trying to provoke him and his passenger, and she kept putting her fingers in the car. said that at one point, he rolled his window up because it was getting hot in his car, and then Officer Perez "snatched" open his door. him and his passenger, "stupid" and "motherfucker." said that after Officer Perez opened his door, she had her head and shoulders inside of his car. At that point, he was offended and got riled up but eventually calmed down and tried to tell to calm down. said that Officer Perez would not leave his window. said the argument got worse when refused to give the officers his ID. said that he asked for a supervisor to come to the scene and a supervisor eventually came, but he did not do much to help the situation. Eventually, the officers gathered behind wehicle and talked. After that, they went to the passenger side of the car, opened the door, and told that he was under arrest for assaulting an officer. Officer Vicky Perez³ On December 5, 2018, COPA interviewed Officer Perez with regard to the stop of vehicle that she and her partner Officer McNicholas conducted on July 3, 2018. Officer Perez stated that she pulled wehicle over and asked for his license and insurance. Officer Perez stated that immediately accused her of racial profiling, and she told him that she was not racially profiling him. Rather, she said she stopped him because his license plate was expired. Officer Perez stated that she became argumentative with and after they verbally abused her. She said that both she and the occupants in the car raised their voices. Officer

³ Atts. 28 & 29 – Parts I and II

² Att. 11

Perez also stated that she became argumentative when they called her "reckless" and a "racist bitch," because that led her to believe that there might be weapons in the car.

Officer Perez acknowledged that given her position, she should not be argumentative, but she said she is human and because they were being verbally abusive and not showing her any respect, she became frustrated. She said that she reacted the way she did, because she did not know if there were weapons in the car, and she did not know why they were using profanity and talking to her the way they did.

When asked why she did not take license and go to her car to run his name and write him tickets, she said that she stayed at the car for the safety of her and her partner, because she did not know if there were weapons in the car. Officer Perez also said that she had not yet determined whether she would ask

Officer Perez explained that she was in fear of a battery, because the passenger said that he would "steal" on her, which she knew to mean that he would punch her, and because she said the passenger lunged at her. She said that the passenger's upper body was leaning over the driver.

The COPA investigator asked Officer Perez why she was in fear of a battery when her partner was standing by the passenger's window of the vehicle and was acting as the guard officer. Officer Perez stated that her partner was unable to see into the car, because the passenger would not roll down his window, and the windows of the vehicle were tinted. Officer Perez also stated that she was involved in an incident where she did receive a battery. Officer Perez explained that on another occasion, an offender who was arguing with someone else grabbed her face.

Officer Perez acknowledged that she has learned a lot of things since this incident, including the fact that a driver could show that he was insured if he had something on his phone to prove it. She also said that if she had it to do over again, she might not have become argumentative.

b. Digital Evidence – Body-worn Camera Footage ("BWC")⁴

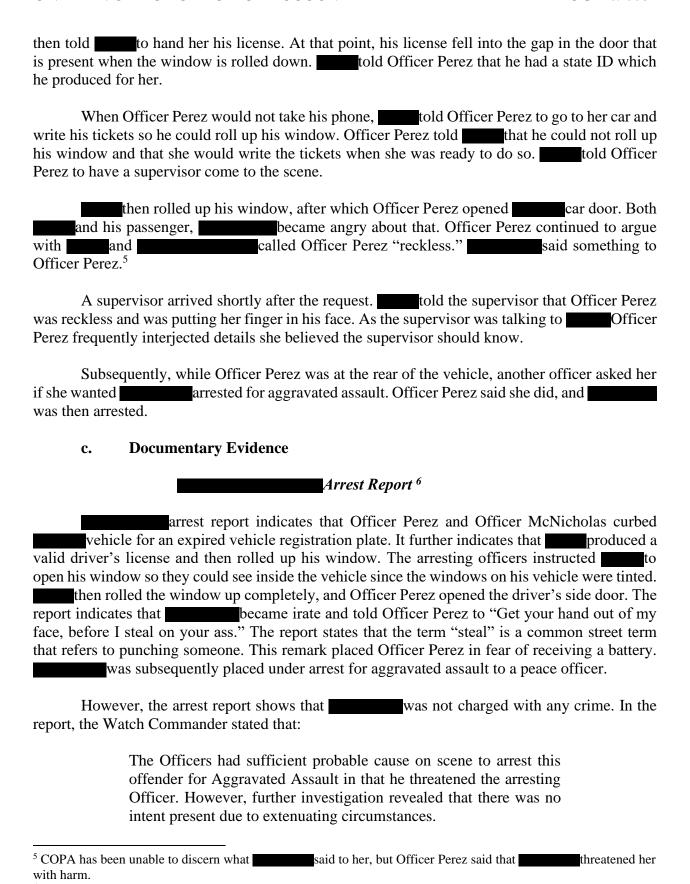
Officer Perez

COPA reviewed footage from Officer Perez's BWC. The BWC covers the entire incident. When Officer Perez approached the driver's side of vehicle, she asks him to roll down the rear window so that she could be sure that no one was in the back seat of his car. Toll down the rear window for Officer Perez. After he did that, Officer Perez asked for that was such a big deal. Told Officer Perez that he believed that the stop was the result of racial profiling. Officer Perez then responded by asking his how it was racially profiling when she stopped him for an expired license plate.

As they argued about this, put his license out, and then he took his phone out, explaining that his proof of insurance was on his phone. Officer Perez would not take phone and told him that he needed to provide her with the physical insurance card. Officer Perez

-

⁴ Att. 24



⁶ Att. 4

V. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

- 1. <u>Sustained</u> where it is determined the allegation is supported by a preponderance of the evidence;
- 2. <u>Not Sustained</u> where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
- 3. <u>Unfounded</u> where it is determined by clear and convincing evidence that an allegation is false or not factual; or
- 4. <u>Exonerated</u> where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

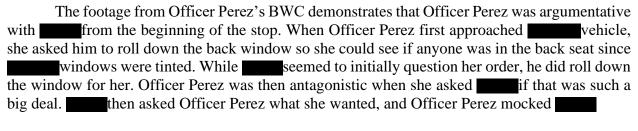
A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 III. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has been 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.

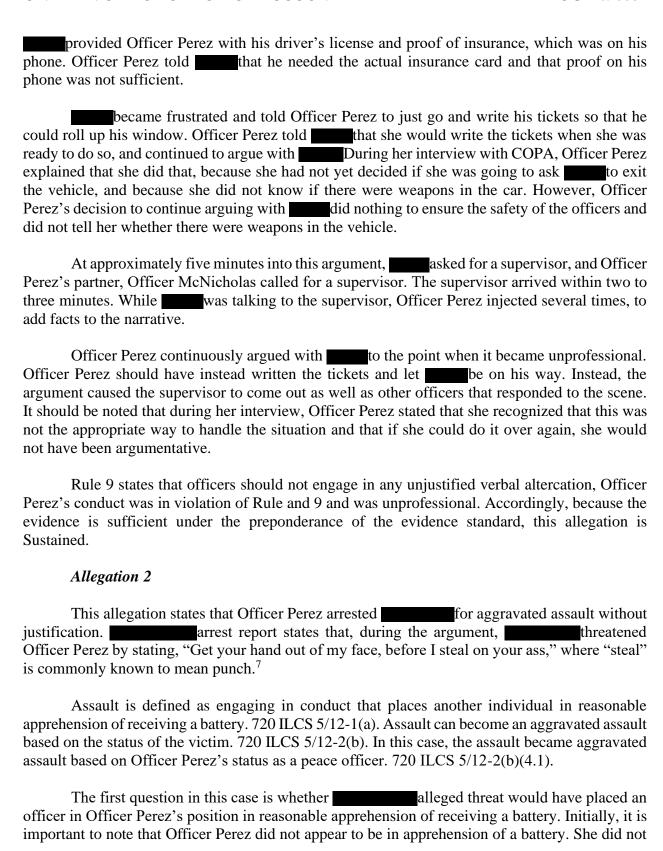
VI. ANALYSIS

Allegation 1

This allegation states that Officer Perez engaged in an unjustified verbal altercation with the occupants of a vehicle during a traffic stop. Based on a preponderance of the evidence standard, COPA sustains this allegation.



then told Officer Perez that he believed that she was racially profiling him. Officer Perez asked him why he believed that since she was stopping him for an expired license plate.



⁷ While the COPA investigator could not actually hear the threat allegedly made, for purposes of this allegation, COPA will presume that did, in fact, make that threat.

back away from the vehicle, request assistance from her partner, or call for back-up. Instead, she continued to argue with both and and are the continued to argue with both are the continued to argue with both and are the continued to argue with both are the continued to argue with a continued to argue with both are the continued to argue with a continued to a continued to argue with a continued to a continued to argue with a continued to a

Although during her interview, Officer Perez stated that and and werbal abuse and them calling her reckless and a racist bitch led her to believe that there were weapons in the car. However, there does not appear to be any connection between those remarks and the presence of weapons.

In addition, the situation was not such that an officer in her position would be in reasonable apprehension of a battery. Officer Perez's partner was on the passenger side of wehicle acting as the guard officer. In addition, although the passenger did lean over the driver, when he did this, he was only using his hands when he talked.

In short, did nothing else to indicate that he intended to commit a battery, and again, Officer Perez did not act as though she believed that he would do so. Finally, it should be noted that arrest report indicates that the watch commander decided that should not be charged with the aggravated assault.

For those reasons, COPA sustains this allegation.

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Vicky Perez

Complimentary and Disciplinary History: Officer Perez's Complimentary History includes: Problem Solving Award, 1; Presidential Election Deployment Award, 2008; Attendance Recognition Award, 1; Special Commendation, 1; Honorable Mention, 66; Complimentary, 6; NATO Summit Service Award, 1; Honorable Mention Ribbon Award, 1; 2009 Crime Reduction Award, 1; Unit Meritorious Performance Award, 1. No applicable disciplinary history.

i. Recommended Penalty, by Allegation

Allegation No. 1: Engaged in an unjustified verbal altercation with the occupants of a vehicle during a traffic stop. **Penalty:** 5 day Suspension.

Allegation No. 2: Arrested without justification.

Penalty: 10 day Suspension.

VII. CONCLUSION

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

Officer	Allegation	Finding/
---------	------------	----------

		Recommendation
Officer Vicky Perez	\mathcal{C} \mathcal{J}	
	 Engaged in an unjustified verbal altercation with the occupants of a vehicle during a traffic stop; 	Sustained / 5 day Suspension
	2. Arrested without justification	Sustained / 10 day Suspension

Approved:

March 24, 2020

Andrea Kersten

 $Deputy\ Chief\ Administrator-Chief\ Investigator$

Date

Appendix A

Assigned Investigative Staff

Squad#:3Investigator:Michele LavinSupervising Investigator:Matthew HaynamDeputy Chief Administrator:Andrea Kersten