

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.

On July 3, 2018, at approximately 2:40 p.m., Officer Vicky Perez (“Officer Perez”) and her partner Officer Daniel R. McNicholas (“Officer McNicholas”) curbed [REDACTED] ([REDACTED] vehicle near 901 W. 63rd St. in Chicago and conducted a traffic stop. [REDACTED] was driving the car, and [REDACTED] ([REDACTED] was in the front passenger seat. Officer Perez and Officer McNicholas stopped [REDACTED] vehicle because his license plate had expired.

After stopping the vehicle, Officer Perez approached the driver’s side of the vehicle and Officer McNicholas approached the passenger side. When Officer Perez asked [REDACTED] for his driver’s license and insurance card, [REDACTED] produced his driver’s license and handed her his phone, which he said had the proof of his insurance. After Officer Perez told [REDACTED] that he needed to have a physical insurance card and would not look on his phone, [REDACTED] rolled his window up. Officer Perez then opened [REDACTED] car door so that she could see into the vehicle, because the windows were tinted. This provoked arguments from both [REDACTED] and [REDACTED] and Officer Perez engaged in the argument.

[REDACTED] notified COPA about the incident, complaining of Officer Perez’s unprofessional conduct. After investigating the allegations against Officer Perez, The Civilian Office of Police Accountability (“COPA”) has determined that there is sufficient evidence to sustain a finding as to each of the Allegations.

II. INVOLVED PARTIES

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

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

III. ALLEGATIONS¹

Officer	Allegation	Finding/ Recommendation
Officer Vicky Perez	It is alleged by the complainant that on or about July 3, 2018, at approximately 2:40 p.m., at or near 901 W. 63 rd St., Chicago, IL 60636, Officer Vicky Perez, star #15656 committed misconduct through the following acts or omissions:	
	1. 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

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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

██████████²

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 driving, and ██████████ 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. ██████████ said she was calling 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, ██████████ said 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 ██████████ vehicle 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 Perez*³

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 ██████████ vehicle 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

² Att. 11

³ Atts. 28 & 29 – Parts I and II

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 [REDACTED] 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 [REDACTED] to exit his vehicle.

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 [REDACTED] 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. [REDACTED] roll down the rear window for Officer Perez. After he did that, Officer Perez asked [REDACTED] if that was such a big deal. [REDACTED] 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, [REDACTED] 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 [REDACTED] phone and told him that he needed to provide her with the physical insurance card. Officer Perez

⁴ Att. 24

then told ██████ to hand her his license. At that point, his license fell into the gap in the door that is present when the window is rolled down. ██████ told Officer Perez that he had a state ID which he produced for her.

When Officer Perez would not take his phone, ██████ told Officer Perez to go to her car and write his tickets so he could roll up his window. Officer Perez told ██████ that he could not roll up his window and that she would write the tickets when she was ready to do so. ██████ told Officer Perez to have a supervisor come to the scene.

██████ then rolled up his window, after which Officer Perez opened ██████ car door. Both ██████ and his passenger, ██████ became angry about that. Officer Perez continued to argue with ██████ and ██████ called Officer Perez “reckless.” ██████ said something to Officer Perez.⁵

A supervisor arrived shortly after the request. ██████ told the supervisor that Officer Perez was reckless and was putting her finger in his face. As the supervisor was talking to ██████ Officer Perez frequently interjected details she believed the supervisor should know.

Subsequently, while Officer Perez was at the rear of the vehicle, another officer asked her if she wanted ██████ arrested for aggravated assault. Officer Perez said she did, and ██████ was then arrested.

c. Documentary Evidence

████████████████████ Arrest Report ⁶

████████████████████ arrest report indicates that Officer Perez and Officer McNicholas curbed ██████ vehicle for an expired vehicle registration plate. It further indicates that ██████ produced a valid driver’s license and then rolled up his window. The arresting officers instructed ██████ to open his window so they could see inside the vehicle since the windows on his vehicle were tinted. ██████ then rolled the window up completely, and Officer Perez opened the driver’s side door. The report indicates that ██████ became irate and told Officer Perez to “Get your hand out of my face, before I steal on your ass.” The report states that the term “steal” is a common street term that refers to punching someone. This remark placed Officer Perez in fear of receiving a battery. ██████ was subsequently placed under arrest for aggravated assault to a peace officer.

However, the arrest report shows that ██████ was not charged with any crime. In the report, the Watch Commander stated that:

The Officers had sufficient probable cause on scene to arrest this offender for Aggravated Assault in that he threatened the arresting Officer. However, further investigation revealed that there was no intent present due to extenuating circumstances.

⁵ COPA has been unable to discern what ██████ said to her, but Officer Perez said that ██████ threatened her with harm.

⁶ Att. 4

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 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.

The footage from Officer Perez's BWC demonstrates that Officer Perez was argumentative with [REDACTED] from the beginning of the stop. When Officer Perez first approached [REDACTED] vehicle, she asked him to roll down the back window so she could see if anyone was in the back seat since [REDACTED] windows were tinted. While [REDACTED] seemed to initially question her order, he did roll down the window for her. Officer Perez was then antagonistic when she asked [REDACTED] if that was such a big deal. [REDACTED] then asked Officer Perez what she wanted, and Officer Perez mocked [REDACTED]

[REDACTED] 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.

█████ provided Officer Perez with his driver's license and proof of insurance, which was on his phone. Officer Perez told █████ that he needed the actual insurance card and that proof on his phone was not sufficient.

█████ became frustrated and told Officer Perez to just go and write his tickets so that he could roll up his window. Officer Perez told █████ that she would write the tickets when she was ready to do so, and continued to argue with █████. During her interview with COPA, Officer Perez explained that she did that, because she had not yet decided if she was going to ask █████ to exit the vehicle, and because she did not know if there were weapons in the car. However, Officer Perez's decision to continue arguing with █████ did nothing to ensure the safety of the officers and did not tell her whether there were weapons in the vehicle.

At approximately five minutes into this argument, █████ asked for a supervisor, and Officer Perez's partner, Officer McNicholas called for a supervisor. The supervisor arrived within two to three minutes. While █████ was talking to the supervisor, Officer Perez injected several times, to add facts to the narrative.

Officer Perez continuously argued with █████ to the point when it became unprofessional. Officer Perez should have instead written the tickets and let █████ be on his way. Instead, the argument caused the supervisor to come out as well as other officers that responded to the scene. It should be noted that during her interview, Officer Perez stated that she recognized that this was not the appropriate way to handle the situation and that if she could do it over again, she would not have been argumentative.

Rule 9 states that officers should not engage in any unjustified verbal altercation, Officer Perez's conduct was in violation of Rule and 9 and was unprofessional. Accordingly, because the evidence is sufficient under the preponderance of the evidence standard, this allegation is Sustained.

Allegation 2

This allegation states that Officer Perez arrested █████ for aggravated assault without justification. █████ arrest report states that, during the argument, █████ threatened Officer Perez by stating, "Get your hand out of my face, before I steal on your ass," where "steal" is commonly known to mean punch.⁷

Assault is defined as engaging in conduct that places another individual in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a). Assault can become an aggravated assault based on the status of the victim. 720 ILCS 5/12-2(b). In this case, the assault became aggravated assault based on Officer Perez's status as a peace officer. 720 ILCS 5/12-2(b)(4.1).

The first question in this case is whether █████ alleged threat would have placed an officer in Officer Perez's position in reasonable apprehension of receiving a battery. Initially, it is important to note that Officer Perez did not appear to be in apprehension of a battery. She did not

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 [REDACTED] and [REDACTED]

Although during her interview, Officer Perez stated that [REDACTED] and [REDACTED] verbal 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 [REDACTED] vehicle 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, [REDACTED] 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 [REDACTED] arrest report indicates that the watch commander decided that [REDACTED] 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 [REDACTED] without justification. **Penalty:** 10 day Suspension.

VII. CONCLUSION

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

Officer	Allegation	Finding/
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		Recommendation
Officer Vicky Perez	It is alleged by the complainant that on or about July 3, 2018, at approximately 2:40 p.m., at or near 901 W. 63 rd St., Chicago, IL 60636, Officer Vicky Perez, star #15656 committed misconduct through the following acts or omissions:	
	1. Engaged in an unjustified verbal altercation with the occupants of a vehicle during a traffic stop;	Sustained / 5 day Suspension
	2. Arrested [REDACTED] without justification	Sustained / 10 day Suspension

Approved:



March 24, 2020

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	3
Investigator:	Michele Lavin
Supervising Investigator:	Matthew Haynam
Deputy Chief Administrator:	Andrea Kersten