

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

| | |
|----------------------------|---------------------------|
| Date of Incident: | July 5, 2018 |
| Time of Incident: | 7:00 p.m. |
| Location of Incident: | 400 E. Lower Wacker Drive |
| Date of COPA Notification: | February 19, 2021 |
| Time of COPA Notification: | 6:53pm |

Improper Stop/Arrest.

II. INVOLVED PARTIES

| | |
|-------------------------|---|
| Involved Officer #1: | Marissa Garbacz, star #17624, employee ID # [REDACTED], Date of Appointment 12/02/2013, rank Officer, Unit of Assignment 715, DOB [REDACTED] 1988, Female, White |
| Involved Officer #2: | Christopher Rubi, star #15920, employee # [REDACTED], Date of Appointment 10/26/2015, rank Officer, Unit of Assignment 007, DOB [REDACTED] 1993, Male, White Hispanic |
| Involved Individual #1: | [REDACTED] DOB [REDACTED] 1985, Male, Black |

III. ALLEGATIONS

| Officer | Allegation | Finding / Recommendation |
|-------------------------|--|---------------------------------|
| Officer Marissa Garbacz | 1. Improperly stopping complainant [REDACTED] without justification. | Exonerated |
| | 2. Improperly arresting complainant [REDACTED] without justification. | Exonerated |
| | 3. Failing to provide medical care for complainant [REDACTED] | Unfounded |
| | 4. Failing to comply with S03-14 by deactivating your body worn camera prior to the conclusion of the event. | Sustained |

| | | |
|--------------------------|--|-------------------|
| Officer Christopher Rubi | 1. Improperly stopping complainant [REDACTED] without justification. | Exonerated |
| | 2. Improperly arresting complainant [REDACTED] without justification. | Exonerated |
| | 3. Failing to provide medical care for complainant [REDACTED] | Unfounded |
| | 4. Failing to comply with S03-14 by failing to activate your body worn camera for the duration of the event. | Exonerated |

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2 Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

2. Rule 5 Failure to perform any duty.

General Orders

1. G03-02 De-Escalation, Response to Resistance, and Use of Force

Special Orders

1. S03-14 Body Worn Cameras

Federal Laws

1. 4th Amendment to the United States Constitution

State Laws

1. Illinois Officer Body Worn Camera Act 50 ILCS 706/10

V. INVESTIGATION

a. Interviews

On July 7, 2021, **Complainant** ██████ gave an audio recorded interview to COPA regarding an incident which occurred on July 5, 2018. ██████ stated he was on the Chicago Riverwalk² conducting a protest for sentencing equity in cannabis laws for people of color.³ ██████ admitted raising his voice loudly which could have startled customers at nearby private businesses but maintains he was on a public walkway. A security manager approached ██████ and asked him not to come near their property. ██████ replied that if the security officer touched him there would be a problem.⁴ A group of CPD Officers arrived on bicycles and spoke briefly with ██████. The officers left the area to speak with security officers and when they returned, ██████ was arrested for assault. ██████ was taken to CPD Central Lockup for processing.

When ██████ arrived at the station, he refused to cooperate with processing because he felt like he was unlawfully arrested.⁵ ██████ requested immediate medical attention because of an alleged injury to his wrist, but was told he could not receive medical attention until he was processed, which he did not feel was fair. After a few hours of sitting in his cell, ██████ decided to comply with being processed and was taken to Mercy Hospital. ██████ stated he does not recall much about the medical attention he received but he was allowed to leave CPD custody from Mercy Hospital. ██████ rented a Divvy Bicycle and rode home.

On March 15, 2022, accused **Officer Marissa Garbacz**⁶ gave an interview to COPA regarding an incident which occurred on July 5, 2018. Due to time elapsed since the occurrence of the incident, COPA reviewed body worn camera footage, as well as reports, with Officer Garbacz prior to the start of the interview. Officer Garbacz stated she was assigned to a bike patrol unit on the day in question. The officers were flagged down by a Riverwalk Security Manager who relayed a male, now known as ██████ had been threatening and acting aggressively with security staff. The security manager stated he approached ██████ and asked him to calm down, as he was creating a disturbance for customers. ██████ made statements to the effect of, “if you touch me you are going to see what happens.”⁷ The security manager also alleged ██████ aggressively got in the face of a female security officer, placing her in belief of receiving a battery.⁸

During the investigation, COPA reviewed all available body worn cameras related to this event. Officer Garbacz was asked why her body worn camera ended after the security manager agreed to sign a complaint for assault. Officer Garbacz stated that she turned her body worn camera off because after the security manager agreed to sign a complaint, she was just doing administrative paperwork and would be riding her bike back to the district. Officer Garbacz was asked when the

¹ Attachment 1.

² The Chicago Riverwalk is a multi-use public space located on the south bank of the main branch of the Chicago River, extending from Lake Shore Drive and Lake Michigan to Lake Street.

³ ██████ protest pre-dates the legalization of cannabis in Illinois effective January 1st, 2019.

⁴ Attachment 1 at 04:45.

⁵ Attachment 1 at 08:17.

⁶ Attachment 2.

⁷ Attachment 2 at 07:20.

⁸ Both the Security Manager and the female security officer signed complaints against ██████

proper time is to activate/de-activate her body worn camera when interacting with the public. Officer Garbacz stated body worn cameras should be activated at the beginning of an event and be de-activated depending on the situation. If she was transporting the arrestee back to the station, then it should not be de-activated until reaching the station. Officer Garbacz then reiterated because she was just filling out administrative paperwork, she could de-activate her camera after the security manager agreed to sign a complaint.

On March 23, 2022, accused **Officer Christopher Rubi**⁹ gave an interview to COPA. Due to time elapsed since the occurrence of the incident, COPA reviewed body worn camera footage, as well as reports, with Officer Rubi. Assigned to a bike patrol unit on the day in question, a group of officers responded to a call of a citizen who was causing a disturbance along the Riverwalk. Officers approached the citizen, now known as ██████████ and asked him to leave. ██████████ refused to leave. The officers then arrested ██████████ once they received two signed complaints for assault. Due to the time elapsed since the occurrence of the incident, Officer Rubi could not recall the nature of the assault. When officers first made contact, ██████████ was walking up and down the Riverwalk area irate and shouting. Officer Rubi did not recall if ██████████ was yelling at a specific person or yelling as part of his protest. After it was determined that ██████████ would be arrested for assault, Officer Rubi placed ██████████ in handcuffs and transported him to the district station for processing. At the district station, ██████████ was uncooperative and refused to give his name and date of birth so he could be processed. Officer Rubi recalls a Sergeant coming to the assist with proceeding and eventually the Sergeant ordered officers to carry ██████████ back to his call because he continued to not comply with orders to be processed. Officer Rubi did not recall if ██████████ requested medical help.

During COPA's investigation it was found there was no body worn camera for Rubi related to this event. Rubi stated he was not issued a body worn camera until he left the bike patrol and returned to the Seventh District. Rubi notified his supervisors in the bicycle unit, on several occasions, but for approximately seven months he was not issued a body worn camera.¹⁰

b. Digital Evidence

Body worn camera footage¹¹ shows several CPD officers on bike patrol on the Riverwalk near 400 E. Lower Wacker Drive. Officers approach ██████████ who is standing on a public walkway. ██████████ does not appear to be speaking to any one person directly, but instead delivering a public protest about his beliefs on sentencing inequity in cannabis laws and the effects on people of color. Officer Garbacz contacts a male Riverwalk Security Manager who relays that ██████████ aggressively walked up to him and stated, "Touch me and then there will be a problem."¹² The security manager also states that ██████████ was aggressive with a female security officer by walking up to her and yelling inaudibly. Both the security manager and female officer agree to fill out a complaint

⁹ Attachment 3.

¹⁰ S03-14 Body Worn Cameras became effective April 30th, 2018. In his interview, PO Rubi stated he was not issued a body worn camera for approx. seven months. A search of Evidence.com showed Officer Rubi was not issued a body worn camera until December 2018. See Attachment 22.

¹¹ Attachments 5 through 12.

¹² Attachment 5 at 07:51.

because they were in belief of receiving a possible battery. The officers then arrest ██████ and charge him with two counts of simple assault.¹³

c. **Documentary Evidence**

The **Original Case Incident Report**¹⁴ was completed by Officer Marissa Garbacz at the conclusion of her shift on July 5, 2018. The report details the arrest of Complainant ██████ at or near 400 E. Lower Wacker Drive on July 5, 2018.

Arrest Report #JB337030¹⁵ was completed by Officer Christopher Rubi at the conclusion of his shift on July 5, 2018. The report details the arrest of Complainant ██████ at or near 400 E. Lower Wacker Drive on July 5, 2018.

Medical records¹⁶ show that on July 6, 2018, ██████ sought treatment at Mercy Hospital. Records indicate that ██████ presented to medical staff complaining of left wrist pain. An x-ray of his left hand revealed no fracture or dislocation, and that the alignment was normal. ██████ discharged himself against medical advice before receiving any further medical treatment.

VI. 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 reviewed complied with 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 conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

¹³ 720 ILCS 5.0/12-1-A Assault. A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.

¹⁴ Attachment 18.

¹⁵ Attachment 15.

¹⁶ Attachment 21.

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.

VII. ANALYSIS

Based on interviews conducted, body worn camera, and reports reviewed, COPA has determined the following: On July 5, 2018, Complainant ██████ was arrested by the Chicago Police Department after a Riverwalk security manager, as well as a security officer, signed a complaint alleging assault. In his interview with COPA, ██████ did not dispute that he spoke with Riverwalk security personnel and made a statement to the effect "if you touch me there will be a problem."¹⁷ Because the store personnel signed complaints, in addition to ██████ admission, the officers were justified in stopping and arresting ██████ Therefore, COPA finds **Allegation 1** and **2** against **Officer Garbacz** and **Officer Rubi** are **Exonerated**.

After ██████ was arrested and transported to CPD Central Lockup, he alleged he was denied medical treatment. By ██████ own admission he refused to comply with arrestee processing by refusing to give his name, date of birth, and other identifying information because he felt he was unfairly arrested. COPA received a copy of ██████ medical records from Mercy Hospital which show that the officers did take him for medical treatment. In addition, the records reflect that ██████ did not complete the medical exam and left under his own power after being released by CPD. Because ██████ was taken to the hospital and then left against medical advice, **Allegation 3** against **Officer Garbacz** and **Officer Rubi** is **Unfounded**.

Body worn camera of the event showed a group of CPD officers on bike patrol responded to a call of an alleged assault. In reviewing body worn camera related to the event, Officer Garbacz turns off her body worn camera after speaking with Riverwalk security personnel who agree to sign a complaint for assault. Officer Garbacz, along with other officers, make their way to ██████ location and he is arrested. In her interview with COPA, Officer Garbacz stated she deactivated her body worn camera early because, after security personnel agreed to sign a complaint, she was just completing administrative paperwork.¹⁸ CPD policy states, "The Department member will not deactivate event mode unless the entire incident has been recorded and the member is no longer in a law-enforcement related activity."¹⁹ When Officer Garbacz turned off her body worn camera, ██████ had yet to be arrested and the law enforcement activity had not yet ended. Because she deactivated her camera before she completed the law enforcement activity, COPA finds **Allegation 4** for Officer Garbacz to be **Sustained**.

In his interview with COPA, Officer Rubi was asked why there was no body worn camera for him related to this event. Officer Rubi stated he was not issued a body worn camera until approximately December 2018 when he transferred back to the 7th District. Rubi stated he requested a body worn camera on several occasions while assigned to bike patrol and supervisors

¹⁷ Attachment 1. 04:45/26:20 of Interview of ██████

¹⁸ Attachment 2. 09:15/16:27 of Interview of PO Garbacz

¹⁹ Attachment 20. S03-14 Body Worn Cameras. Page 3 of 10.

were aware of his request. A search of Evidence.com show Officer Rubi was not issued a body worn camera until December 6, 2018.²⁰ Because he was not issued a body worn camera at the time of the incident, COPA finds **Allegation 4** for Officer Rubi to be **Exonerated**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Marissa Garbacz

i. Complimentary and Disciplinary History

Officer Garbacz’s complimentary history includes one (1) 2019 Crime Reduction Award for 2019, two (2) Attendance Recognition Award, one (1) Complimentary Letter, six (6) Emblems of Recognition – Physical Fitness, fourteen (14) Honorable Mentions, one (1) Joint Operations Award, one (1) Problem Solving Award, and two (2) Unit Meritorious Performance Awards.

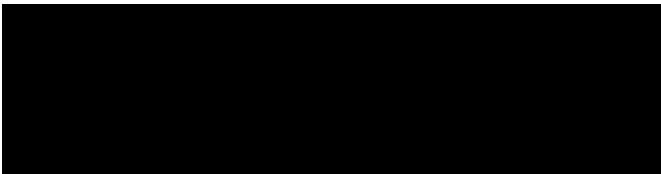
Officer Garbacz has no recent disciplinary history.

ii. Recommended Penalty, by Allegation

1. Allegation No. 4

COPA recommends a **1-Day Suspension** for Officer Garbacz for prematurely deactivating her body-worn camera. Although Officer Garbacz violated CPD policy by deactivating her camera prior to the conclusion of law enforcement activity, she did have her camera on for a significant portion of her interaction with the complainant and witnesses. COPA also notes that this event took place in 2018, when body-worn cameras were still relatively new equipment for officers. COPA notes these mitigating factors and recommends the aforementioned penalty.

Approved:



1-3-2023

Angela Hearts-Glass
Deputy Chief Investigator

Date

²⁰ Attachment 22.