



Log # 2019-0003826

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On September 23, 2019, the Civilian Office of Police Accountability (COPA) received an Initiation Report from Sergeant Eriberto Claudio, #1315, reporting alleged misconduct by a member of the Chicago Police Department (CPD). ██████████ alleged that on September 23, 2019, Officer Anna Malarski, #17517, pointed a weapon at him during a physical/verbal altercation.² Upon review of the evidence, COPA served an additional allegation in that Officer Malarski failed to properly secure her weapon. Following its investigation, COPA reached a sustained finding regarding the allegation of failing to properly secure the weapon.

II. SUMMARY OF EVIDENCE³

On September 23, 2019, off-duty PO Anna Malarski was at her residence conversing with her ██████████ and ██████████, who recently ran away from home. While they were talking, PO Malarski's ██████████ ██████████ arrived home. When they finished talking, both ██████████ left. PO Malarski entered the kitchen where ██████████ was sitting.⁴ What started as a verbal altercation about ██████████ being inside the residence turned physical when ██████████ became enraged and lunged out of a chair at PO Malarski. ██████████ then placed his hand(s) around her neck and used them to lift her off the floor while pressing her body against the kitchen counter, causing her difficulty breathing.⁵ When ██████████ released her, PO Malarski texted ██████████ to return.⁶ While PO Malarski was walking to the front of the residence, ██████████ followed her and shoved her from behind, causing her to fall into

¹ 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.

² 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.

³ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including BWC footage, Electronic Recorded Interview (ERI), third-party video, police reports, accused officer interview.

⁴ ██████████ entered through the backdoor of the residence leading into the kitchen. PO Malarski, ██████████, and ██████████ were standing in or near ██████████ bedroom adjacent to the kitchen.

⁵ At the time of incident ██████████ weighed approximately 500 lbs. while PO Malarski weighed approximately 130 lbs. ██████████ declined to cooperate with COPA's investigation, but made several statements to CPD captured on BWC and ERI. He denied choking PO Malarski and explained he extended his arm toward her to create distance. He also made allegations about other incidents but did not provide enough information for COPA to investigate those claims.

⁶ The altercation occurred within minutes of ██████████ leaving the residence. PO Malarski texted ██████████ alerting him that she was in danger.

a wire rack.⁷ At some point, both parties left the residence and made multiple 911 calls for assistance.⁸ On one call, ██████ reported that PO Malarski pointed her weapon at him.

█████ sat on the porch and waited for police. ██████ returned and ██████ questioned ██████ about his aggressive behavior. ██████ became enraged and exited the gate heading towards ██████. In an effort to prevent any further escalation, PO Malarski and ██████ attempted to restrain ██████. During this struggle, ██████ struck ██████ in the nose. After on-duty officers arrived and interviewed everyone on scene, they arrested ██████ for Domestic Battery for choking PO Malarski and striking ██████.

III. ALLEGATIONS

Officer Anna Malarski:

1. Engaged in a physical altercation with ██████ without justification.
- UNFOUNDED
2. Engaged in a verbal altercation with ██████ without justification.
- UNFOUNDED
3. Displayed and/or pointed a weapon at ██████ without justification.
-NOT Sustained
4. Failed to properly secure her weapon.
- Sustained, in violation of Uniform and Property Order 04-02- Department Approved Weapons and Ammunition

IV. CREDIBILITY ASSESSMENT

The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. In this case, PO Malarski's and ██████ accounts are somewhat similar.

COPA interviewed PO Malarski and reviewed the ERI of ██████ conducted by Chicago Police Detectives upon his arrest. Just as PO Malarski explained, ██████ identified himself as the initiator, instigator, and aggressor of the matter. Moreover, statements of ██████ captured on BWC also corroborate PO Malarski's depiction of ██████ aggressive behavior. ██████ recorded a portion of the incident on his cell phone, capturing ██████ acting aggressively and striking ██████ while he and PO Malarski appeared to be

⁷ PO Malarski related she sustained a bruise to the thigh.

⁸ Att. 7-12

merely holding ██████⁹ This evidence suggests that Malarski did not engage in an unjustified verbal or physical altercation with ██████ without justification.

Additionally, PO Malarski revealed to COPA a history of unreported domestic incidents of physical abuse between she and ██████. She asserted he yells, throws her around, and choked her on several occasions. She reported one incident to CPD in which she sustained torn ligaments in her thumb, requiring her to be on a medical leave for several months.¹⁰ These claims are supported by statements captured on BWC from ██████ and PO Malarski's neighbor. COPA finds that in this instance, PO Malarski was in yet another instance of victimization at the hands of ██████. It is more believable that her initial response was to seek assistance and explains why she called J ██████ back to the residence.

On the other hand, ██████ made comments during his various statements to CPD that revealed a desire to get PO Malarski, who he referred to as a "fucking bitch" in his 911 call,¹¹ fired, and admitted he purposely instigated an argument with her. "Although COPA was unable to interview ██████ for this investigation, he previously boasted about the mental and verbal abuse he displayed to PO Malarski and was unremorseful in another investigation."¹²

Overall, COPA finds PO Malarski credible. Her account of basic facts was consistent in her interviews with CPD, COPA, outcry witnesses, and with ██████ and was supported by CPD records and other evidence. COPA finds no indication that PO Malarski was not being truthful as it relates to the weapon.

V. ANALYSIS¹³

COPA finds that Allegation #1 and #2 against Officer Malarski, that she engaged in an unjustified verbal and physical altercation, are Unfounded. ██████ confirmed that the initial discussion was about ██████ presence in the residence and admitted that he transitioned the discussion to highlight PO Malarski's past infidelities, began to name call/taunt her, and made personal and insensitive derogatory statements about her childhood. He made it clear to CPD detectives that his intent was to get a reaction from her.¹⁴ ██████ denied any physical altercation occurred and stated he never placed his hands around PO Malarski's neck, but COPA finds that denial to not be credible. COPA finds by clear and convincing evidence that PO Malarski did not commit either of the alleged acts. Therefore, both allegations are Unfounded.

COPA finds Allegation #3 against Officer Malarski, that she displayed and pointed a weapon at ██████ without justification, are Not Sustained. The parties differ on this topic. According to ██████ PO Malarski retrieved her weapon and pointed it at him when he became verbally abusive. PO Malarski denied the allegation and asserted that her weapon remained in its

⁹ Att. 24 PO Malarski presented the recording to COPA during her interview.

¹⁰ Att. 25 at 30:00 Malarski reported to COPA she has been the victim at approximately 5 domestic related incidents with ██████ but only reported one incident to police. Att. 26 Case report RD#JA286701- Domestic Battery (2017)

¹¹ Att. 7

¹² The same parties were also involved in COPA Log #2019-0000065.

¹³ For a definition of COPA's findings and standards of proof, see Appendix B.

¹⁴ Att. 17

normal space. This incident occurred inside of the couples' residence with no witnesses present to corroborate either party's version of events. Although Evidence Technician photographs¹⁵ show PO Malarski's weapon in the exact location [REDACTED] relayed she retrieved it from, there is no way to determine if it was removed/replaced prior to CPD's arrival. For this allegation, COPA's investigation did not uncover sufficient evidence to corroborate or refute the alleged misconduct. Therefore, the allegation is Not Sustained.

COPA finds that Allegation #4, that PO Malarski failed to secure her weapon, is Sustained. PO Malarski's weapon was photographed inside a dresser drawer without a locking device and not secured in a lock box or safe.¹⁶ Per the Chicago Police Department's Uniform and Property directive U04-02, "Sworn members are to secure ALL firearms which they own or possess, in a manner that a reasonable person would believe will prohibit access by unapproved individuals, theft, or loss."¹⁷ The evidence is clear that PO Malarski's actions violated this order. PO Malarski admitted to COPA that this was her typical practice and that the weapon was accessible to [REDACTED] and/or her minor children.¹⁸ Therefore, Allegation #4 is Sustained.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Anna Malarski

i. Complimentary and Disciplinary History

Officer Malarski has received 17 awards throughout her career. She has no recent disciplinary history.

ii. Recommended Discipline

COPA has considered Officer Malarski's complimentary history and lack of disciplinary history. Here, Officer Malarski failed to secure her weapon properly. COPA has considered the totality of the evidence. COPA recommends a Written Reprimand.

Approved:

[REDACTED]
Sharday Jackson
Deputy Chief Administrator – Chief Investigator

October 31, 2023

Date

¹⁵ Att. 13

¹⁶ Att. 13

¹⁷ Att. 27

¹⁸ At the time of incident, the residence was also occupied by PO Malarski's 2 minor children ages 12 and 14 yrs. old

Appendix A**Case Details**

Date/Time/Location of Incident:	September 23, 2019/10:15am/ [REDACTED] Chicago, IL 60647
Date/Time of COPA Notification:	September 23, 2019
Involved Officer #1:	Anna Malarski, Star#17517, Employee ID# [REDACTED], Date of Appointment: May 1, 2013, Unit of Assignment: 015, Female/Hispanic
Involved Individual #1:	[REDACTED] Male/Black April 9, 1980

Applicable Rules

- 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

Chicago Police Department- Department Approved Weapons and Ammunition - *Uniform and Property order U04-02- Effective Date June 2, 2017*

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.¹⁹ For example, 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.

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.”²⁰

¹⁹ 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).

²⁰ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th 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