



Log # 2021-0261

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On January 20, 2021, the Civilian Office of Police Accountability (COPA) received an Initiation Report complaint from Commander Eve Gushes reporting alleged misconduct by members of the Chicago Police Department (CPD).² Commander Gushes alleged that on December 12, 2020, Officer Jacob Martinez engaged in excessive force while processing ██████. Officer Brian Moylan failed to report Officer Martinez's misconduct, and that both Officers Martinez and Moylan authored false, misleading, or inaccurate reports.³ Upon review of the evidence, COPA served additional allegations that Officer Martinez failed to properly activate his body worn camera (BWC). Following its investigation, COPA reached sustained findings regarding the allegation of failing to activate BWC; all other allegations were not sustained.

II. SUMMARY OF EVIDENCE⁴

Officers Martinez and Moylan arrested ██████ on singed complaints for multiple batteries, and violation of an order of protection.⁵ Upon arrival at the 006th District Station, the officers escorted ██████ into the holding area. As the officers escorted ██████ into the holding area, ██████ began to turn towards the officers while failing to walk forward under his own power.⁶ Once in the holding area, the officers attempted to calm ██████ and adjust his pants that had fallen while he was walking; however, ██████ verbally protested his arrest, demanded to be let go and resisted efforts to search him.⁷ Officer Martinez responded by placing his hand on ██████ upper back.

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 Att. 1.

³ 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.

⁴ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including CPD Reports, BWC footage, and CPD member statements.

⁵ Both officers recounted that ██████ appeared to be intoxicated, resisted their efforts to arrest him on scene, was yelling while spittle was coming from his mouth, and was reported to be HIV positive. Att. 32, pg. 10, lns. 5 to 24; Att. 31, pg. 10, lns. 19 to 24, pg. 11, lns. 1 to 17, pg. 14, lns. 2 to 9. Additionally, Officer Moylan described ██████ looking like he had been in a fight with someone, generally disheveled, and having poor balance. Att. 31, pg. 13, lns. 1 to 23, pg. 14, lns. 8 and 9.

⁶ At this point in the interaction the activated BWCs were operating in buffer mode. Att. 27 at 01:30. *Also See* Att. 8 at 00:20.

⁷ Both officers detailed that spittle was coming from ██████ while he was speaking. Att. 8 at 00:30; Att. 32, pg. 20, lns. 23 and 24, pg. 21, lns. 1. Att. 31, pg. 16, lns. 4 to 24, pg. 17, lns. 2 to 23. Officer Moylan recounted that ██████ was

█████ then moved forward while bending at the waist and his head makes contact with a metal table.⁸ Once █████ returned to a standing position, █████ had an injury to his right eyebrow and there was a red blood like substance on the table where his head made contact.⁹ Chicago Fire Department (CFD) was requested to address the injury to █████ face.¹⁰ CFD ultimately transported █████ to the hospital for treatment of his injury.¹¹

Once █████ was secured in the holding area the officers completed reports, to include Tactical Response Reports (TRRs). In a TRR, Officer Martinez characterized █████ actions as not following verbal direction, pulling away, and stiffening.¹² Officer Martinez detailed his response to █████ as member presence, verbal direction, escort holds, holding of the arm, and tactical positioning.¹³ Additionally, Officer Martinez explained █████ head striking the table as a result of “dead weight” and “bend[ing] over at the waist,” and does not mention a push by Officer Martinez.¹⁴ In a separate TRR, Officer Moylan characterized █████ actions as not following verbal direction, pulling away, and stiffening.¹⁵ Officer Moylan detailed his response to █████ actions as member presence, verbal direction, escort holds, tactical positioning, and handcuffing.¹⁶ Additionally, Officer Moylan explained █████ head striking the table as result of “los[ing] his footing and go[ing] deadweight face first onto the lockup table.”¹⁷

non-complaint, screaming, and shuffling his feet to the point that █████ actions gained the attention of other CPD members, to include Officer Britton Walker. Att. 31, pg. 15, lns. 10 to 21. Officer Walker characterized █████ demeanor as irate and non-compliant. Att. 28, pg. 15, lns. 2 to 4.

⁸ Att. 8 at 00:48. Officer Walker characterized █████ actions as bending over and becoming deadweight while bending his legs all to evade control and that Officer Martinez did not push █████ to the table. Att. 28, pg. 25, lns. 11 to 24, pg. 35, lns. 13 to 18. Officer Martinez explained that he did not push █████ and that █████ actions were not preventable. Att. 32, pg. 37, lns. 1 to 5, pg. 39, lns. 11 to 16, pg. 41, lns. 2 to 14. Officer Moylan recounted that after appearing to lose his footing, █████ bent at the waist while seeming to go deadweight and impacted the table, and that neither he nor Officer Martinez pushed █████ towards the table while acknowledging that he was focused on █████ and his own actions and not those of Officer Martinez. Att. 31, pg. 17, ln. 1, pg. 18, lns. 1 to 7, pg. 25, lns. 1 to 17, pg. 26, lns. 6 to 10, pg. 27, lns. 1 to 5, pg. 35, lns. 22 to 24, pg. 36, ln. 1.

⁹ Att. 27 at 02:05. Officer Martinez explained that after █████ head contacted the table, █████ attempted to self-harm by banging his head into a concrete block wall. Att. 32, pg. 30, lns. 5 to 7. (BWC footage corroborates the assertion that █████ was banging his head on the cement wall.) See Att. 41 at 02:04 to 03:15.

¹⁰ Officer Martinez explained he did not activate his BWC while at the district station, until after CFD arrived. Att. 32, pg. 31, lns. 10 to 12. CFD medical records detail that █████ admitted to consuming and smelled of alcohol. Att. 18, pg. 4. Additionally, the records detail that █████ was combative, striking his head on the cement wall, attempting to kick and bite CFD personnel, and kicking the wall. Att. 18, pg. 4. *Also see* Att. 41 at 04:40 to 05:30, 12:19 to 13:02.

¹¹ Medical Records detailed that █████ presented at the emergency room while intoxicated, belligerent, and spitting at staff, with a laceration of the right eyebrow and in need of psychiatric evaluation. Att. 24, pgs. 8 and 10. The medical records also detail that █████ was combative and aggressive at such a level the hospital staff secured him in full leather restraints and that he was only released from the restraints after being sedated. Att. 24, pgs. 20 and 24. *Also see* Att. 41 23:50 to 37:31.

¹² Att. 26, pg. 1.

¹³ Att. 26, pg. 1.

¹⁴ Att. 26, pg. 2.

¹⁵ Att. 25, pg. 1.

¹⁶ Att. 25, pg. 1.

¹⁷ Att. 25, pg. 2.

III. ALLEGATIONS

Officer Jacob Martinez

1. Pushing, shoving, or hitting ██████ causing him to hit his head on a metal table resulting in injury, in violation of General Order G03-02.
 - Not Sustained.
2. Making one or more false, misleading, or inaccurate statements by stating words to the effect that “[arresting officer] felt the arrestee [█████] go dead weight and bend over at the waist causing his chest and face to be on the table[.]” in a Tactical Response Report.
 - Not Sustained.
3. Failed to activate his body worn camera (BWC) in accordance with S03-14.
 - Sustained in violation of Rules 2, 3, and 6.

Officer Brian Moylan

1. Making one or more false, misleading, or inaccurate statements by stating words to the effect that ██████ “loses his footing and goes dead weight dace first into the lockup table causing a cut to his right eyebrow[.]” in a Tactical Response Report.
 - Not Sustained.
2. Failing to immediately notify his supervisor after observing misconduct committed by Officer Jacob Martinez, in violation of General Order 03-02(V)(B)(2).
 - Not Sustained.

IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any evidence that caused COPA to doubt the credibility of any of the individuals (sworn or unsworn) who provided statements.

V. ANALYSIS¹⁸

a. Use of Force and Failure to Report Misconduct

COPA finds that Allegation #1 against Officer Martinez, that he pushed/shoved a handcuffed ██████ forward causing him to strike he head on a table, and Allegation #2 against Officer Moylan, that he failed to properly report Officer Martinez’s actions, are both not sustained. Here, COPA determined that there is insufficient evidence to determine if Officer Martinez applied force, a push or otherwise, with his hand causing ██████ fall forward to the point ██████ head impacted the table or if ██████ in a state of agitation, bent over and impacted the table on his own. COPA has based this determination on (a) the CFD and hospital records that detailed ██████ as intoxicated, combative, and attempting to engage in self-harm; (b) the officers recounting of ██████ intoxicated and combative demeanor; (c) Officer Walker’s recounting that he did not observe Officer Martinez push ██████ (d) BWC footage showing ██████ repeated attempts to harm himself; and (e) the lack of a statement from ██████ Since COPA is unable to determine if

¹⁸ For a definition of COPA’s findings and standards of proof, *see* Appendix B.

Officer Martinez engaged in an excessive use of force, COPA cannot find that Officer Moylan was obligated to notify any supervisory members of Officer Martinez's actions.

b. Tactical Response Reports

COPA finds that Allegation #2 against Officer Martinez, and Allegation #1 against Officer Moylan, that they provided false, misleading, or inaccurate statements in their TRRs, is not sustained. As discussed above, COPA was unable to determine if Officer Martinez applied force, a push or otherwise, with his hand causing ██████ fall forward to the point ██████ head impacted the table or if ██████ in a state of agitation, bent over and impacted the table on his own. Since COPA was unable to determine if there was in fact force used on ██████ COPA is unable to assess the accuracy of the officers' account in their respective TRRs and finds that their accounts are not false, misleading, or inaccurate based on the information COPA learned during this investigation.¹⁹

c. Body Worn Camera

COPA finds that Allegation #3 against Officer Martinez, that he failed to properly operate his BWC, is sustained. CPD Members are required to activate BWC "at the beginning of" or "as soon as practical" for "all law-enforcement-related activities."²⁰ Here, it is undisputed that Officer Martinez did not have his BWC activated when he was escorting ██████ into the processing area and while searching ██████. Since Officer Martinez used force, by escorting and controlling, on ██████ he was required to have his BWC activated. Officer Martinez's failure to activate his BWC violated CPD policy and Rules 2, 3, and 6.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Jacob Martinez

i. Complimentary and Disciplinary History²¹

Officer Martinez has received 39 various awards and has no disciplinary history in the past five years.

ii. Recommended Discipline

¹⁹ COPA notes that the officers could and should have provided more details and context to ██████ actions in their TRR narrative, especially as it relates to his attempts at self-harm and his state of intoxication.

²⁰ "Law-enforcement-related activities include but are not limited to:" "calls for service; investigatory stops; traffic stops; traffic control; foot and vehicle pursuits; arrest; use of force incidents; seizure of evidence; interrogations; searches, including searches of people, items, vehicle, buildings, and places; statements made by individuals in the course of an investigation; requests for consent to search; emergency driving situations; emergency vehicle responses where fleeing suspects or vehicle may be captured on video leaving the crime scene; high-risk situations; any encounter with the police that becomes adversarial after the initial contact; arrestee transports; any other instance when enforcing the law." Att. 39, S03-14 III(A)(2)(a-r), Body Worn Cameras (effective April 30, 2018, to current).

²¹ Att. 42.

Here, COPA has found that Officer Martinez authored a report that lacked key details about the actions of [REDACTED] and that he failed to properly activate his BWC. Both failures had a direct impact on COPA's investigation. Additionally, the lack of BWC footage from Officer Martinez negatively impacted COPA's ability to fully assess the interaction with [REDACTED]. After considering the nature of the misconduct, and Officer Martinez's complimentary and disciplinary history, COPA recommends that Officer Martinez receive a **Violation Noted**.

Approved:

[REDACTED]

January 2, 2024

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix ACase Details

Date/Time/Location of Incident:	December 11, 2020 / 8:00 pm / 7808 S. Halsted St., Chicago, IL 60620
Date/Time of COPA Notification:	January 20, 2021 / 2:36 pm.
Involved Member #1:	Officer Jacob Martinez, Star #14358, Employee ID# [REDACTED], DOA: February 16, 2017, Unit: 004, Male, Hispanic.
Involved Member #2:	Officer Brian Moylan, Star #9880, Employee ID# [REDACTED], DOA: August 31, 2015, Unit: 353, Male, White.
Involved Individual #1:	[REDACTED] Male, Black.

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.

Applicable Policies and Laws

- G03-02-02: Incidents Requiring the Completion of a Tactical Response Report (effective February 29, 2020, to April 15, 2021).²²
- S03-14: Body Worn Cameras (effective April 30, 2018 to current).²³

²² Att. 40.

²³ Att. 39.

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.²⁴ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD 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.”²⁵

²⁴ 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).

²⁵ *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