



Log # 2021-3802

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On September 24, 2021, Lieutenant (Lt.) Sean O’Sullivan, #682, authored an Initiation Report alleging excessive force by a member of the Chicago Police Department (CPD).² Lt. O’Sullivan alleged that on September 23, 2021, during a foot pursuit, Officer Moises Diaz, #3359, pushed ██████████ from behind, causing ██████████ to trip over a curb and land on his chest against a steel-plated stoop.³ ██████████ sustained injury to his ribcage area. Following its investigation, the Civilian Office of Police Accountability (COPA) reached an Exonerated finding regarding the allegation.

II. SUMMARY OF EVIDENCE⁴

On the evening of September 23, 2021, Officers Moises Diaz, #3359, Frank Bogatitus, #17956, Christopher Valdez, #8868, and Robert Cabello,⁵ #9989, were on patrol in the vicinity of 2009 S Pulaski Rd., an area reportedly known for narcotics sales and gang violence.⁶ The officers observed ██████████ and an unknown male standing on the sidewalk drinking alcohol.⁷ The unknown male was holding an opened bottle of Don Julio Tequila and a water bottle,⁸ and ██████████ was holding a clear plastic cup containing a clear liquid, which the officers suspected was an alcoholic beverage.⁹ The officers exited their squad car to conduct an investigatory stop. Officers Cabello and Bogatitus detained the unknown male. As Officer Diaz exited the squad car, ██████████ approached the front passenger-side of a parked vehicle and handed the front passenger his cup.¹⁰

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 body-worn camera (BWC) footage, Police Observation Device (POD) footage, police reports, and officer interviews.

⁵ COPA was unable to interview Officer Cabello regarding the incident as he resigned from CPD. *See* Att. 39.

⁶ Att. 3.

⁷ The officers diverted their attention to ██████████ and Officer Diaz once the foot pursuit commenced and never identified this individual. Att. 46, pg. 30, lns. 5 to 13; Att. 45, pg. 24, lns. 1 to 3. *See also* Att. 30, pg. 13, lns. 5 to 9; Att. 45, pg. 10, lns. 11 to 16; Att. 46, pg. 12, lns. 3 to 8, and pg. 15, ln. 21 to pg. 16, ln. 4.

⁸ CPD records describe it as Patron Tequila.

⁹ Atts. 2, 3, and 18; Att. 6 at 1:00; Att. 34 at 1:53; Att. 7 at 4:12 to 4:20.

¹⁰ Att. 7 at 1:55; Att. 30, pg. 13, lns. 20 to 24.

As Officer Diaz approached ██████ Officer Diaz gestured for ██████ to raise his hands.¹¹ ██████ raised his hands in compliance, and Officer Diaz purportedly observed a large bulge in ██████ front, right waistband area—which Officer Diaz believed was a firearm.¹²

█████ immediately fled southbound in the street on Pulaski Rd., in front of oncoming traffic.¹³ Believing ██████ was armed, Officer Diaz pursued ██████ on foot.¹⁴ Approximately four seconds into the pursuit, Officer Diaz yelled, “Taser, Taser, Taser!”¹⁵ Officer Diaz explained that he fabricated having a Taser to coax ██████ into submission and deescalate the situation.¹⁶ Upon hearing the Taser warning, ██████ looked back and waived his right arm toward Officer Diaz.¹⁷ As ██████ veered toward the east curb on Pulaski Rd., Officer Diaz performed a takedown maneuver by pushing ██████ on his back with both hands.¹⁸ ██████ tripped over the curb and fell onto his torso against a steel stoop.¹⁹ ██████ yelled, “It’s broke! It’s broke! It’s broke!”²⁰ Officer Diaz asked, “Where is it bro,” apparently referencing a gun.²¹ Officer Valdez told ██████ not to reach for it. Officer Diaz then explicitly asked ██████ if he had any weapons on him. As Officer Bogatitus performed a pat down, ██████ said, “It’s there,” indicating his right waistband.²² Officer Bogatitus subsequently recovered a loaded 9mm, semi-automatic firearm from ██████ right waistband. A Law Enforcement Automated Data System (LEADS) search revealed that ██████ did not have a valid Firearm Owners Identification (FOID) card or Concealed Carry License (CCL). ██████ was subsequently charged with Armed Habitual Criminal, Unlawful Use of a Weapon, Resisting/Obstructing a Peace Officer, Reckless Conduct, and cited for Drinking Alcohol on the Public Way.²³

█████ complained of pain to the left side of his torso and was transported by ambulance to Mount Sinai Hospital.²⁴ The Chicago Fire Department (CFD) Patient Care Report notes that ██████ had chest pain with possible injury to his thorax (upper chest).²⁵ Medical records document

¹¹ Att. 30, pg. 20, lns. 13 to 16.

¹² Atts. 2, 3, 4 and 18; Att. 30, pg. 14, lns. 1 to 6; and pg. 23, ln. 14 to pg. 24, ln. 11.

¹³ Att. 5 at 1:59. CPD reports note that ██████ held his right side as he fled, a tactic used to maintain control of an unholstered firearm; however, this is not depicted in the available video. During his statement, Officer Diaz clarified that ██████ hand was near his right waistband as ██████ turned—just before he ran. Atts. 2, 3, 4, and 18; Att. 30, pg. 68, ln. 20 to pg. 70, ln. 14.

¹⁴ Att. 30, pg. 35, lns. 2 to 9.

¹⁵ Att. 3; Att. 7 at 2:04; Att. 8 at 9:07:25.

¹⁶ Att. 30, pg. 25, lns. 5 to 21.

¹⁷ Att. 7 at 2:05; Att. 30, pg. 27, ln. 15 to pg. 28, ln. 2.

¹⁸ Att. 4; Att. 7 at 2:08; Att. 30, pg. 29, lns. 14 to 22.

¹⁹ Att. 3; Att. 30, pg. 30, lns. 15 to 16.

²⁰ Att. 7 at 2:10.

²¹ Att. 7 at 2:13.

²² Att. 6 at 2:02; Att. 7 at 2:48.

²³ Att. 2.

²⁴ Att. 3.

²⁵ Att. 28.

that ██████ sustained fractures to his left ribs and would undergo surgery.²⁶ Efforts to interview ██████ were unsuccessful.²⁷

During Lt. O’Sullivan’s review of the incident, as part of the Tactical Response Report (TRR) approval process, he concluded that Officer Diaz’s actions were not in compliance with CPD policy.²⁸ Lt. O’Sullivan cited that ██████ did not pose a threat to Officer Diaz at the time Officer Diaz performed the takedown; and Officer Diaz performed the takedown in the street next to a noticeably high curb, whereby ██████ tripped and landed against a steel-plated concrete stoop. In an interview with COPA, Officer Diaz said he did not disregard ██████ safety or well-being when he pushed ██████ to the ground.²⁹ Officer Diaz explained that he merely intended to end the foot pursuit of a subject he believed was armed, and ██████ injury was incidental.

III. ALLEGATIONS

Officer Moises Diaz:

1. Pushing ██████ to the ground without due regard for his safety and/or well-being.
 - Exonerated

IV. CREDIBILITY ASSESSMENT

COPA notes that while CPD reports document that ██████ fled while holding his right side, this is not consistent with BWC or POD video. During his COPA interview, Officer Diaz explained the discrepancy by saying that ██████ hand was near his right waistband as he turned—just before he ran. While this is a noteworthy inconsistency, the remainder of Officers Diaz’s, Bogatitus’s, and Valdez’s accounts are consistent with the video recordings.

V. ANALYSIS³⁰

COPA finds that **Allegation #1** against **Officer Diaz**, that he pushed ██████ to the ground without due regard for his safety and/or well-being, is **Exonerated**. Under CPD policy, members may only use force that is objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance offered by a person.³¹ When a CPD member encounters a person who attempts to create distance between himself and the member’s reach with the intent to

²⁶ Atts. 2, 3, 7, and 48. COPA received a partial set of medical records from Mt. Sinai Hospital. Efforts to secure the complete records were unsuccessful. See CMS notes CO-1343152, CO-1304098, CO-0349175, CO-0135720, CO-0120768, and CO-0103830.

²⁷ Atts. 27, 31, and 47. Also see CMS notes CO-0349265, CO-0349267, and CO-0351893.

²⁸ Att. 4.

²⁹ Att. 30, pg. 90, Ins. 11 to 23.

³⁰ For a definition of COPA’s findings and standards of proof, see Appendix B.

³¹ See Att. 17, G03-02 (III)(B), De-Escalation, Response to Resistance, and Use of Force (effective April 15, 2021, to June 28, 2023).

avoid physical control and/or defeat arrest, that person is classified as an active resister.³² This type of resistance includes, but is not limited to, evasive movement of the arm, flailing arms, and full flight by running. CPD members may, when appropriate, respond to active resistance with police presence, verbal response, holding and compliance techniques, control instruments, stunning, takedowns, OC spray, Tasers, and canine use.

In the instant case, [REDACTED] was an active resister who failed to comply with Officer Diaz's verbal commands and attempted to avoid physical control and defeat arrest by fleeing. [REDACTED] placed himself in danger by running into oncoming traffic on Pulaski Road, a busy thoroughfare. Officer Diaz asserted that he did not intend for [REDACTED] to sustain the resulting injury; however, he reasonably believed [REDACTED] was armed and wanted to end the pursuit as quickly as possible given [REDACTED] potential access to a firearm. Officer Diaz's belief was confirmed, as [REDACTED] was in fact armed with a loaded firearm. Officer Diaz's use of a takedown in this instance was appropriate and within CPD policy. [REDACTED] unfortunate injury was incidental to the takedown and did not appear intentional or malicious, and COPA finds by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

Approved:

[REDACTED]

1/17/2024

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

³² See Att. 16, G03-02-01 (IV)(B), Response to Resistance and Force Options (effective April 15, 2021, to June 28, 2023).

Appendix ACase Details

Date/Time/Location of Incident:	September 23, 2021 / 9:07 pm / 2009 S Pulaski Rd.
Date/Time of COPA Notification:	September 24, 2021 / 3:58 am
Involved Member #1:	Officer Moises Diaz, Star #3359, Employee ID # [REDACTED], DOA: November 16, 2017, Unit 010/376, Male, Hispanic
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.
- Rule __:** *[Insert text of any additional rule(s) violated]*

Applicable Policies and Laws

- General Order G03-02: De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021, to June 28, 2023)
- General Order G03-02-01: Response to Resistance and Force Options (effective April 15, 2021, to June 28, 2023)

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.³³ 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.”³⁴

³³ 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).

³⁴ *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