



Log # 2021-2337

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On June 16, 2021, the Civilian Office of Police Accountability (COPA) received a Consent Decree Referral from Independent Monitoring Team Monitor Maggie Hickey, reporting alleged misconduct by a member of the Chicago Police Department (CPD).<sup>2</sup> The referral was forwarded in response to CPD actions related to civil unrest and the George Floyd protests. Hickey alleged on May 30, 2020, Officer Martin O’Flaherty grabbed an unidentified protestor by the hair, and pulled an unidentified protestor, without justification.<sup>3</sup> Upon review of the evidence, COPA served additional allegations that Officer O’Flaherty failed to activate his body worn camera for the duration of the event, failed to document the force used on an unidentified protestor in a Tactical Response Report (TRR), and used his baton against an unidentified protestor, without justification. Following its investigation, COPA reached sustained findings regarding the allegations of failing to activate his body worn camera, failure to complete a TRR, and using his baton against an unidentified protestor, without justification.

### II. SUMMARY OF EVIDENCE<sup>4</sup>

On May 30, 2020, large crowds of protesters gathered in the downtown Chicago area near 330 N. Wabash Avenue, in protest of George Floyd’s death at the hands of police officers in Minneapolis, MN. While there was no body worn camera (BWC) for Officer O’Flaherty related to this incident, COPA was able to conduct a review of BWC of other officers assigned to the area. Officers are heard giving the crowd verbal orders to move back as an unidentified protestor (black shirt, black mask, sunglasses, and a black hat) was standing directly in front of Officer O’Flaherty with their hands up but was unable to move back due to the large crowd. In response, Officer O’Flaherty can be seen using his wooden baton to the stomach area of the unidentified protestor at least three times.<sup>5</sup> Minutes later, the same unidentified protestor is in the same area when, without any verbal commands or lawful orders, Officer O’Flaherty appeared to initially grab the

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<sup>1</sup> 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.

<sup>2</sup> Att. 4.

<sup>3</sup> 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.

<sup>4</sup> 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, police reports, and an interview of Officer O’Flaherty.

<sup>5</sup> Att. 1 at 2:51.

unidentified female protestor with his right hand.<sup>6</sup> The unidentified protestor placed her hands in the air and did not appear to resist during the seizure. Officer O'Flaherty then grabbed the unidentified female protestor by what appeared to be the hair and began dragging her away from the crowd with the assistance of other officers on scene.<sup>7</sup> The unidentified protestor was then escorted away by Officer O'Flaherty and assisting officers to an awaiting squadrol nearby.

In his statement to COPA, Officer O'Flaherty stated officers were attempting to push the group south across the Wabash Bridge because protesters were causing damage to property.<sup>8</sup> He claimed, the unidentified protestor was not complying with his orders to move back and so he used his baton to jab the unidentified protestor twice in the solar plexus. Officer O'Flaherty stated he gave verbal directions to move back but the unidentified person did not comply, so he used his baton again.<sup>9</sup>

### **III. ALLEGATIONS**

#### **Officer Martin O'Flaherty:**

1. Grabbing an unidentified protestor by the hair, without justification.
  - Not Sustained.
2. Pulling an unidentified protestor, without justification.
  - Not Sustained.
3. Failing to activate your body worn camera for the duration of the event.
  - Sustained, in violation of Rules 2, 5, 6, and 10.
4. Failing to document the use of force used on an unidentified protestor in a Tactical Response Report.
  - Sustained, in violation of Rules 2, 5, 6, and 10.
5. Using your baton against an unidentified protestor, without justification.
  - Not Sustained, followed by the Rule(s) violated if sustained.

### **IV. CREDIBILITY ASSESSMENT**

This investigation did not reveal any evidence that caused COPA to question the credibility of any of the individuals (sworn or unsworn) who provided statements. COPA was unable to identify the unnamed protestor seen on BWC.

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<sup>6</sup> Att. 1 at 5:21.

<sup>7</sup> Att. 1. at 5:26.

<sup>8</sup> Att.12, p. 8, lns 7-16.

<sup>9</sup> Att. 12, p. 12, lns. 11-15.

## V. ANALYSIS<sup>10</sup>

COPA finds Allegations 1 and 2, that Officer O’Flaherty grabbed and pulled the hair of an unidentified protestor, are **Not Sustained**. The Department rules require members will use the minimum amount of force that is proportional to the threat.<sup>11</sup> In his statement to COPA, Officer O’Flaherty stated the unidentified protester refused verbal commands and as officers moved in for a mass arrest, he grabbed the unidentified protesters sweatshirt and not the hair.<sup>12</sup> While Officer O’Flaherty does appear to place his hands near the hair of the unidentified protester, BWC evidence could not conclusively distinguish between the unidentified protester’s hair or sweatshirt. Because there is insufficient evidence to prove the allegations by a preponderance of the evidence, COPA finds Allegations 1 and 2 are **Not Sustained**.

COPA finds Allegation 3 against Officer O’Flaherty, that he failed to activate his body worn camera for the duration of the event, is **Sustained**. The Department requires members activate their body worn cameras at the beginning of a police interaction and record the entire incident for all law-enforcement-related activities, including investigatory stops, statements made by individuals during an investigation, and any other instances when enforcing the law.<sup>13</sup> COPA was able to review video of the incident from other Department members which captured the event in its entirety but Officer O’Flaherty’s BWC was not available. COPA reviewed the BWC audit trail for Officer O’Flaherty which showed he did have BWC activity on May 30, 2020.<sup>14</sup> In his interview with COPA, Officer O’Flaherty was asked why there was no BWC for him related to this event. Officer O’Flaherty stated he activated his BWC approximately ten minutes prior to this incident but alleged his BWC was lost in the ensuing confrontation with protesters.<sup>15</sup> However, BWC of other responding officers captures Officer O’Flaherty wearing his camera just as he is using his baton to the mid-section of the unidentified protester (see Figure 1 below).

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<sup>10</sup> For a definition of COPA’s findings and standards of proof, *see* Appendix B.

<sup>11</sup> G03-02 De-Escalation, Response to Resistance, and Use of Force (effective October 17, 2017, to April,23, 2021).

<sup>12</sup> Att. 12, p 18, lns 1-8.

<sup>13</sup> Att. 16, S03-14(III)(A)(2), Body Worn Cameras (effective April 30, 2018, to present).

<sup>14</sup> Att. 14.

<sup>15</sup> Att. 12, p. 23, lns 1-9.



*Figure 1: Screenshot from BWC of Officer Schiavone showing Officer O'Flaherty's BWC attached to his uniform as he was using his baton against an unidentified protestor.*

Even if Officer O'Flaherty had lost his body worn camera in the ensuing physical confrontation, it should have been activated prior to his encounter with the unidentified protestor and there would have been a record of activation. Therefore, COPA finds Allegation 3 to be **sustained**.

COPA finds Allegation 4 against Officer O'Flaherty, that he failed to submit a TRR in connection with this incident is **Sustained**. The Department requires the submission of a TRR by a CPD member if they were involved in a level 2 reportable use of force incident.<sup>16</sup> Based on available video, there is sufficient evidence to show Officer O'Flaherty used his department issued baton to the torso area of the unidentified protestor. Using Officer O'Flaherty's PC number, COPA conducted a search of available Department databases for a TRR and results were negative.<sup>17</sup> In his statement to COPA, Officer O'Flaherty stated he did not complete a TRR due to the fact a blanket TRR was issued by CPD management related to the George Floyd Protests.<sup>18</sup> Officer O'Flaherty was asked to provide any documentation that a blanket TRR was issued but failed to provide evidence of such.<sup>19</sup> Therefore, COPA finds Allegation 4 is **Sustained**.

COPA finds Allegation 5 against Officer O'Flaherty, that he used his baton against an unidentified protestor without justification is **Not Sustained**. The Department General Orders state batons are an authorized force options against passive and active resisters only as a control instrument placed mainly on the sensors of the skin covering bone or applied to joints and pressure sensitive areas of the body with non-impact pressure.<sup>20</sup> In his statement to COPA, Officer O'Flaherty stated the unidentified protestor was given verbal orders to move back but did not comply. In response, Officer O' Flaherty used his baton to the solar plexus area to the unidentified

<sup>16</sup> G03-02-02(III)(2)(B)(2) defines a Level 2 reportable use of force incident as the use of impact weapons strikes (baton, asp, or other impact weapons) to the body other than the head or neck.

<sup>17</sup> Att. 13.

<sup>18</sup> Att. 12, p. 26, Ins. 2-6.

<sup>19</sup> Att. 20.

<sup>20</sup> G03-02-07(II)(D)(2)

protester, as well as others, who were not complying with commands. While Officer O’Flaherty’s explanation indicates the baton use may fall within the Department’s authorized use of a baton, we do not have O’Flaherty’s BWC to prove he provided verbal commands. Therefore, COPA finds Allegation 5 is **Not Sustained**.

**VI. DISCIPLINARY RECOMMENDATION**

**a. PO Martin O’Flaherty**

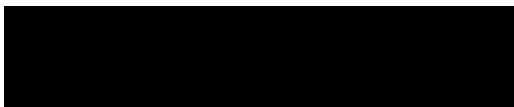
**i. Complimentary and Disciplinary History<sup>21</sup>**

Officer O’Flaherty has received 213 total complimentary awards, including 152 honorable mentions and 21 department commendations. Officer O’Flaherty does not have a record of sustained cases or discipline.

**ii. Recommended Discipline**

COPA has considered Officer O’Flaherty’s complimentary history and lack of disciplinary history. Officer O’Flaherty failed to activate his BWC or document this incident in a TRR. COPA recommends a violation noted.

Approved:



*Sharday Jackson*  
Deputy Chief Administrator

January 24, 2024

Date

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<sup>21</sup> Att. 21

Appendix ACase Details

Date/Time/Location of Incident:	May 30, 2020 / 5:01 p.m. / 330 N. Wabash Avenue
Date/Time of COPA Notification:	June 16, 2021 / 12:41 p.m.
Involved Member #1:	Martin O'Flaherty, Star #19616, Employee ID # [REDACTED], DOA: August 5, 1996, Unit: 180, Male, White.
Involved Individual #1:	Unknown, Unknown, White

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 \_\_:**

Applicable Policies and Laws

- D19-03: Large Street Gatherings (effective May 24, 2019, to present).
- U06-01-20: Baton, Baton Holder, Baton Tassel (effective November 7, 2019).
- S03-14: Body Worn Cameras (effective April 30, 2018, to present).
- G03-02-02: Incidents Requiring the Completion of a Tactical Response Report (effective October 16, 2017, to December 31, 2020).
- G03-02 Use of Force (effective February 28, 2020, to December 31, 2020).
- G03-02-07 Baton Use Incidents (effective February 28, 2020 to April 15, 2021).

## 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.<sup>22</sup> 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.”<sup>23</sup>

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<sup>22</sup> 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).

<sup>23</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> 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