Log # 2024-2277

FINAL SUMMARY REPORT[1]

I. EXECUTIVE SUMMARY

On February 7, 2024, the Civilian Office of Police Accountability (COPA) received a telephone complaint from [redacted] reporting alleged misconduct by members of the Chicago Police Department (CPD). [redacted] stated that on February 7, 2024, CPD members later identified as Officers David De La O, Anthony Fosco, Brian Quirk, Ashton Smiley, Michael Loza, Alberto Temosihue, and Sergeant (Sgt.) Nick Olsen entered her home at [redacted] and searched for her grandson, [redacted] without justification. [redacted] also reported that there was damage to her front door.[2] After a review of the evidence gathered during its preliminary investigation, COPA served additional allegations against Officer De La O for referring to [redacted] using profane language and for making false, misleading, inaccurate and/or incomplete statements when he drafted the associated Arrest and Tactical Response Reports (TRR). COPA also served allegations against Officer Fosco for referring to [redacted] in a derogatory manner and against Officer Temosihue for failing to activate his Body Worn Camera (BWC) in a timely manner.

Following its investigation, COPA reached not sustained findings regarding the allegations of entering and searching [redacted] home without justification. The verbal abuse allegations against Officers De La O and Fosco were sustained. The allegations against Officer De La O for providing false, misleading, inaccurate, and/or incomplete statements were sustained, and the BWC allegation against Officer Temosihue was sustained.

II. SUMMARY OF EVIDENCE[3]

On February 7, 2024, at approximately 1:30 pm, [redacted] parked his vehicle at or near 1914 S St. Louis Ave. [redacted] went there to return a cellphone that [redacted] had forgotten to take with him when he exited [redacted] vehicle a short time earlier. At about the same time, Officer Quirk, Officer Smiley, Officer De La O, and Officer Fosco arrived in a police vehicle and

[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, CPD reports, and civilian and CPD member interviews.

stopped [redacted] vehicle, citing a missing front license plate.[4] Officer Smiley exited the police vehicle and approached [redacted] to begin investigating the traffic violation.[5]

Soon after, [redacted] approached Officer Smiley and [redacted] (who was outside the vehicle) and attempted to recover his cellphone from [redacted].[6] Officer De La O intervened and asked [redacted] to wait until they were done with the traffic stop. [redacted] ignored Officer De La O's request and then attempted to take the cellphone from [redacted] hand.[7] Officer De La O intercepted the cellphone and, again, told [redacted] to wait. [redacted] continued to argue with Officer De La O about taking his cellphone, and Officer De La O told [redacted] to step back.[8] Officer De La O then explained he needed to keep the phone until the investigation was over because [redacted] had possession of the phone when the officers stopped him.[9] The officers did not comment, however, when [redacted] handed [redacted] a set of car keys.[10]

Officers De La O and Fosco moved away from [redacted] vehicle, and [redacted] began to video-record the interaction. Officer De La O told [redacted] it was "ok" for him to record, and then referred to [redacted] as [redacted]" which is [redacted] middle name.[11] [redacted] continued to argue about the phone, and Officer De La O alleged that [redacted] was now obstructing a police investigation.[12] Officer Fosco entered the conversation and told [redacted] he was "screaming like a woman, dude," as he placed his left hand on [redacted] chest and pushed [redacted] backward.[13] Officer De La O warned [redacted] that the next time he "walked up," he would be arrested.[14] [redacted] and Officer De La O continued to argue about why the officer was holding his cellphone when he was not the subject of the stop, and Officer De La O pushed [redacted] back again after [redacted] got closer to him.[15]

Once [redacted] traffic stop concluded, [redacted] walked over to [redacted] and Officer De La O. Officer De La O attempted to hand [redacted] the cellphone in question, and [redacted] grabbed it out of his hand.[16] [redacted] moved in and positioned himself in very close proximity to Officer De La O. Based on Officer De La O's BWC footage, [redacted] *possibly* bumped into Officer De La O with his arm or shoulder and called Officer De La O a "bitch ass." Officer De La O shoved [redacted] backward and said, "Fuck off mother fucker," and [redacted] spun around and ran away.[17] Officer De La O chased

[4] Att. 39. *See also* Att. 5 at 14:00:33. [redacted] gave Officer Smiley consent to search his vehicle shortly after Officer Quirk began to search the vehicle. *See* Att. 6 at 14:00:04.
[5] Att. 5 at 13:59:55.
[6] Att. 4 at 13:59:55.
[7] Att. 4 at 14:00:02 to :03.
[8] Att. 4 at 14:00:04. At 14:00:43, the officers did allow [redacted] to hand [redacted] his car keys. At 14:01:03, Officer De La O referred to [redacted] as [redacted] – [redacted] middle name. *See* Att. 3.
[9] Att. 4 at 14:00:00.
[10] Att. 4 at 14:00:39.
[11] Att. 4 at 14:01:00. Officer De La O then referred to [redacted] as [redacted]"
[12] Att. 4 at 14:01:10.
[13] Att. 4 at 14:01:40.
[14] Att. 4 at 14:01:46.
[15] Att. 4 at 14:02:40.
[16] Att. 4 at 14:03:19.
[17] Att. 4 at 14:03:23.

him and said, "lock your bitch ass up, come on you little pussy."[18] When interviewed later by COPA, Officer De La O explained that [redacted] pushed him with his right hand toward his chest and shoulder area, but he could not remember if [redacted] hand was fully open, in a fist, or otherwise.[19] Officer De La O reported in the narrative sections on both the Arrest Report and TRR for [redacted] that [redacted] pushed him with both hands, making contact with his left shoulder and chest area.[20]

[redacted] and Officer De La O ran north to Ogden Ave. and then ran east on Ogden before turning south on Trumbull. Officer De La O's BWC recording showed [redacted] entering his grandmother's home at [redacted][21] Officer De La O climbed over a fence and opened the locked gate.[22] Officer Quirk arrived shortly thereafter. After Officer De La O told Officer Quirk, in the presence of Officers Smiley and Fosco, that [redacted] pushed him, Officer Quirk kicked the outside front door.[23] [redacted] grandmother, yelled from the second floor and demanded Officer Quirk stop kicking the door. When Officer Quirk suggested she come down, [redacted] refused.[24] Officer Quirk continued to kick the front door until it opened and then kicked in one of the interior doors.[25] Officer De La O, Officer Quirk, Officer Fosco, and Officer Smiley entered the residence and performed an unsuccessful search for [redacted] Officer Loza and Officer Temosihue entered the residence a short time later and joined the search.[26]

Sgt. Olsen arrived near the end of the search and spoke with Officer De La O, who told Sgt. Olsen that the reason the officers forced entry was because [redacted] committed an aggravated battery against him and that "he [[redacted] pushed me, my shoulder," as he demonstrated an open-handed push forward with both hands.[27] Shortly thereafter, Sgt. Olsen took a brief look around the apartment to make sure the premises was secured, and the CPD members relocated to the Tenth District station.

At approximately 2:53 pm on February 7, 2024, [redacted] and [redacted] arrived at the police station and filed a complaint alleging that officers kicked in [redacted] front door and the door to Apartment One, causing damage.[28] Sgt. Vincent Vasquez completed an Initiation Report

[18] Att. 4 at 14:03:27.
[19] Att. 67, pg. 38, ln. 8, to pg. 40, ln. 3.
[20] Att. 3, pg. 3, Incident Narrative section, and Att. 40, pgs. 2 and 6, Notifications and Narrative section.
[21] Att. 4 at 14:04:08.
[22] Att. 4 at 14:04:15.
[23] Att. 6 at 14:04:30.
[24] Att. 6 at 14:05:06.
[25] Att. 6 at 14:04:22. At 14:05:29 a woman, now known as [redacted] yelled down from the second floor and asked what was going on. Officer Quirk asked her to come open the door, and she declined the request. [redacted] then said not to break down her door and Officer Quirck responded that he was breaking it down.
[26] Officers Quirk and De La O entered the residence at 14:06:07, Officer Smiley entered at 14:07:23, Officer Fosco entered 14:06:09, Officer Loza entered at14:06:43. Exactly when Officer Temosihue entered is unknown due to the late activation of his BWC. Sgt. Olsen entered at 14:10:29. All of the officers searched for [redacted] in the residence, then Sgt. Olsen secured the residence and left at approximately 14:13:24. Other officers appeared on scene but stayed outside the residence, one on the porch and others in the rear alley. They were not present for the entry or search of the residence.
[27] Att. 15 at 14:10:34.
[28] Att. 33. [redacted] also reported that [redacted] "is always being harassed by the police."

documenting that the officers who were looking for [redacted] earlier that day were advised that both [redacted] and [redacted] were currently in the police station. Officer De La O and Officer Fosco then placed [redacted] under arrest after a struggle where [redacted] seemingly attempted to escape.[29]

Officer De La O later told COPA that he entered and searched [redacted] residence without a warrant based on the "hot pursuit" of [redacted] who had just committed aggravated battery against a police officer, which he asserted was a forcible felony.[30]

[redacted] was charged with four counts of resisting or obstructing a police officer and one count of battery, all misdemeanors.[31] All of the charges were stricken off with leave to reinstate after witness CPD members failed to appear in court on the date of scheduled bench trial.[32]

III. ALLEGATIONS

Police Officer David De La O:

- Providing a false, misleading, inaccurate, and/or incomplete statement in the Arrest Report for [redacted] by stating that [redacted] pushed Officer De La O with both hands, making contact with Officer De La O's left shoulder and chest.
  - Sustained – Violation of Rules 2, 3, 5, 6, 10, and 11
- Providing a false, misleading, inaccurate, and/or incomplete statement in the Tactical Response Report for [redacted] by stating that [redacted] pushed Officer De La O with both hands, making contact with Officer De La O's left shoulder and chest.
  - Sustained – Violation of Rules 2, 3, 5, 6, 10, and 11
- Referring to [redacted] as a "Mother Fucker."
  - Sustained – Violation of Rules 2, 3, 6, 8, and 9
- Stating words to the effect of, "Come on, you little pussy," to [redacted]
  - Sustained – Violation of Rules 2, 3, 6, 8, and 9
- Entering the premises at [redacted] without justification.
  - Not Sustained.
- Searching the premises at [redacted] without justification.
  - Not Sustained.

Police Officer Anthony Fosco:

- Stating words to the effect of, "You was screaming like a woman, dude," to [redacted]
  - Sustained – Violation of Rules 2, 3, 6, 8, and 9
- Entering the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

[29] Att. 3.
[30] Att. 67, pg. 17, lns. 6 to 13.
[31] Atts. 3 and 49.
[32] Att. 49; Note CO-1394961.

Police Officer Brian Quirk:
- Forcing entry into the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

Police Officer Ashton Smiley:
- Entering the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

Police Officer Michael Loza:
- Entering the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

Police Officer Alberto Temosihue, Jr.:
- Untimely activating his body worn camera, without justification.
  - Sustained– Violation of Rules 2, 3, 5, 6, and 10
- Entering the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

Sergeant Nick Olsen:
- Entering the premises at [redacted] without justification.
  - Not Sustained
- Searching the premises at [redacted] without justification.
  - Not Sustained

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 factor 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.

This investigation did not reveal any evidence that caused COPA to question the credibility of complainant [redacted] Officer Loza, Officer Fosco, Officer Temosihue, Officer Smiley, or

Sergeant Olson, other than some possible lapses of memory and an inaccurate or incomplete definition for a legal concept. Furthermore, their statements were largely corroborated by BWC and CPD reports.

COPA finds that there is reason to doubt the reliability and credibility of the statement given by witness [redacted] He declined to give a recorded account of the incident when he was first approached. Later, he only agreed to speak with COPA at the urging of [redacted] During the recorded telephone interview, [redacted] was nervous and had difficulty expressing ideas. While his original account seemed to be consistent with the evidence, later in the interview [redacted] became confused about what had happened. The interview ended when COPA lost the telephone connection with [redacted] and COPA was then unable to reconnect with him. COPA made further attempts to continue the interview with [redacted] and to interview [redacted] but was unsuccessful.

COPA also finds there is sufficient reason to doubt the credibility of Officers De La O and Quirk. Officer De La O made oral statements describing [redacted] alleged push which were inconsistent with or even contradicted by his CPD reports and his BWC footage. The alleged push is what precipitated the officers' pursuit of [redacted] and their forced entry into [redacted] home.

Officer Quirk stated at the beginning of his interview with COPA that he had little memory of this event, but review of his BWC helped to refresh his memory.[33] Officer Quirk also told COPA that he saw [redacted] put his hands on Officer De La O when he first went to search [redacted] vehicle.[34] A review of BWC for both Officer De La O and Officer Quirk showed that [redacted] neither pushed nor put his hands on Officer De La O at that time.

Some of the CPD members, including Officer De La O, claimed that [redacted] committed a forcible felony against Officer De La O, which justified both the hot pursuit and the warrantless forced entry into and search of [redacted] residence.[35] Some of the officers defined "forcible felony" simply as an aggravated battery against a police officer. However, 720 ILCS 5/2-8 defines "forcible felony" as treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.[36] The push at issue in this case did not rise to this level as the alleged aggravated battery did not result in great bodily harm or permanent disability or disfigurement to Officer De La O.[37] Officers De La O's and Officer Quirk's apparent reliance on an incomplete or incorrect definition for the term "forcible felony"

[33] Att. 89, pg. 9, lns. 7 to 13. Officer Quirk was still unable to recall some details.
[34] Att. 89, pg. 20, ln. 22, to pg. 21, ln. 5.
[35] Att. 66, pg. 30, lns. 7 to 18 (aggravated battery to an officer); Att. 67, pg. 17, lns. 10 to 15 (forcible felony); Att. 88, pg. 28, lns. 12 to 17, and pg. 30, lns. 9 to 10 (forcible felony); Att. 89, pg. 22, ln. 24, to pg. 23, ln. 1, and pg. 23, ln. 16, to pg. 24, ln. 12 (forcible felony).
[36] 720 ILCS 5/2-8. *See also* People v. Robertson, 2017 IL App (1st) 15129-U.
[37] Att. 4 at 14:03:20.

does not necessarily implicate their honesty or their ability to recall facts accurately, but does implicate the reliability of their judgement and their explanations for their actions.

V. ANALYSIS[38]

a. Providing a false, misleading, inaccurate, and/or incomplete statement in Arrest Report and Tactical Response Report for [redacted]

COPA finds that the allegations against Officer De La O, that he provided false, misleading, inaccurate, and/or incomplete statements in the Arrest Report and TRR for [redacted] are supported by a preponderance of the evidence and are **Sustained**. CPD members are responsible for writing reports that provide an accurate record of official actions,[39] and CPD members are prohibited from making a false report, written or oral.[40]

Officer De La O provided a false, misleading, inaccurate, and/or incomplete statement in the Arrest Report and the TRR for [redacted] by stating that [redacted] pushed Officer De La O with both hands, making contact with his left shoulder and chest. The reports, with identical Incident Narrative sections, stated, "Arrestee continued to demand the cellphone and remained irate. Towards the conclusion of the traffic stop, Arresting Officer (A/O) De La O then began to walk towards the squad car at which time above arrestee pushed A/O De La O with both hands making contact with A/O De La O's left shoulder and chest area committing an aggravated battery to PO. A/O De La O then pushed the above arrestee back to create a zone of safety at which time above arrestee fled on foot."[41] The reports then went on to document, "A/Os cleared the residence and were not able to locate arrestee."[42]

COPA finds that BWC footage and Officer De La O's statements made to COPA both contradict the relevant statements that Officer De La O made in the arrest report and TRR. BWC footage showed that [redacted] did not push Officer De La O with both hands, because his left hand was holding a cellphone at the time of the incident and was at his side when the push occurred. [redacted] right hand is not visible on the BWC footage due to the position of the BWC on Officer De La O's chest and the relative positions of both people, but the video footage contradicted the statements Officer De La O made during his recorded interview. He stated that when [redacted] pushed him with his right hand, his arm was fully extended and that he, as a result of the push, lost his balance. BWC footage demonstrated that [redacted] right arm was never extended, and there is no sign that Officer De La O lost his balance.[43]

For these reasons, COPA finds that Officer De La O violated CPD policy and Rules 2, 3, 5, 6, 10, and 11 by providing a false, misleading, inaccurate, and/or incomplete statement in the

[38] For a definition of COPA's findings and standards of proof, *see* Appendix B.
[39] Att. 90, S09-05-01(III)(A)(1), Department Reports and Letters of Clearance (effective August 14, 2003, to present).
[40] Rules and Regulations of the Chicago Police Department (Resources), pg. 7, Rule 14.
[41] Att. 3, pg. 3, Incident Narrative section.
[42] Att. 3, pg. 3, Incident Narrative section.
[43] Att. 67, pg. 39, ln. 11, to pg. 40, ln. 1; Att. 4 at 14:03:21.

Arrest Report and TRR for [redacted][44] These allegations are supported by a preponderance of the evidence and are **Sustained**.

b. Entry into and search of the premises at [redacted]

COPA finds that the allegations against Officer Quirk, that he forced entry into and searched the premises at [redacted] without justification, are not supported by a preponderance of the evidence and are **Not Sustained**. COPA also finds the allegations against Officers De La O, Fosco, Smiley, Loza, and Temosihue, that they entered and searched the premises at [redacted] without justification, are **Not Sustained.**

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." As that text makes clear, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'"[45] That standard "generally requires the obtaining of a judicial warrant" before a law enforcement officer can enter a home without permission.[46] The warrant requirement, however, is subject to certain exceptions. One exception is for exigent circumstances. It applies when "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable."[47] The exception enables police officers to deal with "emergenc[ies]"—situations presenting a "compelling need for official action and no time to secure a warrant."[48] Courts recognize several exigencies. An officer, for example, may "enter a home without a warrant to render emergency assistance to an injured occupant[,] to protect an occupant from imminent injury," or to ensure his own safety.[49] The police may make a warrantless entry to "prevent the imminent destruction of evidence" or to "prevent a suspect's escape."[50] In

[44] COPA does not have sufficient evidence to show that Officer De La O violated CPD Rule 14, which prohibits false statements, written or oral. An officer cannot be found guilty of a Rule 14 violation unless it has been determined that (1) the officer willfully made a false statement and (2) the false statement was made about a fact that was material to the incident under investigation. *See* Agreement between City of Chicago Department of Police and Fraternal Order of Police (FOP) Lodge No. 7 §6.1(M). A statement is "material" when the statement has "a natural tendency to influence, or are capable of influencing, the decision-making body to which it was addressed." *See* United States v. Akram, 152 F.3d 698, 700 (1998); Taylor v. Police Bd., 2011 Ill. App., *P35 (1st) 101156 (2011) ("The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case . . . ."). COPA must also show that the statement was false. In particular, COPA cannot establish that Officer De La O's statements in his reports were willful. Officer De La O did not review his BWC prior to completing his reports. COPA cannot find that his incorrect recollection of events was unreasonable. COPA also questions whether the statements were material. Officer De La O may have exaggerated [redacted] actions in his reports, but whether [redacted] pushed Officer De La O with one or two hands does not change the analysis that [redacted] committed an aggravated battery on Officer De La O.

[45] Brigham City v. Stuart, 547 U.S. 398, 403 (2006).

[46] Riley v. California, 573 U. S. 373, 382 (2014) (internal quotation marks omitted); Brigham City v. Stuart, 547 U. S. 398, 403 (2006).

[47] Kentucky v. King, 563 U. S. 452, 460 (2011) (internal quotation marks omitted).

[48] Riley v. California, 573 U. S. 373, 402 (2014); Missouri v. McNeely, 569 U. S. 141, 149 (2013).

[49] Brigham City v. Stuart, 547 U. S. 398, 403 (2006); Riley v. California, 573 U. S. 373, 388 (2014).

[50] Brigham City v. Stuart, 547 U. S. 398, 403 (2006); Minnesota v. Olson, 495 U. S. 91, 100 (1990) (internal quotation marks omitted).

those circumstances, the delay required to obtain a warrant would bring about "some real immediate and serious consequences"—and so the absence of a warrant is excused.[51] The guiding principle is reasonableness, and each case is evaluated based upon the totality of the circumstances known to the officers at the time of the warrantless entry.[52]

Furthermore, it is well settled "that pursuit of a fleeing felon is itself an exigent circumstance justifying warrantless entry into a home."[53] Under the hot-pursuit doctrine, police "may enter a private residence without a warrant to effectuate the arrest of a fleeing suspect of whom the police are in 'hot pursuit.'"[54] Courts reason that "a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place."[55]

Officer Quirk told COPA that *he* made the decision to kick down both the front door and an inside door at [redacted] to locate and capture [redacted] who he believed to have just committed a forcible felony.[56] BWC footage captured Officer De La O climb over the front gate as [redacted] entered the residence.[57] Officer De La O unsuccessfully attempted to enter the residence by jiggling the doorknob.[58] Officer Quirk asked him what [redacted] did, and Officer De La O responded that [redacted] pushed him.[59] At that time, Officer De La O did not elaborate on what he meant by "push," and BWC footage shows that none of the other officers asked Officer De La O what he meant. Officer Quirk then asked Officer De La O if he should try to gain entry again, but it is unclear if Officer De La O responded. Regardless, Officer Quirk then proceeded to kick in the front door and an inside door.[60] Officer De La O, Officer Fosco, and Officer Quirk entered the residence once the door was finally open.[61] Officers Loza and Temosihue entered and joined the search a short time later.

Aggravated battery is a felony in Illinois.[62] A person commits aggravated battery when, in committing a battery . . . he or she knows the individual battered to be . . . a peace officer . . . (i) performing his or her official duties; (ii) battered to prevent performance of his or her official duties; or (iii) battered in retaliation for performing his or her official duties."[63] A person commits a battery against a person if they knowingly and without legal justification "make[] physical

[51] Welsh v. Wisconsin, 466 U. S. 740, 751 (1984) (quoting McDonald v. United States, 335 U. S. 451, 460 (1948) (Jackson, J., concurring)).
[52] People v. Yates, 98 Ill. 2d 502 (1983).
[53] Lange v. California, 141 S. Ct. 2011, 2025 (2021). This quotation is taken from Justice Kavanagh, writing in concurrence with the decision and characterizing the "long-settled rule" established in United States v. Santana, 427 U.S. 38, 42-43 (1976).
[54] People v. Moore, 2017 IL App (1st) 152419-U, ¶ 32 (citing People v. Davis, 398 Ill. App. 3d 940 (2d dist. 2010)).
[55] People v. Moore, 2017 IL App (1st) 152419-U, ¶ 32 (citing U.S. v. Santana, 427 U.S. 38, 42-43 (1976)).
[56] Att. 82 at 28:00; Att. 89, pg. 22, ln. 22, to pg. 24, ln. 10.
[57] Att. 6 at 14:04:10.
[58] Att. 6 at 14:04:21.
[59] Att. 4 at 14:04:30.
[60] Att. 4 at 14:04:34. Officer De La O's response was unintelligible.
[61] Att. 4 at 14:06:18. Officer Smiley also entered a short time later.
[62] 720 ILCS 5/12-3.05(h).
[63] 720 ILCS 5/12-3.05(d)(5).

contact of an insulting or provoking nature with an individual."[64] The evidence in this case does not conclusively establish whether [redacted] in fact pushed Officer De La O. However, there is sufficient objective evidence to establish that [redacted] did make some contact with Officer De La O before he fled from officers. There is no reason to believe [redacted] was not aware that Officer De La O was a peace officer. Further, it appears that [redacted] engaged in physical contact with Officer De La O while he performed official duties. There is therefore sufficient evidence to establish that Officer De La O had probable cause to believe that [redacted] had committed the felony of aggravated battery under Illinois law. [redacted] was not able to defeat arrest for that offense by escaping into a residence.[65]

Once officers have entered a residence based on exigent circumstances, they "may seize evidence that is in plain view during the course of their legitimate emergency activities."[66] However, a warrantless search must be "strictly circumscribed by the exigencies which justify its initiation,"[67] or the officers may obtain voluntary consent to search.[68] The search in this case was limited to searching for [redacted] it therefore fell within the bounds of the exigency at issue.

For these reasons, COPA finds that the allegations that Officer Quirk forced entry into and searched the premises at [redacted] without justification, and that Officer De La O entered and searched the premises at [redacted] without justification, are **Not Sustained**.

COPA also finds there is insufficient evidence to support the allegations by a preponderance of the evidence that Officers Fosco, Smiley, Loza, and Temosihue were not justified when they entered and searched the premises at [redacted] These officers reasonably relied on Officer De La O's judgment and the appearance of an emergency situation, and they responded accordingly. Therefore, these allegations are **Not Sustained**.

c. Use of profanity or other inappropriate language against [redacted]

COPA finds that the allegations against Officer De La O and Officer Fosco, that they used profanity or other inappropriate language against [redacted] are supported by a preponderance of the evidence, and are **Sustained**.

According to CPD Rules and Regulations, a police officer is the most conspicuous representative of government, and to the majority of people he or she is a symbol of stability and authority upon whom they can rely. Effective law enforcement depends upon a high degree of cooperation between CPD and the public it serves. The practice of courtesy in all public contacts

[64] 720 ILCS 5/12-3(a)(2).
[65] Notably, only misdemeanor offenses were cited in [redacted] arrest report, and the Cook County State's Attorney's Office Felony Review Unit denied felony charges. Att. 3, pg. 1. However, the applicable standard is an objective one. *See* Kentucky v. King, 563 U.S. 452, 464 (2011).
[66] Mincey v. Arizona, 437 U.S. 385, 393 (1978).
[67] Terry v. Ohio, 392 U.S. 1, 25-26 (1968).
[68] People v. Wall, 2016 IL App (5th) 140596, ¶ 14.

encourages understanding and appreciation, while discourtesy breeds contempt and resistance. The majority of the public are law abiding citizens who rightfully expect fair and courteous treatment by CPD members. While the urgency of a given situation might demand firm action, discourtesy or disrespect shown toward a citizen is indefensible, and a recognition of individual dignity is vital in a free system of law. Just as all persons are subject to the law, all persons have a right to dignified treatment under the law, and the protection of this right is a duty which is as binding on CPD and each of its members, as any other. Each member must treat each person with respect, and he or she must be constantly mindful that the people with whom they are dealing are individuals with human emotions and needs. Such recognition and conduct is not an additional duty imposed to a member's primary responsibilities, it is inherent in them.[69]

Furthermore, CPD expects sworn members to devote themselves fully to the attainment of the letter and spirit of the CPD policy and goals, and to conduct themselves at all times in such a manner as will reflect credit upon CPD with emphasis on personal integrity and professional devotion to law enforcement. They will, among other things, know and conform to CPD's Policy, Rules, Regulations, Orders, Procedures and Directives and maintain a courteous and respectful attitude toward all persons.[70] Also, CPD policy specifically requires that members act, speak, and conduct themselves in a courteous, respectful and professional manner, recognizing their obligation to safeguard life and property, and maintain a courteous, professional attitude.[71]

Both officers, after they had been allowed to review their BWC footage, admitted to the allegation(s) made against them. Officer De La O referred to [redacted] as a "Mother Fucker" and stated words to the effect of, "Come on, you little pussy," to [redacted] just as he began to run away.[72] Officer Fosco stated words to the effect of, "You was screaming like a woman, dude," to [redacted] during the same incident.[73] Therefore, COPA finds that both officers violated Rules 2, 3, 6, 8, and 9, and these allegations are supported by a preponderance of the evidence and are **Sustained.**

d. Untimely activation of BWC.

COPA finds that the allegation against Officer Temosihue, that he untimely activated his BWC, without justification, is supported by a preponderance of the evidence and is **Sustained**.

To increase transparency and improve the quality and reliability of investigations, CPD policy requires law-enforcement-related activities to be electronically recorded.[74] Law-enforcement-related activities include, but are not limited to, responding to and engaging in calls for service, investigatory stops, traffic stops, foot and vehicle pursuits, arrests, use of force incidents, emergency vehicle responses where fleeing suspects or vehicles may be captured on

[69] Rules and Regulations of the Chicago Police Department, I(B), Standards of Conduct (5, 6, 10).
[70] Rules and Regulations of the Chicago Police Department, IV(C), Sworn Members (3 and 7).
[71] Att. 91, G02-01(III)(B)(3), Protection of Human Rights (effective June 30, 2022, to present).
[72] Att. 4 at 14:03:22.
[73] Att. 7 at 14:01:44.
[74] Att. 92, S03-14(III)(B), Body Worn Cameras (effective December 29, 2023, to August 8, 2024).

video leaving the crime scene, high risk situations, and any other instances when enforcing the law.[75] The decision to record is mandatory, not discretionary.[76] CPD members are required to activate their BWCs at the beginning of an incident and record the entire incident.[77]

Special Order S03-14 requires department members to initiate BWC recordings "at the beginning of an incident and . . . record the entire incident for all law-enforcement-related activities.[78] The order identifies the beginning of a law enforcement-related activity for multiple circumstances.[79] First, officers must activate BWC "for dispatched calls for service, when acknowledging the call for service and en-route to incident scene."[80] For all other law-enforcement-related activities, officers must activate BWC "when the member initiates and engages in the activity."[81]

If "exigent circumstances prevent the activation of a BWC at the beginning of an incident", members "will activate their camera as soon as practical."[82] CPD members are not permitted to deactivate their BWCs unless: (a) "the entire incident has been recorded and the member is no longer engaged in a law enforcement activity", (b) a victim of a crime requests its deactivation, (c) a witness or community member wishing to report a crime requests its deactivation, or (d) the member "is interacting with a confidential informant."[83]

On the date in question, Officer Temosihue and his partner Officer Loza responded to a call for assistance at [redacted] However, Officer Temosihue did not activate his BWC until he was already at the scene and searching for [redacted] inside the residence.[84] According to CPD policy, his camera should have been activated when he and his partner acknowledged the call for service and were en-route to the incident scene.

When Officer Temosihue was asked by COPA investigators why he did not activate his BWC earlier, he responded that they were just assisting, and things happened "so fast." He explained that when he realized that he had to turn it on, he did.[85] Near the end of the interview, Officer Temosihue admitted to the allegation, apologized, and reiterated that it happened in the heat of the moment.[86] Therefore, COPA finds that the allegation is supported by a preponderance of the evidence and it is **Sustained**, and that Officer Temosihue violated Rules 2, 3, 5, 6, and 10.

[75] Att. 92, S03-14(II)(I).
[76] Att. 92, S03-14(V)(A)(1).
[77] Att. 92, S03-14(V)(A)(2).
[78] Att. 92, S03-14(V)(A)(2).
[79] Att. 92, S03-14(V)(A)(2).
[80] Att. 92, S03-14(V)(A)(2)(a).
[81] Att. 92, S03-14(V)(A)(2)(d).
[82] Att. 92, S03-14(V)(A)(3) (citing 50 ILCS 706/10-20(a)(3)(A)).
[83] Att. 92, S03-14(V)(B).
[84] Att. 14 at 14:06:54.
[85] Att. 86, pg. 21, ln. 21, to pg. 22, ln. 5.
[86] Att. 86, pg. 28, lns. 11 to 16.

VI. DISCIPLINARY RECOMMENDATION

a. Police Officer David De La O

i. Complimentary and Disciplinary History[87]

Officer De La O has received the Superintendent's Award of Tactical Excellence, a Special Commendation Award, two Top Gun Arrest Awards, five Department Commendation Awards, two Police Officer of the Month Awards, two complimentary letters, one-hundred-and-twenty-six Honorable Mention Certificates, and at least sixteen additional awards and commendations. Officer De La O has no sustained complaint registers within the past five years, but a complaint alleging a civil rights violation for an improper vehicle search was sustained against him for a 2018 incident, resulting in the entry of "violation noted" on his record.

ii. Recommended Discipline

COPA has found that Officer De La O violated Rules 2, 3 5 6, 10, and 11 by providing false, misleading, inaccurate, and/or incomplete statements in the Arrest Report and TRR for [redacted] by stating that [redacted] pushed him with both hands, making contact with Officer De La O's left shoulder and chest. COPA has also found that Officer De La O violated Rules 2, 3, 6, 8, and 9 by directing profane language towards [redacted] referring to him as a "mother fucker" and "little pussy." Officer De La O had more than seven years of experience as a police officer at the time of this incident, and he should have better conformed to the standards expected of a CPD member. "The truthfulness and credibility of police officers is foundational to the fair administration of justice, and to CPD's effectiveness as a law enforcement agency."[88] While COPA has not found that Officer De La O willfully made a false report, his apparently exaggerated and inaccurate description of [redacted] actions in the Arrest Report and TRR do not reflect the level of care and attention to detail that is expected of CPD members when completing official police reports, which may be relied upon by police supervisors and by prosecutors in making charging decisions. Also, Officer De La O's gratuitous use of profanity was unnecessary and had the tendency to impede CPD's goal of promoting respect between law enforcement and the community. Considering these findings, and also considering Officer De La O's exceptional complimentary history and lack of recent disciplinary history, COPA recommends that Officer De La O be **suspended for between one and twenty-nine days.** COPA also recommends that Officer De La O receive additional training in report writing.

[87] Atts. 93 and 96.

[88] Office of the Inspector General, City of Chicago, Enforcement of the Chicago Police Department's Rule Against False Reports 5 (May 25, 2023), *available at* https://igchicago.org/wp-content/uploads/2023/08/Enforcement-of-CPDs-Rule-Against-False-Reports-%E2%80%93-Rule-14.pdf.

b. Police Officer Anthony Fosco

i. Complimentary and Disciplinary History[89]

Officer Fosco has received one Special Commendation Award, the Top Gun Arrest Award, five Department Commendation Awards, one-hundred-and-seventy-nine Honorable Mention Certificates, and at least thirteen additional awards and commendations. Officer Fosco has no sustained complaint registers within the past five years, but a complaint involving a lockup incident (search of person or property) was sustained against him for a 2018 incident, resulting in a reprimand. Officer Fosco has also been disciplined three times through the summary punishment process, receiving reprimands for two court appearance violations that occurred in January 2025 and a notation of "no disciplinary action" for a July 2025 preventable accident.

ii. Recommended Discipline

COPA has found that Officer Fosco violated Rules 2, 3, 6, 8, and 9 by stating words to the effect of, "You was screaming like a woman, dude," to [redacted] Officer Fosco had more than six years of experience as a police officer at the time of this incident, and he should have better conformed to the standards expected of a CPD member. Officer Fosco's language was overtly mocking towards [redacted] The use of such language by a CPD member tends to impede CPD's goal of promoting respect between law enforcement and the community. Considering these findings, and also considering Officer Fosco's exceptional complimentary history and lack of disciplinary history for similar misconduct, COPA recommends that Officer Fosco receive a **reprimand**.

c. Police Officer Alberto Temosihue, Jr.

i. Complimentary and Disciplinary History[90]

Officer Temosihue has received two Department Commendation Awards, fifty-seven Honorable Mention Certificates, and at least seven additional awards and commendations. Officer Temosihue has no sustained complaint registers during his tenure with CPD, but he has been disciplined three times through the summary punishment process: a reprimand for conduct unbecoming in March 2025, a notation of "no disciplinary action" for a November 2024 court appearance violation, and a reprimand for failing to timely activate his BWC in September 2024.

ii. Recommended Discipline

COPA has found that Officer Temosihue violated Rules 2, 3, 5, 6, and 10 by untimely activating his BWC. Officer Temosihue had more than six years of experience as a police officer at the time of this incident, and he should have recognized his obligation to fully record law-enforcement-related activity. BWC recordings are important tools used to document police

[89] Atts. 94 and 98.
[90] Atts. 95 and 97.

interactions with members of the public, and failure to capture the entirety of an encounter, as required by CPD directives, tends to undermine public trust in CPD. BWC recordings are used both to prevent misconduct and to exonerate officers where they are wrongfully accused, and to ensure that the true circumstances of incidents involving CPD members are known. Based on these findings, and considering Officer Temosihue's complimentary history and his relatively recent reprimand for similar misconduct, COPA recommends that Officer Temosihue be **suspended for between one and twenty-nine days.**

Approved:

[redacted]

8-7-5052

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Case Details

Date/Time/Location of Incident:	February 7, 2024 / 2:00 pm / [redacted]3315 W Ogden Ave., and 1914 S St Louis Ave., Chicago, IL 60623
Date/Time of COPA Notification:	February 7, 2024 / 3:32 pm
Accused Member #1:	Sergeant Nick Olsen, Star #1965, Employee ID #[redacted] DOA: September 30, 2002, Unit: 010, Male, White
Accused Member #2:	Police Officer David De La O, Star #9329, Employee ID #[redacted] DOA: June 27, 2016, Unit: 189, Male, White Hispanic
Accused Member #3:	Police Officer Anthony Fosco, Star #15727, Employee ID #[redacted] DOA: April 17, 2017, Unit: 010, Male, White
Accused Member #4:	Police Officer Michael Loza, Star #10515, Employee ID #[redacted] DOA: December 14, 2012, Unit: 193, Male, White Hispanic
Accused Member #5:	Police Officer Brian Quirk, Star #9928, Employee ID #[redacted] DOA: August 16, 2017, Unit: 010/542, Male, White
Accused Member #6:	Police Officer Ashton Smiley, Star #9488, Employee ID #[redacted] DOA: June 27, 2016, Unit: 010/606, Male, White Hispanic
Accused Member #7:	Police Officer Alberto Temosihue, Jr., Star #10884, Employee ID #[redacted] DOA: May 16, 2017, Unit: 010, Male, White Hispanic
Involved Individual #1:	[redacted]Female, Black
Involved Individual #2:	[redacted]Male, Black
Involved Individual #3:	[redacted]Male, Black

Applicable Rules

☐ **Rule 1:** Violation of any law or ordinance.
☒ **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 11:** Incompetency or inefficiency in the performance of duty.

Applicable Policies and Laws

- G02-01, Protection of Human Rights (effective June 30, 2022, to present)
- S03-14, Body Worn Cameras (effective December 29, 2023, to August 8, 2024)
- S09-05-01, Department Reports and Letters of Clearance (effective August 14, 2003, to present)
- 50 ILCS 706/10-20, Law Enforcement Officer-Worn Body Camera Act
- 720 ILCS 5/2-8, Forcible Felony
- 720 ILCS 5/12-3, Battery

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.[91] 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."[92]

[91] *See* Avery v. State Farm Mut. Auto. Ins. Co., 216 Ill. 2d 100, 191 (2005) ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.").
[92] 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