

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

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| Date of Incident: | March 27, 2016 |
| Time of Incident: | 10:45am |
| Location of Incident: | 2109 W. Foster Ave. Chicago, IL |
| Date of COPA Notification: | March 15, 2017 |
| Time of COPA Notification: | 3:30pm |

Subject 1, a pedestrian, and Officer A, off duty and driving his personal vehicle, crossed paths on the above date, time, and location when Subject 1 spit at Officer A's car. Officer A exited his vehicle to confront Subject 1, grabbed Subject 1 by his backpack strap, and demanded that Subject 1 clean off his windshield. When Subject 1 refused, Officer A handcuffed him and called the 20th District to summon on duty officers. Officer A told the responding officers that Subject 1 spit in his face during the confrontation. Officer A then signed a misdemeanor battery complaint, causing Subject 1 to be arrested. Almost one year later, Subject 1 filed a lawsuit alleging misconduct by Officer A and the other involved officers. COPA's subsequent investigation shows that only Officer A committed misconduct; allegations against all other officers are unfounded.

II. INVOLVED PARTIES

| | |
|----------------------|---|
| Involved Officer #1: | Officer A, Star #XXXX, Employee #XXXX, Police Officer, Unit XXX, Appointment Date XX XX, 1994, Birth Date XX XX, 1968, Male, Black. |
| Involved Officer #2: | Officer B, Star #XXXX, Employee #XXXX, Police Officer, Unit XXX, Appointment Date XX XX, 1996, Birth Date XX XX, 1963, Male, White. |
| Involved Officer #3: | Officer C, Star #XXXX, Employee #XXXX, Police Officer, Unit XXX, Appointment Date XX XX, 1993, Birth Date XX XX, 1967, Male, White. |
| Involved Officer #4: | Officer D, Star #XXXX, Employee #XXXX, Police Officer, Unit XXX, Appointment Date XX XX, 1993, Birth Date XX XX, 1967, Female, White. |

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendations set forth herein are the recommendations of COPA. In the interest of clarity, all investigative actions documented in this report will be attributed to COPA.

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| Subject #1: | Subject 1, Birth Date XX XX, 1984, Male, White |
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III. ALLEGATIONS

Officer A

| Allegation | Finding |
|---|---------------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Not Sustained |
| 2. Stated "I'm gonna kick your ass," or words to that effect, to Subject 1, in violation of Rule 8. | Not Sustained |
| 3. Grabbed and pulled Subject 1 by his backpack strap, in violation of Rule 8. | Sustained |

Officer B

| Allegation | Finding |
|---|-----------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |

Officer C

| Allegation | Finding |
|---|-----------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |

Officer D

| Allegation | Finding |
|--|-----------|
| 1. Improperly seized Subject 1, in that she knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |

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IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Prohibits violation of any law or ordinance.

2. Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.

Federal Laws

1. United States Constitution, Amendment IV: Prohibits unlawful searches and seizures.

V. INVESTIGATION²

a. Interviews

In an April 14, 2017, interview with COPA,³ **Subject 1** stated that on the above date and time he was a pedestrian in a crosswalk on Foster Avenue when he observed a speeding vehicle travelling towards him. As the vehicle passed, Subject 1 spit behind him. Subject 1 denied intentionally spitting on the vehicle. The vehicle made two u-turns on Foster and pulled over in front of Subject 1, who was now walking on the sidewalk. The driver, now known to be off duty Police Officer A, exited the vehicle and walked aggressively toward Subject 1 stating, "I'm gonna kick your ass," or words to that effect. Officer A was dressed in civilian clothing and did not initially identify himself as a police officer. Officer A grabbed Subject 1 by his backpack strap and pulled him towards the vehicle, demanding that Subject 1 clean up the spit from his vehicle's windshield. After Subject 1 refused, Officer A stated he was going to arrest Subject 1 for battery and verbally identified himself as a police officer. After several requests from Subject 1 for identification, Officer A flashed his badge. Because Officer A would not let him go, Subject 1 began to yell for help. Subject 1 observed a woman in a parked vehicle on her phone who Subject 1 believed was calling 911. Subject 1 and Officer A were arguing back and forth while Officer A continued to restrain Subject 1 by holding his backpack strap. Officer A then accused Subject 1 of spitting in his face during the verbal exchange; Subject 1 denied doing so.

Subject 1 stated that three patrol cars (Officers D, B, and C) arrived and Officer A let him go. Officer A told Officer D that Subject 1 spit on him and his car while he was driving, and on his face during the ensuing confrontation. Officer D did not allow Subject 1 to give his account of the incident. Officer B took Subject 1 aside and talked to him. Subject 1 told Officer B that he was crossing the street, saw a vehicle speeding towards him, and spit over his shoulder. Subject 1 told Officer B the vehicle did not yield or stop at the crosswalk. Subject 1 described Officer B as hostile, Officer C as aggressive, and felt that none of the officers provided him the opportunity to tell his side of the story. Officer B then left to speak to Officer A, after which he handcuffed Subject 1 and placed him inside a police vehicle. Subject 1 was transported to the 20th District Station, processed, brought to lockup, and released approximately two and a half hours later.

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Atts. 17 and 20.

In a January 23, 2018, interview with COPA,⁴ **Officer A** stated he was off duty, driving his personal vehicle on Foster, when he observed Subject 1 in the crosswalk. Subject 1 made eye contact with Officer A and spit over his shoulder as Officer A's vehicle passed. The spit landed on the vehicle's windshield and went through the open passenger window before landing on Officer A's right hand, which was resting on the right side of the empty passenger seat. Officer A made two u-turns and exited his vehicle to confront Subject 1.

Officer A stated he told Subject 1 to clean off his windshield, and grabbed Subject 1 by the jacket and backpack strap. Subject 1 refused to clean the windshield, and Officer A identified himself by showing his police star. While Officer A was holding Subject 1, an argument ensued, during which Subject 1 intentionally spit on Officer A's face three times. Officer A felt that the spitting was intentional because he told Subject 1 he was spitting in his face, yet even more spit came out of Subject 1's mouth as they continued to argue. Officer A called the 20th District, asked for a patrol car, and handcuffed Subject 1 as he heard sirens approaching. Officers D, B, and C arrived and Officer A told them what had occurred. Officer A signed a complaint against Subject 1, who was then transported to the 20th District.

Officer A denied stating "I'm gonna kick your ass" or threatening Subject 1 in any way. Officer A stated that he acted entirely within the scope of his profession, and characterized his seizure of Subject 1 as a detention rather than an arrest.

In a December 18, 2017, interview with COPA,⁵ **Officer B** denied the allegation, stating that when he arrived at the scene Officer A had already taken Subject 1 into custody by handcuffing and holding onto Subject 1. Officer B had little independent recollection of the specific circumstances of the incident, only that Subject 1 told him he spit at Officer A because he was angry that Officer A did not give him the right of way in the crosswalk; Officer A told Officer B he wanted to sign complaints for battery; and Officer B transported Subject 1 to the 20th District for processing. Officer B relied heavily on the Original Case Incident Report to refresh his recollection during his statement.

In a December 18, 2017, interview with COPA,⁶ **Officer C** stated that he recalled responding to the scene and was the last officer to arrive. He exited his vehicle and observed Officers A, D, and B speaking with Subject 1, who Officer C believed was handcuffed. Officer C determined that the situation was under control and returned to his patrol duties. Officer C did not speak to Subject 1 nor did he recall the substance of any conversation he may have had with any other officer.

In a January 22, 2018, interview with COPA,⁷ **Officer D** stated she responded to the scene and saw Officer A holding onto Subject 1, who was handcuffed. Officer A and Subject 1 were speaking with other police officers, including Officer B. Officer A told Officer D that Subject 1 spit at him three times and the third spit struck him on the face. Officer D asked Officer A whether he wanted her to write a battery report or to sign a complaint; Officer A stated he wanted Subject 1 arrested and signed a misdemeanor battery complaint. Officer D did not recall many of the

⁴ Att. 46.

⁵ Atts. 34 and 35.

⁶ Att. 32.

⁷ Att. 40.

specifics regarding the incident, and relied on the Original Case Incident Report to refresh her recollection during her statement.

b. Documentary Evidence⁸

A **Complaint at Law**⁹ (Case No. 17-M1-XXXXXX) filed on January 24, 2017, in the Circuit Court of Cook County, alleges battery by Officer A; malicious prosecution by Officers A and B; false arrest by all involved officers; and intentional infliction of emotional distress by all involved officers. The complaint details substantially the same conduct as alleged by Subject 1 in his statement to COPA.

An **Arrest Report**¹⁰ (CB #1XXXXXXXX) indicates Subject 1 was arrested for battery against Officer A. Officer B is listed as the attesting officer and first arresting officer; Officer D as the second arresting officer; and Officer C as an assisting arresting officer.

An **Original Case Incident Report**¹¹ (RD #HZXXXXXXXX) authored by Officer D indicates Officer A told Officer D the following: Subject 1 spit on Officer A's vehicle as Subject 1 crossed the street. Officer A stopped and asked Subject 1 why he spit on his car. Subject 1 told Officer A he had the right of way and spit again, striking Officer A in the face while he sat in the driver's seat. Officer A exited his vehicle and handcuffed Subject 1 until other officers arrived. The report states Subject 1 was arrested on a signed complaint and transported to the 20th District for processing.

VI. ANALYSIS

Officer A

COPA recommends a finding of **NOT SUSTAINED** for Allegation #1, that Officer A improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. Only Officer A and Subject 1 were present during the incident, and each provided conflicting accounts of the alleged battery. Absent independent evidence to support or refute either individual's statements, the allegation must be **NOT SUSTAINED**.

COPA recommends a finding of **NOT SUSTAINED** for Allegation #2, that Officer A stated "I'm gonna kick your ass," or words to that effect, to Subject 1, in violation of Rule 8. Other than Subject 1's statement, there is no evidence that corroborates the allegation, and Officer A denied making the statement or threatening Subject 1 in any way. Because there is insufficient evidence to prove or disprove Subject 1's claim of misconduct, the allegation must be **NOT SUSTAINED**.

⁸ COPA was notified of this incident nearly one year after occurrence. During that time, Subject 1's criminal case records were expunged, and retention periods for audio and video recordings expired. Consequently, COPA's ability to obtain documentary and digital evidence was significantly limited.

⁹ Att. 4.

¹⁰ Att. 13.

¹¹ Att. 6.

COPA recommends a finding of **SUSTAINED** for Allegation #3, that Officer A grabbed and pulled Subject 1 by his backpack strap, in violation of Rule 8. Officer A admitted that he grabbed Subject 1 by the jacket and backpack strap and instructed him to clean off his windshield before identifying himself as a police officer. Officer A claimed he was acting within the scope of his profession, however his conduct was clearly inconsistent with legitimate law enforcement objectives. While it may have been lawful for Officer A to invoke his police powers to detain or arrest Subject 1, demanding that Subject 1 clean the windshield while forcibly restricting his movement falls well outside the scope of justifiable law enforcement activity. This behavior constitutes serious misconduct and a clear violation of Rule 8. The allegation must therefore be **SUSTAINED**.

Officer B, Officer C, and Officer D

COPA recommends findings of **UNFOUNDED** for each Allegation #1, that Officer B, Officer C, and Officer D improperly seized Subject 1, in that they knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. The evidence establishes that Officer A seized Subject 1 and caused him to be arrested by signing a complaint for battery. There is no evidence of misconduct by responding officers, therefore the allegations must be **UNFOUNDED**.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer A

| Allegation | Finding |
|---|---------------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Not Sustained |
| 2. Stated "I'm gonna kick your ass," or words to that effect, to Subject 1, in violation of Rule 8. | Not Sustained |
| 3. Grabbed and pulled Subject 1 by his backpack strap, in violation of Rule 8. | Sustained |

Officer B

| Allegation | Finding |
|---|-----------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |

Officer C

| Allegation | Finding |
|------------|---------|
|------------|---------|

| | |
|---|-----------|
| 1. Improperly seized Subject 1, in that he knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |
|---|-----------|

Officer D

| Allegation | Finding |
|--|-----------|
| 1. Improperly seized Subject 1, in that she knowingly arrested him without probable cause to believe that he had committed a criminal offense, in violation of Rule 1. | Unfounded |

Approved:

Acting Deputy Chief Administrator A
Acting Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

| | |
|---|-------------------------------------|
| Squad#: | X |
| Investigator: | COPA Investigator A |
| Supervising Investigator: | COPA Supervising Investigator A |
| Acting Deputy Chief Administrator: | Acting Deputy Chief Administrator A |