

SUMMARY REPORT OF INVESTIGATION¹

Date/Time/Location of Incident:	October 29, 2014; 11:35 PM; 1751 W. 51 st Street
Date/Time of COPA Notification:	September 27, 2017; 1:55 PM
Involved Officer #1:	██████████ # ██████ Employee # ██████; Date of Appointment: ██████, 1999; Sergeant; Unit of Assignment: ██████; DOB: ██████, 1965; Male White
Involved Officer #2:	██████████ # ██████; Employee # ██████; Date of Appointment: ██████, 2002; Sergeant ² ; Unit of Assignment: ██████; DOB: ██████, 1979; Female White
	██████████ # ██████; Employee # ██████; Date of Appointment: ██████, 2003; Police Officer; Unit of Assignment: ██████; DOB: ██████, 1976; Male Hispanic
Involved Individual #1:	██████████; DOB: ██████, 1976; Female Black
Case Type:	Excessive force/ No injuries

I. ALLEGATIONS

COPA makes the following findings:

Officer	Allegation	Finding
Sgt. ██████	It is alleged that on October 29, 2014, at approximately 11:35 PM, at or near 1751 W. 51 st Street, Sgt. ██████ committed misconduct through the following acts or omissions, by 1. Grabbing ██████ by her arm without justification.	Not Sustained

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. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² On October 29, 2014, ██████ was a police officer. According to CLEAR, ██████ was promoted to sergeant on June 16, 2018.

	<ol style="list-style-type: none"> 2. Pushing ██████ against a wall without justification. 3. Arresting ██████ without justification. 4. Referring to ██████ as a “Bitch.” 5. Falsely charging ██████ with possession of a firearm. 	<p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p>
<p>Sgt. ██████</p>	<p>It is alleged that on October 29, 2014, at approximately 11:35 PM, at or near 1751 W. 51st Street, Sgt. ██████ committed misconduct through the following acts or omissions, by</p> <ol style="list-style-type: none"> 1. Arresting ██████ without justification. 2. Falsely charging ██████ with possession of a firearm. 	<p>Exonerated</p> <p>Exonerated</p>
<p>Officer ██████</p>	<p>It is alleged that on October 29, 2014, at approximately 11:35 PM, at or near 1751 W. 51st Street, Officer ██████ committed misconduct through the following acts or omissions, by</p> <ol style="list-style-type: none"> 1. Arresting ██████ without justification. 2. Spraying ██████ with OC Spray without justification. 3. Pushing ██████ against a wall without justification. 4. Falsely charging ██████ with possession of a firearm. 	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p>

II. SUMMARY OF EVIDENCE

On September 26, 2017, ██████████ registered a complaint via COPA's website and related that on October 30, 2014³ she was falsely arrested and charged with aggravated unlawful use of a weapon. ██████████ added that she was sprayed with OC spray and thrown against a brick wall.⁴

COPA interviewed the complainant ██████████ and responding officers.⁵ ██████████ identified several witnesses, all who refused to cooperate with the investigation.⁶ COPA also reviewed the Arrest Report, General Offense Case Report, Tactical Response Report (TRR), OEMC event queries and Attendance and Assignment (A&A) Sheets for the relevant date and district.⁷ Body Worn Cameras were not issued to the involved officers at the time of this incident. COPA makes the following findings of fact.

On October 29, 2014 Sgt. ██████████ responded to the vicinity of 1751 W. 51st Street regarding to police involved shooting.⁸ Once the perimeter of the crime scene was established, Sgt. ██████████ proceeded to tape off the area. ██████████ was in the area of the crime scene and was directed by Sgt. ██████████ to move back away from the crime scene several times. After failing to comply Sgt. ██████████ attempted to grab ██████████ and ██████████ pulled away from Sgt. ██████████. Officer ██████████ attempted to assist Sgt. ██████████ as ██████████ continued to flail her arms. Officer ██████████ utilized his OC spray on ██████████ and placed ██████████ in hand cuffs. During the process of handcuffing ██████████, a handgun fell from her person and onto the ground. The handgun was recovered, and ██████████ was transported to the ██████████ District Station without further incident.

III. LEGAL STANDARD

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.

³ According to Department reports, ██████████ was arrested on October 29, 2014.

⁴ Att. #4

⁵ Atts. #10, 40, 42, 44, 49, 54, 56

⁶ Att. #57

⁷ Atts. #5, 6, 13 – 17, 20 – 34

⁸ Separate Log investigation - 1072297

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy. *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 has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department 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. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). 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." *Id.* at ¶ 28.

IV. ANALYSIS

COPA finds the allegations are **Not Sustained** against Sgt. ██████████ for **Allegations #1, 2 and 4**. ██████████ alleged that Sgt. ██████████ grabbed her arm without justification, pushed her against a wall without justification, and referred to her as a "Bitch."

In direct contrast to ██████████ allegations, Sgt. ██████████ denied having the opportunity to grab ██████████ because he was suffering from the effects of the OC spray. Further Sgt. ██████████ denied pushing ██████████ against a wall. Officer ██████████ and ██████████ also deny seeing Sgt. ██████████ push ██████████ against a wall or calling her a "bitch." COPA did not have the benefit of having audio or video evidence to confirm or deny either parties version of the events. Based on the available information there is insufficient evidence to prove or disprove the above allegations.

COPA finds the allegations **Exonerated** for Sgt. ██████████ for **Allegations #3 and 5; Allegations #1 and 2** against Sgt. ██████████ and **Allegations #1, and 4** against Officer ██████████ that Sgt. ██████████ Sgt. ██████████ Officer ██████████ arrested ██████████ without justification and falsely charged her with possession of a firearm.

Officer ██████████ stated that when he arrived at the location of incident, he observed Sgt. ██████████ directing ██████████ to step back away from the crime scene. Officer ██████████ further stated that ██████████ refused to comply with the directions given by Sgt. ██████████ Officer ██████████ stated that he approached the immediate area to assist Sgt. ██████████ Officer ██████████ related that he attempted to grab ██████████, but she pulled away and flailed her arms. Officer ██████████ continued that he sprayed ██████████ with OC Spray in order to gain control of ██████████. Officer ██████████ stated that as he was placing handcuffs on ██████████, a handgun fell from ██████████ person and onto the ground. Sgt. ██████████ stated that as ██████████ was being placed into custody he heard, what sounded like a metal object strike the ground, immediately followed by an officer stating "gun." Sgt. ██████████ added that he did not observe the weapon fall because he was dealing with the effects of the OC spray. Sgt. ██████████ stated that while placing ██████████ into custody, she observed a handgun fall from ██████████ person onto the ground.

██████████ denied she had a gun. ██████████ added that the officers found the gun in the alley and put it on her. It is highly unlikely that a handgun would simply lay on the ground in the immediate area of ██████████ arrest in plain view prior to taking ██████████ into custody. Based on the available credible evidence the officer’s actions of arresting ██████████ and charging her with possession a firearm were within Department’s policies.

COPA finds the allegations are **Not Sustained** for **Allegation #3** against **Officer ██████████** ██████████ alleged that Officer ██████████ pushed her against a wall.

██████████ alleged that Officer ██████████ pushed her against a wall after she was sprayed with OC. Officer ██████████ denied pushing ██████████ against a wall. Sgt. ██████████ and Sgt. ██████████ deny observing Officer ██████████ push ██████████ against the wall. However, COPA has no video or audio evidence to bolster either the complainant or the officers’ version of events. Based on the available information the evidence is insufficient evidence to prove or disprove the allegation.

COPA recommends a finding of **Exonerated** for **Allegations #2** against **Officer ██████████** ██████████ alleged that Officer ██████████ arresting her without justification, sprayed her with OC Spray without justification and falsely charged her with possession of a firearm.

As articulated above, Officer ██████████ sprayed ██████████ with OC Spray in order to gain control of ██████████ after Officer ██████████ observed her pull away and flail her arms. ██████████ was an active resistor at the time the OC was deployed. Based on the available evidence, Officer ██████████ actions of spraying ██████████ with OC Spray was within Department’s policies.

Approved:

██████████

March 29, 2020

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:

Investigator:

Supervising Investigator:

Deputy Chief Administrator:

Andrea Kersten