



Log # 2022-0000645

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On February 24, 2022, the Civilian Office of Police Accountability (COPA) received a telephone complaint from ██████████ reporting alleged misconduct by a member of the Chicago Police Department (CPD). ██████████ alleged that on or about February 19, 2022, at or near ██████████ at approximately 10:39 PM, Police Officer Bob Oldenburger discharged oleoresin capsicum spray at ██████████ without cause, discharged oleoresin capsicum spray into an enclosed area, and failed to de-escalate his encounter with ██████████² Following its investigation, COPA reached exonerated, not sustained, or unfounded findings for all the allegations.

II. SUMMARY OF EVIDENCE³

On February 19, 2022, at approximately 10:23 pm, Officer Oldenburger and his partner, Police Officer Najati Elusta, responded to a Mental Health Disturbance call at ██████████ ██████████. The officers arrived on the scene and encountered Chicago Fire Department (CFD) personnel, who informed the officers that the call involved the father of a family who is intoxicated and has bi-polar disorder, is refusing to go to the hospital, and “wants to beat everybody up”.⁴ Officer Oldenburger readied his oleoresin capsicum (OC) spray by placing it in his right hand while ascending the stairs to the apartment.⁵ ██████████ approached Officer Oldenburger, with an outstretched hand and said, “Shake my hand, what are you scared?”⁶ Officer Oldenburger took a step backward and told ██████████ to stay back. ██████████ waved his right hand in Officer Oldenburger’s direction and Officer Oldenburger discharged his OC spray directly into ██████████ face for approximately one second.⁷

III. ALLEGATIONS

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 Body Worn Camera video, civilian and officer interviews, and police reports.

⁴ Att. 3 at 14:45.

⁵ Att. 3 at 15:16.

⁶ Att. 3 at 15:36.

⁷ Att. 2 at 15:31.

Police Officer Bob Oldenburger:

1. Discharged oleoresin capsicum spray at [REDACTED] without cause.
 - Sustained in violation of Rules 2, 3 and 6.
2. Discharged oleoresin capsicum spray into an enclosed area.
 - Sustained in violation of Rules 2, 3, and 6.
3. Failed to de-escalate his encounter with [REDACTED]
 - Sustained in violation of Rule 2, 3, and 6.

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.

V. ANALYSIS⁸

COPA finds that all the allegations against Officer Oldenburger, that he failed to de-escalate prior to improperly discharging his OC spray while in a confined space, are sustained. CPD policy requires members “to use de-escalation techniques to prevent or reduce the need for force....”⁹ Additionally, a CPD member’s use of force must be “objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance offer by a person, under the totality of the circumstances.”¹⁰ Members will consider “the persons age, disability, or physical condition...” when assessing the totality of the circumstances.¹¹ Further, a member may respond to anyone presenting as a active resister or above with the deployment of OC spray, provided the totality of the circumstances make is objectively reasonable.¹² Finally, members are required to limit their use of OC Spray on vulnerable persons and in enclosed spaces.¹³

Here, Officer Oldenburger responded to reports of [REDACTED] suffering a possible mental health crisis during which he was threatening to fight members of his family and Chicago Fire Department (CFD) personnel. Upon arrival at the scene, Officer Oldenburger spoke to CFD who confirmed that Camillo was being combative. Officer Oldenburger then entered the residence where he was approached by [REDACTED] extended his hand and asked to shake Officer Oldenburger’s hand. Officer Oldenburger rebuffed the request and asked [REDACTED] not to touch him. [REDACTED] responded by reaching for Officer Oldenburger. Officer Oldenburger discharged his OC

⁸ For a definition of COPA’s findings and standards of proof, *see* Appendix B.

⁹ Att. 12, G03-02-01 II(B), Response to Resistance and Force Options (effective December 31, 2020 to April 15, 2021).

¹⁰ Att. 12, G03-02-01 II(C).

¹¹ Att. 12, G03-02-01 II(E)(3)(a).

¹² An active resister is defined as “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid control and/or defeat arrest.” Att. 12, G03-02-01 IV(B)(2).

¹³ Att. 11, G03-02-05 II(D)(1 and 2), Oleoresin Capsicum (OS) Devices and Other Chemical Agent Use Incident (effective December 31, 2020 to April 15, 2021). Vulnerable persons but is not limited to include the elderly.

spray directly at ██████████ was then taken into custody. Additionally, during his statement and his CPD report, Officer Oldenburger characterized ██████████ actions as those of an assailant.

Regardless of Officer Oldenburger's classification of ██████████ as an assailant, Officer Oldenburger decision to discharge his OC spray at ██████████ was still unreasonable and improper under the totality of the circumstances and CPD policy requirements that uses of force are necessary and proportional. First, Officer Oldenburger encountered ██████████ in the enclosed living space of his apartment where other citizens and CFD were present and susceptible to the use of OC spary.¹⁴ Second, Officer Oldenburger made no reasonable efforts to redirect ██████████ slow down the interaction, tactically retreat to a place of greater safety , or provide verbal commands.¹⁵ Third, the noticeable and appreciable difference in size between Officer Oldenburger and ██████████¹⁶ Fourth, ██████████ overall lack of aggression. Thus, based on the above, COPA has determined that Officer Oldenburger's decision to deploy OC spray at ██████████ inside a confined space with other civilians present was unreasonably excessive based on the totality of the circumstances, and violated CPD policy requiring de-escalation and force mitigation efforts, use of force, and limitations on the deployment of OC spray in violation of Rules 2, 3, 5, 6 and 10.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Bob Oldenburger

i. Complimentary and Disciplinary History¹⁷

Officer Oldenburger has received 43 various awards. Additionally, in 2022, Officer Oldenburger received a SPAR for a preventable accident; and in 2023, he received a SPAR for failing to report to Medical Roll Call.

ii. Recommended Discipline

Here, COPA while has found that Officer Oldenburger improperly deployed his OC spray as ██████████ in violation of two different CPD policies, COPA acknowledges that Officer Oldenburger's classification of an assailant is reasonable and that only the totality of the circumstances limited Officer Oldenburger's response options.¹⁸ Based on this information combined with Officer Oldenburger's history, COPA recommends that Officer Oldenburger receive a suspension of 2-days.

¹⁴ When Officer Oldenburger discharged his OC spray many of the occupants in the room suffered the effects. In fact, the complaint made by ██████████ daughter specifically alleges Officer Oldenburger sprayed all the occupants in the room.

¹⁵ These are all methods of de-escalation and/or force mitigation.

¹⁶ Officer Oldenburger is more than six feet tall while ██████████ is significantly shorter.

¹⁷ Att. 13.

¹⁸ COPA considers this in mitigation.

Approved:



1/22/2024

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix ACase Details

Date/Time/Location of Incident:	February 18, 2022; 10:39 pm; ██████████ Avenue
Date/Time of COPA Notification:	February 24, 2022; 10:12 am
Involved Member #1:	Bob Oldenburger, star #8777, employee ID# ██████, Date of Appointment: July 30, 2001, Unit of Assignment: 8 th District, male, white
Involved Member #2:	Najati Elusta, star #12094, employee ID# ██████, Date of Appointment: February 29, 2016, Unit of Assignment: 8 th District, male, Asian
Involved Individual #1:	██████████ male, Hispanic
Involved Individual #2:	██████████ male, Hispanic

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.

Applicable Policies and Laws

- G03-02-05: Oleoresin Capsicum (OC) Devices and Other Chemical Agent Use Incidents (effective April 15, 2021, to June 28, 2023)¹⁹
- G03-02-01: Response to Resistance and Force Options (effective April 15, 2021, to June 28, 2023)²⁰

¹⁹ Att. 11.

²⁰ Att. 12.

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.²¹ 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.”²²

²¹ 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).

²² *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