



Log # 2022-0003937

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On September 13, 2022, the Civilian Office of Police Accountability (COPA) received an Initiation Report complaint from Sergeant Kristin Tracy reporting that ██████████ alleged misconduct by members of the Chicago Police Department (CPD). ██████████ alleged that on September 13, 2022, Officers Kevin O'Brien and Sean McNamara pushed her husband, ██████████ ██████████² ██████████ also alleged that an officer kned him in the back while he was on the ground.³ Lastly, ██████████ alleged that Sgt. Scott Kravits failed to intervene.⁴ Upon review of the evidence, COPA served allegations that Officer McNamara pushed ██████████ without justification, and was rude and unprofessional during his arrest; and that Officer O'Brien forcefully pushed ██████████ back without justification. COPA did not serve an allegation to Sgt. Kravits for failure to intervene because there was no objective, verifiable evidence to support it as he was not present for the incident.⁵ Following its investigation, COPA reached **Sustained** findings regarding the allegation that Officer O'Brien forcefully pushed ██████████ back without justification.

II. SUMMARY OF EVIDENCE⁶

On September 13, 2022, Field Training Officer (FTO) McNamara, Probationary Police Officer (PPO) Sandra Kowalski, Officer O'Brien, and other assisting officers, arrived at ██████████ ██████████ in response to a call for a battery in progress.⁷ The caller, now known to be ██████████

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 Att. 7, the Initiation Report.

³ Att. 7.

⁴ 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.

⁵ Att. 21, the BWC of Sgt. Kravitz, at 3:00, he arrived, on scene and ██████████ was already in a seated position on the ground.

⁶ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including footage, police reports, civilian interviews, and officer interviews.

⁷ Atts. 4, the Arrest Report, Att. 28, the Event Query, Att. 3, the Case Report details ██████████ called police earlier in the morning due to a bald male with tattoos in a white shirt who pointed a weapon at her. The officers arrived for the morning incident and wrote an ISR. The officers left since ██████████ did not sign complaints on the man now known to be ██████████ called police later in the afternoon regarding ██████████ who battered her son and tried to run her over with his tow truck, as well as threatening to kill her. The second incident in the afternoon is what ██████████ and ██████████ complained to COPA about.

█████ stated a man with a bald head, in a white shirt with tattoos fought her son, tried to run over █████ with his tow truck, and threatened to kill everyone.⁸

The officers observed █████ on the sidewalk fitting the above description,⁹ and conducted an investigatory stop.¹⁰ While the officers tried to locate the caller, █████ approached FTO McNamar very closely, yelling at him, threatening him, and generally verbally abusing him.¹¹ Several of █████ family members were present taking video, and were soon joined by other citizens from the area. FTO McNamara tried to deescalate the situation by telling █████ to move back multiple times.¹² █████ did not move back and continued verbally abusing FTO McNamara.¹³ FTO McNamara pushed █████ back with his hand several times, telling him not to spit on him.¹⁴

While FTO McNamara continued to make efforts to locate the caller,¹⁵ █████ tried to leave the immediate area.¹⁶ FTO McNamara reiterated that █████ was not free to leave, and the officers began to place handcuffs on █████.¹⁷ █████ resisted while holding a can of soda in his hand which he refused to release, leading PPO Sandra Kowalski to cut her hand on the can.¹⁸

After the officers were able to handcuff █████ hands behind his back, FTO McNamara and Officer Brian Bone began to escort █████ towards a CPD transport vehicle.¹⁹ During the escort towards the vehicle █████ continued to resist.²⁰ Officer O'Brien then forcefully pushed █████ from behind with two hands him which led █████ to fall face forward towards the ground.²¹ The officers quickly helped █████ into a seated position on the sidewalk.²² The officers requested more units to assist and an ambulance.²³ █████ continued to yell and be verbally abusive.²⁴

⁸ Atts. 4, Att. 3, the Case Report.

⁹ Att. 34, the BWC of Officer O'Brien at 2:00, Att. 35, the BWC of FTO McNamara at 5:02, Att. 39, the BWC of Officer Kowalski at 5:28.

¹⁰ Att. 58, the Transcripts Officer O'Brien, Pg. 9, Lns. 1-20, and Att. 35 at 5:28.

¹¹ Att. 34 at 2:34-2:45, Att. 35 at 5:50-7:15, Att. 39 at 5:32- 6:30, Atts. 4, Att. 57, the Transcripts of FTO McNamara, Pg. 14 Lns. 7-9, Att. 35 at 5:50, and Att. 39 at 6:32.

¹² Att. 34 at 2:34-2:57, Att. 35 at 7:24 - 8:00, Att. 39 at 5:32-6:40 and 7:30-8:25.

¹³ Att. 34 at 2:42, Att. 35 at 7:23, and Att. 39 at 7:25.

¹⁴ Att. 34 at 2:43, Att. 35 at 7:26, Att. 39 at 7:28, Att. 34 at 2:48, Att. 35 at 7:30- 7:35, and Att. 39 at 7:30.

¹⁵ Att. 34 at 4:14, and Att. 35 at 8:56.

¹⁶ Att. 39 at 10:39, Att. 35 at 10:38, Att. 38 at 3:59, and 34 at 5:55.

¹⁷ Att. 34 at 6:33, Att. 35 at 11:00, and Att. 39 at 11:07.

¹⁸ Att. 34 a 6:10, Att. 57, Pg. 18, Lns. 1-5, Att. 58, Pg. 15, Lns. 3-10, Att. 4. Att. 39 at 10:50.

¹⁹ Att. 34 at 6:56, and Att. 35 at 11:27.

²⁰ Att. 34 at 6:59, Att. 58, Pg. 15, Lns. 3-11, Att. 9, Att.36, The BWC of Officer Bone from 4:58-5:08, Att. 38, the BWC of Officer Matias from 4:59-5:05, and Att. 39 at 11:32-11:42.

²¹ Att. 34 at 7:00, Att. 58, Pg. 21, Ln. 24, and Pg. 22, Lns. 1-66, and Att. 9. Att. 35 at 11:43.

²²Att. 34 at 7:08, it should be noted that at no point did any officer put their knee(s) on █████ back or neck area during the incident. See Att. 35 at 11:55, and Att. 39 at 11:57.

²³ Att. 34 at 7:10, Att. 3, Att. 35 at 12:35, and Att. 39 at 12:30.

²⁴ Att. 34 at 7:00-9:00, Att. 35 at 11:45-14:00, and Att. 39 at 12:00- 15:00.

While they waited for an ambulance Sgt. Kravits arrived on scene and explained to ██████████ the reason he was being arrested.²⁵ Sgt. Stojack arrived on scene a few minutes later to talk to ██████████ as well.²⁶ The ambulance arrived and took ██████████ to Humboldt Park Health Hospital.²⁷ ██████████ identified ██████████ as the offender.²⁸ ██████████ was arrested on signed complaints from ██████████ for battery as well as assault with a deadly weapon and resisting/obstructing a police officer.²⁹ While at the 25th District, ██████████ and ██████████ made a complaint to Sgt. Kristin Tracey regarding the incident.³⁰

In ██████████ and ██████████ statements to COPA, they alleged that the officers pushed ██████████ without justification. ██████████ further alleged that FTO McNamara was rude to ██████████ and unprofessional, and an officer put his knee on ██████████ back after he fell while he was still on the ground.³¹ ██████████ claimed he complied “100 percent” with the officers and never resisted, but acknowledged that he might have gone “overboard” in his interaction with the police and said a lot of stuff he should not have said, and stated he apologized to them at the police station.³²

In FTO McNamara’s statement to COPA, he recounted that he asked ██████████ to step back multiple times, and ██████████ continued to step closer.³³ When FTO McNamara moved backward to gain distance, ██████████ continued to inch closer.³⁴ FTO McNamara explained that the reason he pushed ██████████ was to gain distance between them.³⁵ FTO McNamara mentioned to ██████████ that he was not free to leave because he was a probable suspect from the description dispatch gave them.³⁶ ██████████ continued to get closer and spat at him.³⁷ ██████████ resisted and pulled away when the officers tried to put handcuffs on him.³⁸ FTO McNamara believed that during the escort to the CPD vehicle, ██████████ tripped or lost his balance and fell down.³⁹ FTO McNamara indicated that he caught his balance and did not fall on top of ██████████⁴⁰ FTO McNamara denied that he was rude or unprofessional during this incident to ██████████⁴¹

²⁵ Att. 34 at 10:09, Att. 21 at 3:29, Att. 35 at 15:00, Att. 39 at 15:06, and Att. 3.

²⁶ Att. 34 at 15:20, Att. 35 at 18:55, Att. 41, the BWC of Sgt. Stojack at 2:34.

²⁷ Att. 34 at 26:07, Att. 35 at 30:58, and Att. 39 at 30:50.

²⁸ Att. 3.

²⁹ Att. 3.

³⁰ Att. 7.

³¹ Att. 60, the Transcripts of ██████████ statement to COPA, Att. 59, the Transcripts of ██████████ statement to COPA. See Att. 35 at 11:48, no officer had their knee(s) on his back while he was on the ground.

³² Att. 60, pgs. 42, 76-77.

³³ Att. 57, Pg. 9, Lns. 8-12.

³⁴ Att. 57, Pg. 9, Lns. 8-12.

³⁵ Att. 57, Pg. 19, Lns. 13-17.

³⁶ Att. 57, Pg. 9, Lns. 11-12.

³⁷ Att. 57, Pg. 9, Lns. 17-24.

³⁸ Att. 57, Pg. 10, Lns. 6-7.

³⁹ Att. 57, Pg. 10, Lns. 11-13 and Att. 57, Pg. 10, Lns. 18-20.

⁴⁰ Att. 57, Pg. 16, Lns. 13-18. Att. 57, Pg. 10, Lns. 18-20.

⁴¹ Att. 57, Pg. 18, Lns. 22-204, and 19, Ln. 1-2.

In Officer O'Brien's statement to COPA, he related that the reason he pushed ██████ was because ██████ resisted arrest and pushed back against the officers who attempted to move him.⁴² He further explained that ██████ was larger in stature than both of the officers and that he observed ██████ continued to fight, brace himself with his legs, and push back against the officers when Officer O'Brien decided to use an emergency takedown by pushing ██████ toward the ground in order to immobilize him and to get him to stop fighting with the officers.⁴³ Officer O'Brien tried to grab the handcuffs behind ██████ back to break ██████ fall, but Officer O'Brien did not catch them in time which led ██████ to fall to the ground.⁴⁴ Officer O'Brien classified ██████ as an active resistor and used the amount of force he believed was necessary at the time. Officer O'Brien related that he felt it was far below the highest level allowed in the situation.⁴⁵ Officer O'Brien recounted that ██████ fell to his knees and was lowered to the ground by the officers and was immediately moved to a recovery position.⁴⁶ Officer O'Brien also stated that no officers were on top of ██████ when he fell at any point.⁴⁷

III. ALLEGATIONS

Officer Kevin O'Brien:

1. Forcefully pushing ██████ back without justification.
 - Sustained, Rules 2, 6, 8, and 10.

Officer Sean McNamara:

1. Pushing ██████ without justification.
 - Exonerated.
2. Being rude and unprofessional to ██████ during his arrest.
 - Unfounded.

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.

COPA questions the reliability and truthfulness of ██████ and ██████ account of the events where the BWC contradicts their versions. For instance, ██████ claimed that he

⁴² Att. 58, Pg. 13, Lns. 23-24, and 14, Ln. 1.

⁴³ Att. 58 Pg. 13, Lns. 17-21, and Att. 58, Pg. 14, Lns. 1-7.

⁴⁴ Att. 58, Pg. 21, Ln. 24, and Pg. 2, Lns. 1-6.

⁴⁵ Att. 58, Pg. 15, Lns. 16-23.

⁴⁶ Att. 58, Pg. 16, Lns. 3-11.

⁴⁷ Att. 58, pg. 17, Lns. 9-13.

complied “100 percent” with the officers and never resisted, which was belied by the BWC.⁴⁸ In ██████ opinion, the police were antagonizing ██████ while she described ██████ as non-confrontational, fine, calm, cooperative, and “listening,” but not talking.⁴⁹ ██████ also claimed that Officer O’Brien kned ██████ out of nowhere and shoved his face into the ground, which was not reflected in the BWC.⁵⁰

This investigation did not reveal any evidence that caused COPA to question the credibility of any sworn members of CPD who provided statements.

V. ANALYSIS⁵¹

1. Officer Kevin O’Brien forcefully pushed ██████ back without justification

COPA finds the allegation that Officer O’Brien forcefully pushed ██████ during his arrest is **Sustained**.

In General Order, G03-02, it details that Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to provide for the safety of any person or Department member, stop an attack, make an arrest, bring a person or situation safely under control, or prevent escape.⁵²

Here, at the time that Officer O’Brien decided to conduct an emergency takedown of ██████ was handcuffed behind his back and being escorted on either side by FTO McNamara and Officer Bone. ██████ was resisting, twisting around and stopping the forward movement which Officer O’Brien described in his interview with COPA as continuing to fight, bracing himself with his legs, and pushing back against the officers.⁵³ Thus, he felt an emergency takedown was necessary to immobilize ██████ to get him to stop fighting with the officers.⁵⁴

Although it is true that ██████ was still resisting at the time of the take-down, COPA finds Officer O’Brien’s forceful push to ██████ back while handcuffed, forcing ██████ face down on the pavement to be not necessary or proportional to the amount of resisting ██████ was doing at the time, which was largely being controlled by FTO McNamara and Officer Bone. Additionally, Officer O’Brien’s reasoning to push ██████ to immobilize him to get him to

⁴⁸ Att. 60, pgs. 42, 76-77.

⁴⁹ Att. 59, pgs. 13-14, 25

⁵⁰ Att. 59, pgs. 12, 22

⁵¹ For a definition of COPA’s findings and standards of proof, *see* Appendix B.

⁵² Att. 63, G03-02- De-Escalation, Response to Resistance, and Use of Force (111) (Use of Force- When Authorized) (B).

⁵³ Att. 58, Pg. 13, Lns. 23-24, and 14, Lns. 1-9; pg. 15.

⁵⁴ Att. 58, Pg. 13, Lns. 23-24, and 14, Lns. 1-9.

cooperate, actually defeating the purpose to try to get him to walk to the CPD transport car.⁵⁵ Therefore, COPA sustains this allegation finding it in violation of CPD policy G03-02.

1. Officer Sean McNamara pushed ██████████ without justification

COPA finds the allegation that FTO McNamara pushed ██████████ without justification is **Exonerated**. In G03-02, “Department members will modify the use of force as circumstances change and in ways that are consistent with officer safety, including stopping the use of force when it is no longer necessary. Examples of de-escalation techniques include but are not limited to; provide a warning and exercising persuasion and advice prior to the use of force, and determining whether the member may be able to stabilize the situation through the use of time, distance, or positioning to isolate and contain a person.”⁵⁶

During this encounter, ██████████ was extremely verbally abusive and threatening as he kept inching closer to FTO McNamara. FTO McNamara tried multiple times to de-escalate the situation by telling ██████████ multiple times to step back, but ██████████ failed to comply with the verbal commands.⁵⁷ FTO McNamara stated that the reason he pushed ██████████ was to create distance as ██████████ onslaught advanced to spitting in FTO McNamara’s face.⁵⁸

CPD Directives instruct Officers to keep their distance under these circumstances. COPA finds that FTO McNamara’s choice to push ██████████ away from him, and not even in a particularly forceful way, was the reasonable next step to create distance from this hostile subject while detaining him.

2. Officer McNamara being rude and unprofessional to ██████████

COPA finds the allegation that FTO McNamara was rude and unprofessional to ██████████ is **Unfounded**. ██████████ and ██████████ alleged FTO McNamara was rude and unprofessional to ██████████ during his arrest.⁵⁹ ██████████ was aggressive, resistant, threatening, verbally abusive, and uncooperative to the officers during the incident.⁶⁰ FTO McNamara did his best to maintain his cool and under very trying circumstances.⁶¹ COPA finds FTO McNamara exhibited incredible professionalism during this incident.

VI. DISCIPLINARY RECOMMENDATION

⁵⁵ Att. 34 at 7:00, Att. 58, Pg. 21, Ln. 24, and Pg. 22, Lns. 1-66, and Att. 9. Att. 35 at 11:43.

⁵⁶ Att. 63, G03-02, (C)(2)(a)(b).

⁵⁷ Att. 34 at 2:34-2:57, Att. 35 at 7:24 - 8:00, Att. 39 at 5:32-6:40 and 7:30-8:25, Att. 34 at 2:48, Att. 35 at 7:30 and 7:35, Att. 39 at 7:30, Att. 34 at 3:12-3:25, Att. 39 at 7:56, Att. 34 at 4:18, Att. 35 at 8:59, and Att. 39 at 8:59.

⁵⁸ Att. 57, Pg. 9, Lns. 5-12, Att. 34 at 2:43, Att. 35 at 7:26, Att. 39 at 7:28, Att. 34 at 3:05, Att. 35 at 7:49, Att. 39 at 7:50, Att. 34 at 4:18, Att. 35 at 8:59, and Att. 39 at 8:59.

⁵⁹ Atts. 59 and 60.

⁶⁰ Att. 58, Pg. 12, Lns. 21-24.

⁶¹ Att. 57, Pg. 9, Lns. 5-12, Att. 34 at 2:34-2:57, Att. 35 at 7:24 - 8:00, Att. 39 at 5:32-6:40 and 7:30-8:25, 39 at 7:30, Att. 34 at 3:12-3:25, Att. 35 at 7:55, Att. 39 at 7:56, Att. 34 at 4:18, Att. 35 at 8:59, and Att. 39 at 8:59.

a. Officer O’Brien

i. Complimentary and Disciplinary History⁶²

Officer O’Brien has received 89 awards including 79 Honorable Mentions and a Life Saving Award. Officer O’Brien’s disciplinary history is one reprimand in 2020 for “Operation/Personnel Violations Reports Fail to Submit.”

ii. Recommended Discipline

COPA found that Officer O’Brien pushed [REDACTED] without justification in violation of G03-02. However, the subject was an active resistor at the time which force could have been allowable under slightly different circumstances and COPA recognizes the split-second nature of these decisions under trying circumstances.

COPA recommends a **1-day suspension**.

Approved:

[REDACTED]

2-28-2024

Angela Hearts-Glass
Deputy Chief Administrator-Chief Investigator

Date

⁶² Att.64, the Complimentary and Disciplinary History of Officer O’Brien.

Appendix A

Case Details

Date/Time/Location of Incident:	9/13/2022/2:30 P.M./ [REDACTED].
Date/Time of COPA Notification:	9/13/2022/ 6:23 P.M.
Involved Member #1:	Kevin O'Brien, Star #20614, Employee ID# [REDACTED], Date of Appointment: 10/26/2015, Unit of Assignment: 025, Male, White.
Involved Member #2:	Sean McNamara, Star #14672, Employee ID# [REDACTED], Date of Appointment: 2/02/2015, Unit of Assignment: 025, Male, White.
Involved Individual #1:	[REDACTED] 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.
- Rule __:** *[Insert text of any additional rule(s) violated]*

Applicable Policies and Laws

- G03-02- De-Escalation, Response to Resistance, and Use of Force (15 April 2021 to Present).

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.⁶³ 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.”⁶⁴

⁶³ 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).

⁶⁴ *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