



Log # 2023-0002053

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On May 13, 2023, the Civilian Office of Police Accountability (COPA) received a Chicago Police Department (CPD) Initiation Report from Sergeant Stephen Keenan reporting alleged misconduct: on May 13, 2023 an arrestee, ██████████ ██████████ alleged that Detention Aide Marcus Kimbrough placed ██████████ into a choke hold, pushed ██████████ into a cell, and kicked ██████████ in the head.<sup>2</sup> Upon review of the evidence, COPA served allegations that Detention Aide Kimbrough forcefully grabbed ██████████ by the neck and/or throat area without justification, performed a takedown of ██████████ without justification, dragged ██████████ by the leg without justification, and failed to complete a Tactical Response Report (TRR) in violation of G03-02-02. Following its investigation, COPA sustained the allegations.

### II. SUMMARY OF EVIDENCE<sup>3</sup>

Detention Aide Kimbrough has been a CPD member in his current role for 27 years.<sup>4</sup>

On May 13, 2023, ██████████ was in CPD custody at the 025<sup>th</sup> District lockup pending criminal charges. Detention Aide Kimbrough was tasked with processing arrestees.<sup>5</sup> According to Detention Aide Kimbrough, ██████████ was unwilling to be fingerprinted.<sup>6</sup> Detention Aide Kimbrough escorted ██████████ back to a cell.

Prior to reaching the cell, ██████████ was uncooperative. An altercation ensued between Detention Aide Kimbrough and ██████████. Video footage depicts Detention Aide Kimbrough with his hand around ██████████ throat area, dragging ██████████ into the cell, throwing ██████████ to the ground, and dragging ██████████ by his leg.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including lockup video, police reports, and officer interviews. The complainant did not give a statement and there were no civilian witnesses.

<sup>4</sup> Att. 21.

<sup>5</sup> Processing detainees typically consists of fingerprinting, searching, and photographing them.

<sup>6</sup> Att. 9, pg. 6, Ins. 22 to 24.

<sup>7</sup> Att. 6 at 7:21:16.

### III. ALLEGATIONS

#### Detention Aide Marcus Kimbrough:

1. Forcefully grabbing ██████████ by the neck and/or throat area without justification.
  - Sustained, Violation of Rules 1, 2, 3, 6, 8 and 9.
2. Performing a takedown of ██████████ without justification.
  - Sustained, Violation of Rules 1, 2, 3, 6, 8 and 9.
3. Dragging ██████████ by the leg without justification.
  - Sustained, Violation of Rules 1, 2, 3, 6, 8 and 9.
4. Failing to complete a Tactical Response Report in violation of G03-02-02.
  - Sustained, Violation of Rules 3 and 6.

### IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any reason for COPA to doubt the credibility of any of the individuals who provided statements.

### V. ANALYSIS<sup>8</sup>

As a general matter, CPD “expects its members to develop and display the skills and abilities to act in a manner to eliminate the need to use force and resolve situations without resorting to force.”<sup>9</sup> Further, “[d]epartment members will use only the force that is proportional to the threat, actions, and level of resistance offered by a person.”<sup>10</sup> As outlined in G03-02, Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, bring a person or situation safely under control, or prevent escape.

In detention operations in particular, CPD is responsible for the care of persons in its custody.<sup>11</sup> This CPD policy reflects the widely acknowledged, basic duties of the government and its agents regarding the care, custody, and control of those it forcibly confines.<sup>12</sup>

In analyzing Detention Aide Kimbrough’s use of force, COPA was charged to determine whether the applicable standards were met, namely, whether Detention Aide Kimbrough’s actions, under all the facts and circumstances known by him at the time, were objectively reasonable in the

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

<sup>9</sup> Att. 22, G03-02(II)(C).

<sup>10</sup> Att. 22, G03-02(III)(B)(3), De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 27, 2023).

<sup>11</sup> Att. 27, S06-01(II)(B)(1), Processing Persons Under Department Control (January 28, 2022).

<sup>12</sup> Att. 28, Russo, J. et al., (2017), *Caring for Those in Custody: Identifying High-Priority Needs to Reduce Mortality in Correctional Facilities*, RAND Corporation, pg. 2 (“The principal tenets of institutional corrections—care, custody, and control—are well established.”), accessed March 15, 2024.

totality of the circumstances<sup>13</sup> as well as consistent with CPD's custodial responsibility for [REDACTED] well-being.

A. COPA finds Allegation 1 against Detention Aide Kimbrough, that he forcefully grabbed [REDACTED] by the neck and/or throat area without justification, is **sustained**.

Video footage depicts Detention Aide Kimbrough with his left hand near [REDACTED] neck and/or throat area, dragging [REDACTED] backward into the cell.<sup>14</sup> While COPA does not have video depicting the events leading up to this use of force, in his statement, Detention Aide Kimbrough told COPA that, as he was escorting [REDACTED] to the cell, [REDACTED] twice pulled away from him and it was for this reason Detention Aide Kimbrough grabbed [REDACTED].<sup>15</sup>

A chokehold is defined as “applying pressure to the throat, windpipe, or airway of another with the intent to reduce or prevent the intake of air. A chokehold does not include any holding involving contact with the neck that is not intended to reduce the intake of air.”<sup>16</sup> A chokehold would itself be considered deadly force.<sup>17</sup> There was no indication that Detention Aide Kimbrough was faced with deadly force such that the use of deadly force in response would be appropriate.

Detention Aide Kimbrough was holding and dragging [REDACTED] in the area of [REDACTED] neck in such a manner as to potentially cause a loss of air flow; it is unclear whether or not the technique used by Detention Aide Kimbrough on [REDACTED] amounted to a chokehold. However, it is clear that the control techniques used by Detention Aide Kimbrough were not techniques he had been taught to use by CPD in his formal training. In his statement to COPA, Detention Aide Kimbrough stated that although he had received control tactics training at the CPD's Academy, the grabbing of a subject by the neck and/or throat area was not a control technique Detention Aide Kimbrough had been taught.<sup>18</sup>

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<sup>13</sup> Att. 24.

<sup>14</sup> Att. 6, 7:21:17 to 7:21:19 and Att. 23.

<sup>15</sup> Att. 19, pg. 10, ln. 8 and pg. 7, lns. 2 to 5.

<sup>16</sup> Att. 22, G03-02 Glossary.

<sup>17</sup> Att. 22, G03-02(IV)(A)(4).

<sup>18</sup> Att. 19, pg. 12, ln. 24 to pg. 13, ln. 2.



**Figure 1:** Screenshot from Att. 6, video footage from 025<sup>th</sup> District Lockup Camera 09 at 7:21:18, showing Detention Aide Kimbrough's left hand near ██████ throat and/or neck area.

Detention Aide Kimbrough stated that, in hindsight, he should have called for assistance in dealing with ██████<sup>19</sup>

**B.** COPA finds Allegation 2 against Detention Aide Kimbrough, that he performed a takedown of ██████ without justification, is **sustained**.

Video footage depicts Detention Aide Kimbrough dragging ██████ into the cell and then throwing ██████ to the ground.<sup>20</sup> Although Detention Aide Kimbrough told COPA that he took ██████ to the floor so that Detention Aide Kimbrough could extract himself from the cell,<sup>21</sup> this explanation is contradicted by the video footage. After he threw ██████ to the ground, Detention Aide Kimbrough stood with his back to the opened cell door and made no immediate attempt to exit the cell.<sup>22</sup> In fact, Detention Aide Kimbrough walked further into the cell and stood over ██████<sup>23</sup>

**C.** COPA finds Allegation 3 against Detention Aide Kimbrough, that he dragged ██████ by the leg without justification, is **sustained**.

<sup>19</sup> Att. 19, pg. 14, ln. 22 to pg. 15, line 8.

<sup>20</sup> Att. 6, from 7:21:16 to 7:21:20.

<sup>21</sup> Att. 19, pg. 11, lns. 5 to 8.

<sup>22</sup> Att. 6, from 7:21:17 to 7:21:39.

<sup>23</sup> Att. 6, from 7:21:16 to 7:21:38.

Video footage depicts Detention Aide Kimbrough grabbing ██████ leg and dragging him toward the bed and placing ██████ legs on the bed after he threw ██████ to the ground.<sup>24</sup> Detention Aide Kimbrough told COPA that he dragged ██████ by the leg “to get him all the way in the cell so when I close it, his leg wouldn’t get caught by the door.”<sup>25</sup> A review of the video footage suggests Detention Aide Kimbrough’s actions may have been retaliatory, rather than serving some legitimate purpose, such as clearing ██████ from the closing cell door’s path (██████ leg was not positioned in a way that would have interfered with the operation of the cell door).

**D.** COPA finds Allegation 4 against Detention Aide Kimbrough, that he failed to complete a TRR in violation of G03-02-02, is **sustained**.

A TRR is required when a CPD member encounters active resistance.<sup>26</sup> Detention Aide Kimbrough told COPA that he was walking ██████ back to the cell after ██████ refused to be fingerprinted and that ██████ pulled away twice as they walked to the cell; this was the reason Detention Aide Kimbrough grabbed ██████ Detention Aide Kimbrough was required to complete a TRR in these circumstances.<sup>27</sup> Detention Aide Kimbrough told COPA that he has *never* completed a TRR; usually his sergeant completes TRRs.<sup>28</sup>

## **VI. DISCIPLINARY RECOMMENDATION**

### **a. Detention Aide Marcus Kimbrough**

#### **i. Complimentary and Disciplinary History<sup>29</sup>**

Detention Aide Kimbrough’s “Five Year Sustained Complaints History Report” and the “SPAR HISTORY REPORT (Sustained Findings)” report received from CPD contained no entries. Detention Aide Kimbrough is listed as having received ten awards, to include the Presidential Election Deployment Award 2008 and the NATO Summit Service Award.

#### **ii. Recommended Discipline**

Given COPA’s findings of misconduct, the accused CPD member’s complimentary and disciplinary history, as well as the applicable aggravating and mitigating factors<sup>30</sup> (in this case the following aggravating factors are present: Detention Aide Kimbrough’s length of service, apparent retributive or retaliatory conduct, the fact that the victim is a member of the public, the misconduct

<sup>24</sup> Att. 6, from 7:21:20 to 7:21:40.

<sup>25</sup> Att. 19, pg. 11, ln. 15.

<sup>26</sup> Att. 18, G03-02-02(III)(A)(1)(b), Incidents Requiring the Completion of a Tactical Response Report (effective April 15, 2021 to June 27, 2023).

<sup>27</sup> Att. 18, G03-02-02(III)(A)(1)(b).

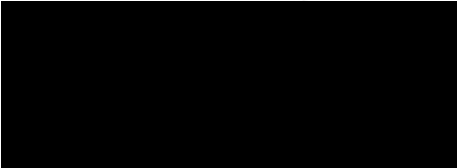
<sup>28</sup> Att. 19, pg. 13, ln. 20 to pg. 14, ln. 4.

<sup>29</sup> Att. 26.

<sup>30</sup> COPA policy, Disciplinary and Remedial Recommendations (effective June 24, 2021), para. II.

exposed CPD to civil liability, the vulnerability of the victim as a detainee, disregard for training expectations conveyed to the member), COPA recommends retraining in control tactics and TRR preparation and submission as well as a 21-day suspension.

Approved:



3/26/2024

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*Matthew Haynam*  
*Deputy Chief Administrator – Chief Investigator*

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Date

Appendix ACase Details

Date/Time Location of Incident:	May 13, 2023/7:20 am/5555 W Grand Ave., Chicago, IL
Date/Time of COPA Notification:	May 13, 2023/11:23 am
Involved Member #1:	Marcus K. Kimbrough, Employee ID# [REDACTED] Date of Appointment: September 03, 1996, Unit of Assignment: 025 <sup>th</sup> District, male, Black
Involved Individual #1:	[REDACTED] male, Hispanic

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 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.

Applicable Policies and Laws

- TITLE 18, U.S.C., SECTION 242, Deprivation of Rights Under Color of Law
- 720 ILCS 5/12-3, Battery
- G03-02, De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 27, 2023)
- G03-02-02, Incidents Requiring the Completion of a Tactical Response Report (effective April 15, 2021 to June 27, 2023)
- S06-01, Processing Persons Under Department Control (January 28, 2022)

## 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.<sup>31</sup> 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.”<sup>32</sup>

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<sup>31</sup> 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).

<sup>32</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> 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