



Log # 2022-0393

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On February 2, 2022, the Civilian Office of Police Accountability (COPA) received an initiation report from Sergeant (Sgt.) Paul Honea reporting alleged misconduct by a member of the Chicago Police Department (CPD). Sgt. Honea alleged that on February 2, 2022, Police Officer Derek McMahon struck ██████ in and about the face with a closed fist and elbow or forearm approximately three times.²³ Upon review of the evidence, COPA served an excessive force allegation against Officer McMahon. Following its investigation, COPA reached a Sustained finding regarding the allegation.

II. SUMMARY OF EVIDENCE⁴

On February 2, 2022, COPA received an Initiation Report authored by Sgt. Honea of the 4th District, documenting that he witnessed Officer McMahon strike ██████ in and about the face with a closed fist and elbow or forearm approximately three times.⁵ Sgt. Honea reported that Officer McMahon struck ██████ after ██████ spat in his face. The Initiation Report further explains that ██████ was resisting and refusing to get into the backseat of the police vehicle before spitting on Officer McMahon.

COPA obtained Tactical Response Reports (TRRs) from Sgt. Honea and Officer McMahon. Sgt. Honea's report documents that he responded to ██████ to serve an order of protection on ██████ where ██████ attempted to strike Sgt. Honea by picking up a blunt object; ██████ was then arrested and escorted from the residence without injury.⁶ Officer McMahon's TRR documented his use of mechanical strikes about the head with a closed fist and his elbow or forearm more than once after being spat on, as he was attempting to place ██████ into a patrol vehicle.⁷

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. 1.

³ 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.

⁴ 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 (BWC) video footage, CPD member interviews, and CPD reports.

⁵ Att. 1.

⁶ Att. 16.

⁷ Att. 17.

COPA obtained Body Worn Camera (BWC) footage from Sgt. Honea, Officer McMahon, Officer Jacob Tracy, Officer Victor Gonzalez, and Officer Ricardo Gallegos.⁸ COPA also requested and obtained the In-Car Camera (ICC) footage of the event that shows the subsequent actions of ██████ after being placed into the patrol vehicle.⁹ The ICC footage does not show Officer McMahon striking ██████ COPA also obtained audio-recorded statements from Officer McMahon and Sgt. Honea.¹⁰ ██████ was charged with aggravated battery of a peace officer and later pled guilty to an amended charge of resisting or obstructing a peace officer; he was sentenced to twelve months of probation.¹¹

III. ALLEGATIONS

Officer Derek McMahon:

1. Striking ██████ on or about the face with your fist without justification.
 - **Sustained**, Rules 2, 3, 6, 8, & 9

IV. CREDIBILITY ASSESSMENT

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

V. ANALYSIS¹²

On February 2, 2022, Officer Derek McMahon and Officer Jacob Tracy respond to ██████ related to an unwanted person. Once on scene, Officer Tracy spoke to ██████ who informed him that she had an Order of Protection against ██████ who was not supposed to be at the residence.¹³ ██████ showed Officer Tracy the Order of Protection against ██████ Officer Tracy was informed by ██████ daughter, ██████ that ██████ was intoxicated and had been very aggressive, suggesting that they would need more than two police officers to manage ██████¹⁴ Officer Tracy told ██████ that he requested a supervisor to officially serve ██████ the Order of Protection, which had not been previously served.¹⁵

Sgt. Paul Honea arrived and attempted to serve ██████ with the Order of Protection with the assistance of Officer Victor Gonzalez, who translated because ██████ did not completely speak and understand English.¹⁶ Officer Gonzalez explained to ██████ that he was required to leave the residence, and ██████ suddenly began to curse and yell at the officers in both

⁸ Atts. 9, 11, 21, 22, and 23.

⁹ Att. 20.

¹⁰ Atts. 25 and 27. COPA attempted to interview ██████ but was not successful. *See* Att. 15 and Notes CO-0121165, CO-1350335, and CO-1350434.

¹¹ Att. 30.

¹² For a definition of COPA's findings and standards of proof, *see* Appendix B.

¹³ Att. 9, BWC of Officer Tracy at 5:06.

¹⁴ Att. 9 at 20:50.

¹⁵ Att. 9 at 15:20.

¹⁶ Att. 22, BWC of Sgt. Honea at 8:50.

English and Spanish.¹⁷ Sgt. Honea informed [REDACTED] multiple times that if he did not leave, he would go to jail. [REDACTED] continued to yell and curse, and he picked up a decorative vase from a table and attempted to throw the vase at Sgt. Honea.¹⁸ Before he could throw the vase, Officer Gonzalez was able to grab and control his arm, and officers then placed him in restraints.¹⁹ [REDACTED] was then searched before being escorted from the home to a police vehicle.²⁰

While being escorted from the home to the police vehicle, [REDACTED] again became irate and resistive. He attempted to kick snow at the officers and yelled, "Fuck You, Mother Fucker."²¹ [REDACTED] refused to step into the police vehicle, and he then spit in the face of Officer McMahon.²² Officer McMahon then punched [REDACTED] in and about the face multiple times until Sgt. Honea intervened.²³ [REDACTED] was then pulled into the police vehicle and secured by other officers. During his audio recorded statement to COPA, Officer McMahon admitted to punching [REDACTED] in the face after being spat on,²⁴ and he explained that "it was just a reaction to what he did to me."²⁵ However, Officer McMahon also asserted that no other force option would have prevented [REDACTED] from spitting again.²⁶ Officer McMahon further explained that the purpose of his strikes was to "move his face away from me so he's not spitting on me" and that he did not believe it was possible to move [REDACTED] face away without delivering the strikes.²⁷ When asked by COPA if he believed his use of force was reasonable, necessary, and proportionate to [REDACTED] actions, Officer McMahon answered that it was, even taking into consideration that [REDACTED] was handcuffed and inebriated.²⁸

Sgt. Honea told COPA that he saw Officer McMahon deliver three or four closed-fist punches to [REDACTED] face immediately after hearing a person spitting; Sgt. Honea yelled, "Whoa, whoa, whoa," and placed himself between Officer McMahon and [REDACTED].²⁹ Sgt. Honea explained that he submitted an initiation report for this incident because he believed that an officer punching a handcuffed subject in the face was possibly not a proper use of force.³⁰ Sgt. Honea also spoke with Officer McMahon after the incident and explained that this use of force was not justified and that Officer McMahon may have gone overboard in response to being spat on.³¹

¹⁷ Att. 22 at 10:50.

¹⁸ Att. 22 at 11:20; Att. 11, BWC of Officer Victor Gonzalez at 1:15:06.

¹⁹ Att. 22 at 11:46.

²⁰ Att. 11 at 1:16:35.

²¹ Att. 9 at 1:48:10.

²² Att. 9 at 1:48:40; Att. 22 at 14:52.

²³ Att. 9 BWC at 1:48:45; Att. 22 at 14:55; Att. 11 at 1:18:25.

²⁴ Att. 27, Audio interview of Officer McMahon, at 6:05.

²⁵ Att. 27 at 22:25 to 22:29.

²⁶ Att. 27 at 26:30 to 27:00.

²⁷ Att. 27 at 32:15 to 32:54.

²⁸ Att. 27 at 34:10 to 34:50.

²⁹ Att. 25, Audio interview of Sgt. Honea, at 16:25 to 17:00.

³⁰ Att. 25 at 26:45 to 27:05.

³¹ Att. 25 at 28:13 to 28:30.

The actions of Officer McMahon were in violation of CPD General Order G03-02, De-escalation, Response to Resistance, and Use of Force.³² CPD officers are required to use force proportional to the threat, actions, and level of resistance offered by a person.³³ De-escalation techniques, including continually assessing the situation, considering individualized factors such as the subjects age, disability, or physical condition; and if the subject is restrained, injured, or in crisis.³⁴

The force that Officer McMahon used is classified as a “direct mechanical technique,” which is a “forceful, concentrated striking movement[] such as punching and kicking”³⁵ Direct mechanical strikes may only be used against a subject who is labeled as an “assailant.”³⁶ An assailant is “a person who is using or threatening the use of force against another person . . . which is likely to cause physical injury.”³⁷ When █████ spat on Officer McMahon, he was unarmed and handcuffed. And while █████ actions were crude, offensive, and could potentially spread disease, his spit did not cause bodily harm to Officer McMahon or to any other person present.

Officer McMahon referred to █████ spitting as a battery, and he believed that his use of force in response was permitted to prevent further battery. However, the battery committed by █████ was not a use of force or threatened use of force which would render him an assailant as defined by the directives quoted above. Spitting can be considered a battery, but Illinois law recognizes two distinct categories of battery: the first type involves causing bodily harm to an individual, and the second type involves making contact of an insulting or provoking nature with an individual.³⁸ Only the first type of battery, involving bodily harm, implicates the definition of “assailant” found in CPD’s use-of-force directives. Illinois courts have consistently held that an offender spitting on a police officer has committed the “insulting or provoking” type of battery,³⁹ and the United States Court of Appeals for the Seventh Circuit has held that the insulting-or-provoking form of the Illinois battery statute is not a crime of violence for purposes of a federal sentencing enhancement.⁴⁰

None of this suggests that Officer McMahon was obligated to allow █████ to spit on him. On the contrary, Officer McMahon could use reasonable force to prevent █████ from spitting and could have enlisted assistance from fellow officers. However, █████ conduct would properly be classified as active resistance; direct mechanical techniques, such as punching with a closed fist or

³² Att. 29, G03-02, De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021, to June 28, 2023).

³³ Att. 29, G03-02(III)(B).

³⁴ Att. 29, G03-02(III)(C).

³⁵ Att. 28, G03-02-01(IV)(C)(1)(a), Response to Resistance and Force Options (effective April 15, 2021, to June 28, 2023).

³⁶ Att. 28, G03-02-01(IV)(C).

³⁷ Att. 28, G03-02-01(IV)(C).

³⁸ See 720 ILCS 5/12-3(a).

³⁹ See *People v. Wrencher*, 2011 IL App (4th) 080619, ¶¶ 54-55; *People v. Peck*, 260 Ill. App. 3d 812, 814-15 (1994).

⁴⁰ See *United States v. Hampton*, 675 F.3d 720, 730 (7th Cir. 2012).

the delivery of elbow/forearm strikes, are not authorized for use against active resisters.⁴¹ Further, even if Officer McMahon classified ██████ as an assailant, this would not automatically allow Officer McMahon to punch or strike ██████. Instead, Officer McMahon's actions would still be constrained by the requirement to use force in an objectively reasonable, necessary, and proportional manner, considering the totality of the circumstances. Given that ██████ was handcuffed, punches and strikes were not objectively reasonable, necessary, or proportional, regardless of ██████ classification under the rubric created by CPD's use-of-force directives.

Therefore, COPA concludes that Officer McMahon's punch and other strikes to ██████ were excessive. These were objectively unreasonable and unnecessary tactics that were disproportional under the totality of the circumstances. By engaging in this conduct, Officer McMahon disobeyed written directives G03-02 and G03-02-01 and violated Rules 2, 3, 6, 8, and 9, and COPA finds that **Allegation #1 against Officer McMahon is Sustained.**

VI. DISCIPLINARY RECOMMENDATION

a. Police Officer Derek McMahon

i. Complimentary and Disciplinary History⁴²

Officer McMahon has received a Superintendent's Honorable Mention, 18 Honorable Mentions, one complimentary letter, and four other awards and commendations. Officer McMahon has not been disciplined within the past five years.

ii. Recommended Discipline

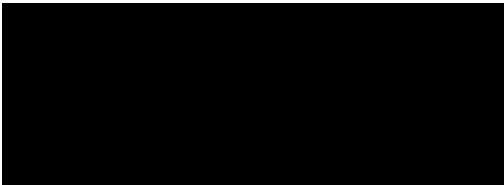
Here, COPA has found that Officer McMahon violated CPD policy and Rules 2, 3, 6, 8, and 9 when he struck ██████ on or about the face with his fist. Officer McMahon did not take responsibility for his misconduct and instead attempted to justify his actions. Officer McMahon's misconduct does not appear to have been premeditated; he appears to have reacted – inappropriately – to extremely offensive conduct by ██████. While ██████ refused medical attention and is not known to have suffered any serious injury, redness to the left side of his face and swelling to his forehead was observed by a CPD lieutenant.⁴³ Based on this information, and considering Officer McMahon's complimentary and disciplinary history, COPA recommends a **30-day suspension.**

⁴¹ See Att. 28, G03-02-01(IV)(B). This order defines a "resister" as "a person who is uncooperative," and further defines an active resister as "a person who attempts to create distance between himself or herself and the member's reach with the intent to avoid physical control and/or defeat the arrest." Within the framework created by General Order G03-02-01, ██████ is best characterized as an active resister because he was uncooperative when ordered to sit in the police vehicle and because he spit at Officer McMahon with the apparent intent to either force Officer McMahon to retreat or to avoid physical control.

⁴² Att. 34.

⁴³ Att. 17, pg. 5.

Approved:



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

January 26, 2024
Date

Appendix ACase Details

Date/Time/Location of Incident:	February 2, 2022 / 5:20 pm/ [REDACTED] Chicago, IL 60617
Date/Time of COPA Notification:	February 2, 2022 / 9:07 pm
Involved Officer #1:	Derek McMahon, Star #3920, Employee ID # [REDACTED] DOA: January 16, 2018, Unit: 004, 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.

Applicable Policies and Laws

- General Order G03-02-01, Response to Resistance and Force Options (effective April 15, 2021, to June 28, 2023)
- General Order G03-02, De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021, to June 28, 2023)
- 720 ILCS 5/12-3: Battery
- 720 ILCS 5/12-3.05: Aggravated Battery

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.⁴⁴ For example, 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. 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.”⁴⁵

⁴⁴ See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) (“A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.”).

⁴⁵ *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