

Brandon Johnson Mayor

Department of Police · City of Chicago 3510 S. Michigan Avenue · Chicago, Illinois 60653 Larry Snelling Superintendent of Police

January 13, 2024

Andrea Kersten Chief Administrator Civilian Office of Police Accountability ("COPA") 1615 W. Chicago Ave., 4th Floor

> Re: Complaint Register Number: 2023-0001374
> Superintendent's partial Non-Concurrence with COPA's findings and proposed penalties: Police Officer Emilio De Leon #16360
> Police Juan Santamaria #18680
> Police Officer Mark Gentille #17580
> Police Officer Psyenne Kallenborn #18901

Dear Chief Administrator Kersten:

COPA sustained three allegations from a total of five made against Chicago Police Department ("CPD") Police Officer ("P.O.") Emilio De Leon. Allegations three and four were not sustained. The allegations relate to an on-duty use of force incident referenced under JG205404¹. The involved citizen is **Example** ("**Example** 1) The Department concurs with COPA's sustained findings for allegations one, two, and five. Additionally, the Department agrees with COPA's findings of not sustained for allegations three and four. Furthermore, the Department does not concur with the recommended penalty for the sustained findings. The allegations made against the following P.O.s are related to the same event.

COPA sustained one allegation from a total of two made against P.O. Juan Carlos Santamaria. Allegation two was not sustained. The allegations relate to failing to intervene and failing to request medical attention. The Department does not concur with COPA's sustained finding for allegation one, and concurs with the finding of not sustained for allegation two.

COPA sustained two allegations from a total of four made against P.O. Mark Gentille. Allegations two and three were not sustained. The sustained allegations relate to failing to intervene and failing to secure his firearm. The Department does not concur with COPA's sustained finding for allegation one and concurs with the sustained finding for allegation three. The Department agrees with COPA's findings of not sustained for allegations two and four. Furthermore, the Department does not concur with the recommended penalty for the sustained finding.

COPA sustained one allegation from a total of two made against P.O. Psyenne Kallenborn. Allegation

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¹ Chicago Police Department Initiation Report for CR# 2021-0003940. Mar. 31, 2023.

two was not sustained. The sustained allegation relates to failing to intervene. The Department does not concur with COPA's sustained finding for allegation one. The Department concurs with COPA's finding of not sustained for allegation two.

In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalties.

ALLEGATIONS

It is alleged by COPA, by and through Chief Administrator, Andrea Kersten, that P.O. De Leon committed misconduct through the following acts or omissions:

Allegation #1 - Failing to use de-escalation techniques in violation of General Order G03-02.

Allegation #2 - Forcefully throwing to the ground without justification.

Allegation #3 - Failing to immediately request appropriate medical aid for

Allegation #4 - Failing to investigate a domestic disturbance incident.

Allegation #5 - Failing to timely activate his body worn camera.

It is also alleged by COPA, by and through Chief Administrator, Andrea Kersten, that P.O. Santamaria committed misconduct through the following acts or omissions:

Allegation #1 - Failing to intervene when Officer Emilio De Leon forcefully threw **Example 1** to the ground without justification.

Allegation #2 - Failing to immediately request appropriate medical aid for

It is also alleged by COPA, by and through Chief Administrator, Andrea Kersten, that P.O. Gentille committed misconduct through the following acts or omissions:

Allegation #1 - Failing to intervene when Officer Emilio De Leon forcefully threw **constants** to the ground without justification.

Allegation #2 - Failing to immediately request appropriate medical aid for

Allegation #3 - Failing to secure his firearm before entering detention facility in violation of S06-01-02.

Allegation #4 - Making one or more false, incomplete, inaccurate and/or misleading statements relating to the manner in which Officer De Leon removed from the squad car in the sally port of the 018th District in his Witness Statement to the Commander after the incident.

It is also alleged by COPA, by and through Chief Administrator, Andrea Kersten, that P.O. Kallenborn committed misconduct through the following acts or omissions:

Allegation #1 - Failing to intervene when Officer Emilio De Leon forcefully threw **constant** to the ground without justification.

Allegation #2 - Failing to immediately request appropriate medical aid for

FACTS:

This case review is to be read in conjunction with all other reports generated under the COPA investigation for CR #2023-0001374. This case review is a summarization of all reported information. All statements are also in summary format and are not to be considered verbatim.

On 31 Mar 2023, COPA received an initiation report from CPD Lieutenant Nicholas Vasselli reporting alleged misconduct by a member of CPD. Lieutenant Vasselli alleged that on 31 Mar 2023, P.O. Emilio De Leon pulled a handcuffed arrestee, **Margare 1** from the inside of a squad car and pushed her to the cement ground in the 018th District sally port. Upon review of the evidence, COPA served allegations that P.O. De Leon failed to use de-escalation techniques, forcefully three **Margare** to the ground without justification, failed to immediately request medical aid for **Margare** failed to investigate a domestic disturbance incident, and failed to timely activate his body worn camera ("BWC"). COPA also served allegations on multiple CPD members, who witnessed the incident, for failing to intervene to stop P.O. De Leon's actions. Although **Margare** declined to cooperate with the investigation, COPA interviewed seven CPD members, including four who were eyewitnesses to the incident. Following its investigation, COPA reached sustained findings regarding the excessive force and failure to intervene allegations, as well as several operational violations².

ANALYSIS

P.O. Emilio De Leon

Allegation 1 - Failing to use de-escalation techniques

Allegation one should be sustained in that P.O. De Leon violated General Order G03-02. Based on the preponderance of the evidence, COPA has met its burden.

Constitutional Precedent - Police Use of Force

In *Graham v. Connor*, the hallmark United States Supreme Court Fourth Amendment case on police use of force, the Court held that claims of excessive force used by government officials are properly analyzed under the Fourth Amendment's "objective reasonableness" standard. Furthermore, the "objective reasonableness" of a use of force should be judged by the perspective of an officer on the scene, and should take into account factors such as the severity of the crime, the threat posed by the suspect, and any attempts by the suspect to resist or evade arrest³.

Illinois Law - Police Use of Force

A peace officer is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on

² Civilian Office of Police Accountability ("COPA"), Summary Report of Investigation CR# 2023-0001374.

³ Graham v. Connor, 490 U.S. 386 (1989).

the totality of the circumstances, to be necessary to defend himself or another from bodily harm while making the arrest. The decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies. The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time of the decision, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force⁴.

CPD Policy - De-Escalation, Response to Resistance, and Use of Force

The Department's highest priority is the sanctity of human life. Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved. Furthermore, Department members' use of force must be 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 escape⁵.

Department members are required to use de-escalation techniques to prevent or reduce the need for force, unless doing so would place a person or a Department member in immediate risk of harm, or deescalation techniques would be clearly ineffective under the circumstances at the time. When a zone of safety cannot be established, a person is at immediate risk of physical harm, or there is an immediate need for a Department member to accomplish lawful objectives that cannot be achieved through force mitigation. Factors to consider include, but are not limited to, the subject's physical, perceived behavioral or mental health condition, risk posed by the subject, and if the subject is restrained or in crisis⁶.

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, providing a warning and exercising persuasion and advice prior to the use of force, determining whether the member may be able to stabilize the situation through the use of time, distance, or positioning to isolate and contain a subject (e.g., establishing a zone of safety), and requesting additional personnel to respond or make use of specialized units or equipment including crisis-intervention-team trained officers, as necessary and appropriate⁷.

The use of excessive force, unwarranted physical force, or unlawful force by a Department member is prohibited and will not be tolerated. Force used as punishment or retaliation (e.g., force used to punish or retaliate for fleeing, resisting arrest, or insulting a Department member) is prohibited⁸.

CPD Policy - Response to Resistance and Force Options

Consistent with the Department policy that all uses of force must be objectively reasonable, necessary, and proportional, Department members will refrain from using force against a person who is secured and

⁸ Id.

⁴ Peace Officers Use of Force in Making Arrest. 720 ILCS 5/7-5. Eff. Dec. 17, 2021.

⁵ Chicago Police Department General Order G03-02. De-escalation, Response to Resistance, and Use of Force. Eff. Apr. 15, 2021. ⁶ Id at 2-3.

 $^{^{7}}$ *Id* at 3.

restrained with handcuffs or other restraining devices (e.g., flexible restraining devices), unless the member must act to prevent injury to the Department member, the restrained person, or another person, must act to prevent escape, or is compelled by other law enforcement objectives⁹.

During all use of force incidents, when it is safe and feasible to do so, Department members will use the principles of Force Mitigation to ensure effective police-public encounters. The concepts of Force Mitigation include continual communication, tactical positioning, and time as a tactic¹⁰.

Analysis of P.O. De Leon's Use of Force and De-escalation Techniques

P.O. De Leon was not justified in using the amount of force that he did. Furthermore, his actions were not objectively reasonable, necessary, and proportional, based on the totality of the circumstances. P.O. De Leon failed to utilize de-escalation and force mitigation techniques to prevent or reduce the need for force. Ultimately, P.O. De Leon did not act with the best regard for the safety of **mathematical and others**.

Technically speaking, **Sector** can be described as an assailant for spitting on P.O. De Leon. An assailant is a person who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury¹¹. In this case, **Sector** actions were aggressively offensive by committing a battery to a police officer. Similarly, in *People v. Peck*, a defendant committed aggravated battery by spitting in a police officer's face. The Court in *Peck* held that the defendant made "physical contact of an insulting or provoking nature¹²." However, P.O. De Leon's response was not objectively reasonable, necessary, and proportional, under the totality of the circumstances.

The situation was already under control in that **was** was in custody, handcuffed behind her back, and seated in a Department vehicle within a secured District sally port. Although **was** actions were aggressively offensive, she was not likely to cause physical harm to anyone on scene. Furthermore, P.O. De Leon had deescalation and force mitigation options. First, he could have shut the vehicle door to create distance and cover. This is known as tactical positioning. Secondly, after establishing a zone of safety, P.O. De Leon could have used time as a tactic by slowing down the pace of the incident. This would have permitted the de-escalation of **would** have allowed her an opportunity to comply with the lawful verbal direction. Additionally, time would have allowed for the arrival of additional resources such as Crisis Intervention Team ("CIT") trained officers and a supervisor. Finally, P.O. De Leon could have attempted to allow other members on scene to use verbal control techniques to avoid a further confrontation with **was** that **was** have been more receptive to others, including P.O. Gentille, who appeared to be making progress with **was** have been more receptive to others.

P.O. De Leon's actions were not proportional to the threat, actions, and level of resistance offered by Under the totality of the circumstances, throwing a handcuffed arrestee to the cement ground face first from an elevated position was reckless and unnecessary. P.O. De Leon did not use the minimum amount of force needed to bring the situation safely under control. Spitting at a police officer is an egregious act. Nonetheless, **was not posing an imminent threat to P.O. De Leon or others, and the risk of harm was low**

⁹ Chicago Police Department General Order G03-02-01. Response to Resistance and Force Options. Eff. Apr. 15, 2021. ¹⁰ *Id.* at 2.

¹¹ Id. at 6.

¹² People v. Peck, 260 Ill. App. 3d 812, 814-15, 198 Ill.Dec. 760, 633 N.E.2d 222 (1994).

because she was already handcuffed from behind her back and it appeared that she was in a state of inebriation. Furthermore, although was not thoroughly searched on scene, it did not appear that she had access to weapons. Additionally, as already discussed, de-escalation techniques could have been employed and most likely would have been more effective than resorting to force. Lastly, other resources were available, including other officers, a supervisor, and CIT trained officers.

There is no evidence that P.O. De Leon was retaliating against for spitting on him. However, he stated to COPA that he was frustrated, and in better judgment, he would have done things differently¹³. P.O. De Leon would have allowed for spitting to sit in the vehicle longer and requested assistance from other officers with de-escalation¹⁴. Furthermore, P.O. De Leon claimed that this incident was the first time that someone spat on him, and he was disrespected to the point that he had cloudy judgment¹⁵. Noteworthy, P.O. De Leon showed remorse by stating that he regrets using the level of force that he did¹⁶. P.O. De Leon also admitted that it was a humbling experience, and he should have maintained his professional composure. P.O. De Leon concluded his COPA statement by affirming that he does not want to have the same reaction again because it was out of character for him¹⁷. Nonetheless, allegation one is legally sufficient.

Allegation 2 - Forcefully throwing to the ground without justification.

This allegation should be sustained for the same reasons noted under allegation one. Based on the preponderance of the evidence, COPA has met its burden.

Allegation 3 - Failing to immediately request appropriate medical aid for

The Department agrees with COPA's finding of not sustained.

Allegation 4 - Failing to investigate a domestic disturbance incident.

The Department agrees with COPA's finding of not sustained.

Allegation 5 - Failing to timely activate his body worn camera.

Allegation five should be sustained. Based on the preponderance of the evidence, COPA has met its burden. P.O. De Leon failed to activate his BWC at the beginning of the incident. The Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. If circumstances prevent activating the BWC at the beginning of an incident, the member will activate the BWC as soon as practical. Law-enforcement-related activities include calls for service¹⁸. P.O. De Leon acknowledged to COPA that he did not initially activate his BWC because he did not believe that there was a police matter being investigated. This inaction is evidenced in his BWC video. P.O. De Leon further stated that once between the being with a purse, he knew it was time to activate his BWC¹⁹. P.O.

¹³ Att. 55 at 10.

¹⁴ Id. at 11 and 39.

¹⁵ *Id.* at 11.

¹⁶ Id. at 28.

¹⁷ Id. at 41-42.

¹⁸ Chicago Police Department, Special Order S03-14 Body Worn Cameras. Pg. 2. Eff. Apr. 30, 2018.

¹⁹ Att. 55 at 37-38.

De Leon violated Special Order S03-14-3-A-2-c and e - Body Worn Cameras. Therefore, allegation five is legally sufficient.

P.O. Juan Carlos Santamaria

Allegation 1 - Failing to intervene when Officer Emilio De Leon forcefully threw **Constant of the** ground without justification.

Allegation one should not be sustained. COPA has not met its burden, by the preponderance of the evidence.

Illinois Law - Duty to Intervene

A peace officer, or any other person acting under the color of law who has an opportunity to intervene, shall have an affirmative duty to intervene to prevent or stop another peace officer in his or her presence from using any unauthorized force or force that exceeds the degree of force permitted, if any, without regard for chain of command²⁰.

CPD Policy - Duty to Intervene and Report

A Department member who directly observes a use of force and identifies the force as excessive or otherwise in violation of Department policy will, except in extraordinary circumstances, act to intervene on the person's behalf. Such action may include, but is not limited to, verbally or physically intervening to try to stop the violation. Department members will then immediately notify their supervisor²¹.

Like 720 ILCS 5/7-16(b) (Duty to Intervene), Department members who have knowledge of the use of force against a person in violation of Department policy will submit an individual written report to a supervisor before reporting off duty on the day the member becomes aware of the misconduct²².

Analysis of P.O. Santamaria's Alleged Failure to Intervene

In what many courts have recognized to be the leading case on the duty to intervene, the Federal Seventh Circuit Court of Appeals stated in *Byrd v. Brishke* that it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. Under this principle, which recognized the now well-established duty to intervene, law enforcement officers are generally required to intervene when they observe a fellow officer infringing on certain constitutional rights of citizens²³.

Likewise, the Federal Seventh Circuit Court of Appeals held in *Yang v. Hardin* that a police officer, whether supervisory or nonsupervisory, who is present and fails to intervene to prevent other officers from infringing constitutional rights of citizens is liable if that officer had reasonable opportunity to intervene to prevent harm from occurring and if the officer had reason to know that excessive force was being used, that citizen has been unjustifiably arrested, or that any constitutional violation has been committed by law

²⁰ Duty to Intervene. 720 ILCS 5/7-16. Eff. Jul. 1, 2021.

²¹ Chicago Police Department General Order G03-02. De-escalation, Response to Resistance, and Use of Force. Eff. Apr. 15, 2021. ²² Id.

²³ Byrd v. Brishke, 466 F.2d 6, 11 (7th Cir. 1972).

enforcement official²⁴. The Court in *Yang* concluded that although the plaintiff's complaint failed to explicitly specify the existence of an opportunity for Hardin (Chicago Police Officer) to have intervened, the facts demonstrated several opportunities during which Hardin could have acted while his partner drove fast and recklessly in a zig-zagging pattern, braking and accelerating, in an attempt to throw Yang off of a moving vehicle²⁵.

Conversely, the Federal Ninth Circuit Court of Appeals held in *Ting v. United States* that an officer cannot be faulted for failing to intervene when another officer suddenly and unexpectedly uses excessive force. The plaintiff in *Ting* alleged that an officer used excessive force by shooting the plaintiff while arresting him. The Court held that summary judgment was properly granted in favor of other officers present at the scene. There was no evidence that the four non-shooting agents knew that the officer who shot the plaintiff would hurt or shoot the plaintiff, and the agents were positioned around the room away from the incident and were thus physically incapable of preventing the incidents surrounding the shooting, all of which transpired in a matter of seconds²⁶.

Unlike the facts in *Yang*, P.O. Santamaria did not have a reasonable opportunity to intervene to prevent harm from occurring to **Example** Although P.O. De Leon's conduct violated the Department's use of force policies, the violation ceased after **Example** struck the ground and lasted less than one second. The facts in the instant case are more like the *Ting* case. P.O. De Leon's actions were sudden, and there is no evidence that P.O. Santamaria could have expected the use of excessive force.

Furthermore, P.O. Santamaria assisted P.O. De Leon by helping escort **const** into the detention facility. appeared to be unsteady on her feet as she was being escorted, most likely from being intoxicated and wearing high heels, but she was not mistreated by P.O. De Leon after the aforementioned use of force incident. Therefore, there was no further requirement for P.O. Santamaria to intervene. P.O. Santamaria, then dutifully submitted an individual written report to his supervisor about the incident before reporting off duty, in accordance with G03-02. Accordingly, allegation one is not legally sufficient.

Allegation 2 - Failing to immediately request appropriate medical aid for

The Department agrees with COPA's finding of not sustained.

P.O. Mark Gentille

Allegation 1 - Failing to intervene when Officer Emilio De Leon forcefully threw **contraction** to the ground without justification.

Allegation one should not be sustained. COPA has not met its burden, by the preponderance of the evidence. P.O. Gentille's defense is the same as P.O. Santamaria's argument against failing to intervene. Like the *Ting* case, P.O. Gentille did not have a reasonable opportunity to intervene to prevent harm from occurring to Although P.O. De Leon's conduct violated the Department's use of force policies, the violation ceased after **Security** struck the ground and lasted less than one second. P.O. De Leon's actions were sudden, and there is no evidence that P.O. Gentille could have expected the use of excessive force.

²⁴ Yang v. Hardin, 37 F.3d 282 (7th Cir. Ill. Sept. 28, 1994).

²⁵ Id.

²⁶ Ting v. United States, 927 F.2d 1504 (9th Cir. 1991).

Furthermore, P.O. Gentille attempted to use verbal de-escalation techniques and assisted P.O. De Leon in escorting **second** to the detention facility. Furthermore, P.O. Gentille used a force mitigation technique by placing a surgical mask on **second** face to prevent further spitting. **Second** was not mistreated by P.O. De Leon after the aforementioned use of force incident. Therefore, there was no further requirement for P.O. Gentille to intervene. P.O. Gentille, then dutifully submitted an individual written report to his supervisor about the incident before reporting off duty, in accordance with G03-02. Accordingly, allegation one is not legally sufficient.

Allegation 2 - Failing to immediately request appropriate medical aid for

The Department agrees with COPA's finding of not sustained.

Allegation 3 - Failing to secure his firearm before entering detention facility in violation of S06-01-02.

Allegation three should be sustained. COPA has met its burden, by the preponderance of the evidence. All sworn CPD members will secure their firearms in a gun locker before entering a processing area if the processing area and detention facility are adjoining²⁷. Additionally, as addressed by COPA, the door at the 018th District, which P.O. Gentille walked through to enter the detention facility, contains a sign stating that no firearms are allowed in the processing area or lockup. P.O. Gentille admitted to entering the processing/lockup area in the 018th District while armed with his duty weapon. P.O. Gentille advised COPA that this was the first time he had entered through this doorway, and he was unfamiliar with the area. Furthermore, in the past, he had taken arrestees into lockup through the side door, and he had secured his firearm in the lock boxes near that entrance. P.O. Gentille said he was focused on and did not pay attention to the location of the lock boxes²⁸.

Despite no exigent circumstances, P.O. Gentille displayed an inattention to duty by failing to secure his weapon prior to entering the processing area in violation of S06-01-02. Therefore, allegation 3 is legally sufficient.

Allegation 4 - Making one or more false, incomplete, inaccurate and/or misleading statements relating to the manner in which Officer De Leon removed **Example 1** from the squad car in the sally port of the 018th District in his Witness Statement to the Commander after the incident.

The Department agrees with COPA's finding of not sustained.

P.O. Psyenne Kallenborn

Allegation 1 - Failing to intervene when Officer Emilio De Leon forcefully threw **contraction** to the ground without justification.

Allegation one should not be sustained. COPA has not met its burden, by the preponderance of the evidence. P.O. Kallenborn's defense is the same as P.O. Santamaria's and P.O. Gentille's arguments against

²⁷ Chicago Police Department Special Order S06-01-02. Detention Facilities General Procedures and Responsibilities. Eff. Jan. 28, 2022.

²⁸ Civilian Office of Police Accountability ("COPA"), Summary Report of Investigation CR# 2023-0001374.

failing to intervene. Like the *Ting* case, P.O. Kallenborn did not have a reasonable opportunity to intervene to prevent harm from occurring to Although P.O. De Leon's conduct violated the Department's use of force policies, the violation ceased after struck the ground and lasted less than one second. P.O. De Leon's actions were sudden, and there is no evidence that P.O. Kallenborn could have expected the use of excessive force.

was not mistreated by P.O. De Leon after the aforementioned use of force incident. Therefore, there was no further requirement for P.O. Kallenborn to intervene. P.O. Kallenborn then dutifully submitted an individual written report to her supervisor about the incident before reporting off duty, in accordance with G03-02. Accordingly, allegation one is not legally sufficient.

Allegation 2 - Failing to immediately request appropriate medical aid for

The Department agrees with COPA's finding of not sustained.

CONCLUSION

The Department concurs with COPA's sustained findings for allegations one, two, and five, for P.O. De Leon, but disagrees with the penalty recommendation. P.O. De Leon should be given a 30-day suspension and receive training.

The Department concurs with COPA's sustained finding of allegation three, for P.O. Gentille, but disagrees with the penalty recommendation. P.O. Gentille should be given a reprimand and firearms training. The Department does not concur with COPA's sustained findings for P.O. Santamaria and P.O. Kallenborn.

CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,

Larry Snelling Superintendent of Police Chicago Police Department