



Log # 2023-0003539

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On August 8, 2023, the Civilian Office of Police Accountability (COPA) received a web complaint from ██████████ reporting alleged misconduct by members of the Chicago Police Department (CPD). ██████████ alleged that on August 7, 2023, he observed Officer Jose Gutierrez, who is now a sergeant, strike and knee ██████████ without justification.² Upon review of the evidence, COPA served additional allegations that Sgt. Gutierrez and his partner, Officer Musa Ahmad, pulled ██████████ hair without justification. Following its investigation, COPA reached exonerated findings for striking and kneeling ██████████ and not sustained findings for pulling ██████████ hair without justification.

II. SUMMARY OF EVIDENCE³

On August 7, 2023, at approximately 3:59 pm, Sgt. Gutierrez and Officer Ahmad were on routine patrol on the 6200 block of S. Drexel Avenue, which is a designated hotspot for illegal narcotics sales.⁴ They observed ██████████ standing in front of a residential building with a scale, bagging up cannabis in small clear bags.⁵ Sgt. Gutierrez and Officer Ahmad approached the front gate and asked ██████████ to open it, but ██████████ ignored their commands.

Sgt. Gutierrez and Officer Ahmad told ██████████ that they saw he had cannabis, and they just wanted to document it and leave.⁶ Sgt. Gutierrez then pushed the gate open and approached ██████████ who clenched onto his bag. Officer Ahmad grabbed ██████████ bag while Sgt. Gutierrez grabbed ██████████ left arm in an attempt to handcuff him.⁷ ██████████ warned Sgt. Gutierrez not to touch him and stated words to the effect of, “I’m gonna fuck you up.”⁸ ██████████ then began to resist by pushing the officers, pulling his bag away, and stiffening his body and arms in an attempt to defeat the detainment.⁹

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 BWC footage, third-party video, police reports, civilian interviews and officer interviews.

⁴ Att. 2, pg. 3; Att. 46, pg. 11.

⁵ Att. 10 at 15:59:11; Att. 46, pg. 10.

⁶ Att. 10 from 15:59:49 to 16:00:08.

⁷ Att. 11 at 16:00:18; Att. 46, pg. 10; Att. 45, pg. 8.

⁸ Atts. 10 and 11 at 16:00:23.

⁹ Att. 10 starting at 16:00:23.

While Sgt. Gutierrez and Officer Ahmad were struggling to handcuff ██████ a crowd started to gather around them.¹⁰ The crowd was hostile and yelled at Sgt. Gutierrez and Officer Ahmad to leave ██████ alone. Sgt. Gutierrez repeatedly requested backup and eventually called a 10-1 over the radio.¹¹ Officer Ahmad later told COPA that he felt trapped by the crowd and thought he was going to die.¹²

█████ continued to push the officers away from him, and Officer Ahmad attempted to pull ██████ to the ground by his hair.¹³ While ██████ head was down, Sgt. Gutierrez attempted to place handcuffs on him, but ██████ appeared to elbow Sgt. Gutierrez in the face.¹⁴ ██████ then extended his right arm and swung it upwards, towards Sgt. Gutierrez.¹⁵ Sgt. Gutierrez responded by striking ██████ on right side of his stomach and his right arm.¹⁶ Sgt. Gutierrez proceeded to pull ██████ hair and kned him twice to gain control, but he was still unsuccessful in handcuffing ██████¹⁷ ██████ broke away from Sgt. Gutierrez and Officer Ahmad and ran to the front gate, holding onto it with both hands and refusing to let go.¹⁸ Responding officers arrived at the scene, and they were able to gain control of ██████ and place him in handcuffs.¹⁹

█████ began breathing heavily while he was on the ground.²⁰ An ambulance was called to the scene to take ██████ to the hospital. Paramedics noted that ██████ complained of wrist pain and shortness of breath, but he was extremely uncooperative and “continuously attempting to dump himself off of [the] stretcher.”²¹ ██████ was transported via ambulance to the University of Chicago Hospital, where he was evaluated and medically cleared.²² Sgt. Gutierrez and Officer Ahmad both sustained scrapes and bruises but did not seek medical attention.²³

█████ was charged with manufacturing/dealing cannabis, resisting/obstructing a peace officer, and failing to register as a gun offender.²⁴ He subsequently pled guilty to the resisting charge and was sentenced to 18 months of probation.²⁵

¹⁰ Att. 11 starting at 16:00:48.

¹¹ Att. 11 at 16:01:27.

¹² Att. 45, pg. 24.

¹³ Att. 11 at 16:00:40.

¹⁴ Atts. 12 and 13 at 0:19.

¹⁵ Atts. 12 and 13 at 0:21.

¹⁶ Atts. 12 and 13 from 0:22 to 0:25.

¹⁷ Atts. 12 and 13 at 0:32.

¹⁸ Att. 12 starting at 0:46.

¹⁹ Att. 11 starting at 16:02:50.

²⁰ Att. 10 starting at 16:05:25; Att. 46, pg. 17.

²¹ Att. 32, pg. 2.

²² Atts. 2 and 32. COPA was unable to obtain ██████ medical records from the University of Chicago Hospital. See Att. 50.

²³ Atts. 6 to 7; Att. 45, pgs. 16 and 24 to 25; Att. 46, pgs. 16 to 17.

²⁴ ██████ also had a warrant out of Rockford, Illinois, for a probation violation. Att. 2.

²⁵ Att. 25.

COPA interviewed the complainant, ██████████ who was an eyewitness to the incident and signed a sworn affidavit.²⁶ COPA also made repeated attempts to interview ██████████ but these efforts were unsuccessful.²⁷

III. ALLEGATIONS

Sergeant Jose Gutierrez:

- Striking ██████████ without justification.
 - Exonerated
- Kneeing ██████████ without justification.
 - Exonerated
- Pulling ██████████ hair without justification.
 - Not sustained

Officer Musa Ahmad:

- Pulling ██████████ hair without justification.
 - Not sustained

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.

In this case, the statements of Sgt. Gutierrez and Officer Ahmad were consistent with each other, and they largely matched the events depicted on the Body Worn Camera (BWC) footage and third-party video. As a result, COPA finds that both CPD members provided generally credible statements. Similarly, ██████████ statements about the incident in his interview with COPA were also consistent with the events depicted on video, and did not reveal any evidence that caused COPA to question his credibility.

V. ANALYSIS²⁸

a. Striking and Kneeing ██████████

COPA finds the allegations that Sgt. Gutierrez struck and kned ██████████ without justification, are **exonerated**. CPD policy defines force as any physical contact by a CPD member,

²⁶ Atts. 15 to 18.

²⁷ Atts. 20 to 24, 28; CMS Notes CO-1380823, CO-1383971, CO-1387001, CO-1395405.

²⁸ For a definition of COPA's findings and standards of proof, *see* Appendix B.

either directly or through the use of equipment, to compel a person's compliance.²⁹ CPD members may only use force that is objectively reasonable, necessary, and proportional under the totality of the circumstances.³⁰

CPD policy classifies a person who is using or threatening the use of force which is likely to cause physical injury as an assailant.³¹ The policy divides assailants into two categories: 1) a person whose actions are aggressively offensive with or without weapons (low-level assailant); and 2) a person whose actions constitute an imminent threat of death or great bodily harm (high-level assailant). CPD members who encounter the low-level assailants are authorized to use a variety of force options, including "direct mechanical" techniques, which are forceful concentrated striking movements such as punching, kicking, or focused pressure strikes.³²

Here, ██████ was a low-level assailant whose actions were aggressively offensive. The BWC and third-party footage clearly captured ██████ grab, push, elbow, and swing his hands/arms towards Sgt. Gutierrez and Officer Ahmad. Thus, the force used by Sgt. Gutierrez – striking and kneeling ██████ to gain control – was authorized by CPD policy. Additionally, the sergeant's use of force was objectively reasonable, necessary, and proportional under the totality of the circumstances. As such, COPA finds there is clear and convincing evidence that Sgt. Gutierrez was justified in striking and kneeling ██████ and the allegations against him are exonerated.

b. Pulling ██████ Hair

COPA finds the allegation that Sgt. Gutierrez and Officer Ahmad pulled ██████ hair without justification, is **not sustained**. As discussed above, CPD policy states that members may only use force that is objectively reasonable, necessary, and proportional under the totality of the circumstances.³³

In this case, Sgt. Gutierrez and Officer Ahmad were unsuccessful in gaining control of ██████ while a hostile crowd was gathering, they felt trapped, and assistance did not arrive until three to four minutes into their struggle with ██████ Both Sgt. Gutierrez and Officer Ahmad told COPA that they were trying to gain control of ██████ using the least amount of force necessary.³⁴ Sgt. Gutierrez explained that he pulled ██████ hair as part of the takedown, and he would have employed an alternative such as pulling on ██████ hoodie had that been available to him.³⁵ ██████ however, was not wearing a hoodie, only a t-shirt. Notably, CPD policy does not

²⁹ Att. 51, G03-02, (III)(A), De-Escalation, Response to Resistance, and Use of Force (effective June 28, 2023 to present).

³⁰ Att. 51, G03-02, (III)(B)(1)-(3).

³¹ Att. 49, G03-02-01 (IV)(C) Response to Resistance and Force Options (effective June 28, 2023, to present).

³² Att. 49, G03-02-01 (IV)(C)(1)(a)(1).

³³ Att. 51, G03-02, (III)(B)(1)-(3).

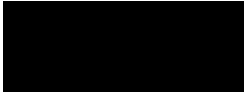
³⁴ Att. 45, pg. 17 to 18; Att. 46, pg. 16.

³⁵ Att. 46, pg. 16.

specifically address whether or not hair pulling is an option available to assist with an emergency takedown.

For these reasons, COPA cannot find by a preponderance of the evidence that the hair pulling was unjustified, and this allegation is **not sustained**.

Approved:



Steffany Hreno
Director of Investigations

10/23/2024

Date

Appendix A

Case Details

Date/Time/Location of Incident:	August 7, 2023 / 3:59 pm / ██████████, ██████████
Date/Time of COPA Notification:	August 8, 2023 / 11:35 am
Involved Member #1:	Jose Gutierrez, Star #14601, Employee ID# ██████████ DOA: February 02, 2015, Unit of Assignment: 005, Male, Hispanic
Involved Member #2:	Musa Ahmad, Star #9263, Employee ID# ██████████ DOA: June 27, 2016, Unit of Assignment: 153, Male, White
Involved Individual #1:	██████████ Male, Black

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

- Att. 51, G03-02: De-Escalation, Response to Resistance, and Use of Force (effective June 28, 2023 to present).
- Att. 49, G03-02-01: Response to Resistance and Force Options (effective June 28, 2023 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.³⁶ 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.”³⁷

³⁶ 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).

³⁷ *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