INVESTIGATIVE RESPONSIBILITY:

The Investigating Officer (I/O) for this case was Sergeant II Camille Spitaleri, Serial No. 38076, Internal Affairs Division (IAD) - South Section. She can be contacted at (213) 996-2921. Requests for a supplemental investigation must be approved by the IAD Commanding Officer (C/O) via an Intradepartmental Correspondence, Form 15.2.

STATUTE DATE

On December 11, 2022, Police Officer II Armando Avena, Serial No. 42919, Pacific Patrol Division, was arrested for California Penal Code Section (CPC) 647(f)PC-Public Intoxication. On December 12, 2022, Pasadena Police Department (PPD) declined to present Avena's arrest for filing consideration. Police Officer Raffi Badalian Serial No. 0701, PPD, released Avena per CPC Section 849 (b) 2 – Release from custody.[1] The statute date remained **December 11, 2023.**

SUMMARY

On December 11, 2022, Avena called 9-1-1 to report that [redacted], Witness Witness 1, was pushed down to the floor by security officers at Via Sorriso Bar located at 119 East Colorado Boulevard, Pasadena, California. Police Officers Duncan Conner, Serial No. 1940, and John Cybulski, Serial No. 1630, PPD, responded to a "Trouble Unknown" radio call at the Via Sorriso Bar and met with Avena, who was already speaking to Badalian. Avena demanded a private person's arrest for the battery of W-1, (Addendum 1- PPD Incident Recall) (Avena 911 Audio).

PPD spoke to the Via Sorriso Bar security officers, who alleged Avena spat at them and threw a drink at a bar patron. The security officers escorted Avena out of the bar, and W-1 was knocked to the floor during that process. PPD officers refused to take the private person's arrest, and Avena requested a supervisor. Avena identified himself as an off-duty Los Angeles Police Department (LAPD) officer to Pasadena Police Officer Michael Green, Serial No. 3134. Sergeant Chris Burchett, Serial No. 1187, PPD, arrived on the scene and spoke to Avena and W-1. Burchett told Avena that PPD would not accept a private person's arrest for the incident. During the PPD investigation, it was determined that Avena was overly intoxicated, and Avena was subsequently arrested for CPC Section - 647(f)PC-Public Intoxication. Badalian transported Avena to PPD for booking, (Addendum 2-Arrest Report).

Detective II Juan Gonzalez, Serial No. 33026, and Detective II Jared Witzer, Serial No. 39316, IAD-South Section, were assigned to the IAD On-Call team and responded to PPD to conduct an administrative investigation.

[1] CPC 849(b) A peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:
(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

The I/O reviewed all relevant Body Worn Video (BWV) and Digital in Car Video System (DICVS) footage. The video showed Burchett and other PPD officers attempting to show W-1 surveillance footage of the incident inside the Via Sorriso Bar. Avena was seen moving closer to W-1 to view the video over W-1 's left shoulder. Burchett told Avena to move to the other side of W-1 . As Burchett tried to guide Avena to move away, his left hand made slight contact with Avena's right shoulder. Avena stumbled backward (as though pushed) and fell into a brick wall. Avena grabbed the back of his head and said to Burchett, "Fuck bro, you don't have to hit me that hard bro," (BWV-Avena arrest)

Note: The I/O requested but could not obtain video surveillance from the Via Sorriso Bar on the night of the incident.

ALLEGATION 1. The Department alleges that on December 11, 2022, Officer Avena, while off-duty, was intoxicated in public which caused the response and led to his arrest by the Pasadena Police Department.

ALLEGATION 2. The Department alleges that on December 11, 2022, Officer Avena, while off-duty, made discourteous remarks to on-duty Pasadena Police Department personnel.

Cybulski and his partner, Police Officer Duncan Conner, Serial No. 1940, PPD, were assigned to a foot beat in the City of Pasadena bar district. Cybulski and Conner responded to a "Trouble Unknown" at the Via Sorriso Bar. According to Cybulski, the dispatcher reported the caller, Avena, was extremely uncooperative but kept saying, "Black on Black." The dispatcher attempted to get clarification but could not because Avena was uncooperative. Badalian was first on the scene and spoke to Avena and W-1 . W-1 felt more comfortable speaking Spanish, so PPD requested a Spanish-speaking officer. W-1 told that officer that security officers at the Via Sorriso Bar pushed her down without provocation. According to Cybulski, Avena stood "face to face" with Badalian. Badalian continually asked Avena to step back. Cybulski said Avena was obviously intoxicated as he smelled like alcohol and was swaying. Badalian eventually had to move Avena away from him ((BWV Badalian tells Avena to move back).

W-1 asked if she could record and pulled out her cellular telephone. W-1 put her cellular phone in Badalian's face and continuously called him a "motherfucker." Cybulski told W-1 to step back, and W-1 responded by calling Cybulski a racist. Avena then requested that a supervisor respond.

Burchett arrived on the scene as the video footage from the Via Sorriso Bar became available to review. Burchett, Cybulski, and Badalian reviewed the video. In the video, Cybulski observed security officers talking to Avena. Cybulski then saw Avena throw a drink over his shoulder, at which time security officers forcefully pushed Avena toward the front door. Cybulski observed W-1 get in the middle of the security officers as they were moving Avena toward the exit, which is when W-1 fell. Cybulski did not see any security officer push W-1 down.

While Cybulski attempted to show W-1 the video, Avena kept putting his face between the video and W-1. Burchett told Avena to back up and pulled Avena back. Avena threw himself against the wall at his touch and accused Burchett of hitting him. Due to his belligerence, Avena was arrested for CPC Section - 647(f) Public Intoxication and was placed in the back of Badalian's police vehicle. An unknown person who claimed to be Avena's friend approached the car and advised Cybulski Avena was an LAPD officer from Pacific Division. The friend asked if Avena could be released to him. Cybulski advised the friend to return with his vehicle so that Avena could be released. The unknown person provided Cybulski with his telephone number and left. Cybulski called the number approximately 20 times, but there was no answer, and the unknown person never returned.

Badalian was assigned to a foot beat detail in Old Town, Pasadena. Badalian responded to a radio call of a male (later determined to be Avena) asking for help at the Via Sorriso Bar, located at 119 East Colorado Boulevard. The only information Badalian had was that four people hit the male's [redacted] (later determined to be W-1). As Badalian pulled along the sidewalk in front of the location, Avena approached him. Avena told Badalian that W-1 was hit and pushed down by security guards from the Via Sorriso Bar. Avena told Badalian that he could identify the security guards. Another unit responded, and those officers met with the security guards. Avena continually repeated his story about how W-1 was pushed down when they were leaving the bar. Badalian immediately noticed objective signs and symptoms indicating that Avena was intoxicated. Avena stood very close to Badalian, and Badalian had to ask Avena to step back repeatedly. Avena told Badalian he and W-1 were trying to leave the bar. Avena told Badalian that he wanted to call an Uber (ride service) and wait inside the bar because it was raining, but security guards pushed them out. Badalian completed an arrest report for this incident.

Burchett was assigned as the foot beat sergeant and supervised officers assigned to the bar corridor in Old Town Pasadena. Burchett responded to the Via Sorriso Bar for a supervisor request and spoke to Cybulski. Cybulski told Burchett that a citizen (Avena) was thrown out of a club and was not satisfied when PPD officers told him they would not accept a private person's arrest of the involved security guards. Burchett spoke to

Avena and, in doing so, observed that Avena was under the influence of alcohol. Burchett smelled a strong odor of alcohol emitting from Avena's person and observed Avena to have bloodshot watery eyes. Avena also continually repeated himself as he told Burchett his concerns. Avena stated that W-1 was pushed down, and he wanted a private person's arrest.

PPD Officers told Burchett that the incident began when security guards caught Avena and W-1 in the men's bathroom. Avena and W-1 were asked to leave the men's bathroom. As W-1 and Avena walked out, Avena spat at a security guard. The spit did not strike the security guard, and the security officers escorted Avena out of the bar. Burchett viewed video surveillance footage from inside the bar. Burchett observed Avena throw a drink over his shoulder. Burchett also observed several security officers pushing Avena towards the front door and observed an unknown female (later identified as W-1) attempting to intervene, which caused her to fall to the ground. Burchett was not sure if W-1 was also asked to leave. During Burchett's interview with Avena, Avena was not in custody and was free to leave at any time.

Burchett explained to Avena that he was more than willing to have his officers take a police report, but Avena demanded a private person's arrest. Officers attempted to show W-1 video footage of the incident inside the bar. Avena also tried to view the video but kept obscuring W-1 's view with his head. Burchett touched Avena's shoulder and told him to back up. Avena "flung" himself backward and against the wall. Avena told Burchett "That [Burchett] didn't have to hit [Avena] so hard." Burchett said he did not push Avena. Officers then detained Avena for being drunk in public. Several of Avena's friends approached once Avena was detained. Burchett told the friends to return with a vehicle, and Avena would be released to their care, but no one returned. While still on scene, officers also attempted to call a friend of Avena's to pick him up, but they did not reach anyone. Avena was then transported to the station for booking.

> **Note:** The I/O called witness W-1 but could not reach her nor leave a message due to her inactive voicemail system. The I/O identified another witness, Witness 2, identified by PPD. The I/O called W-2 with the telephone number W-2 provided PPD, but the telephone number was no longer in service. Neither W-1 nor W-2 was identified as Department employees.

Avena said that at approximately 1830 hours, a friend came over to his house. Avena and his friend had a couple of shots before taking an Uber to a small bar in Alhambra. Avena and his friend had more drinks and ate cheeseburgers while watching the UFC fight. Once the fight was over, another friend and his girlfriend showed up at the bar. From there, the girlfriend drove Avena and his friends to IX-tapa Cantina in Pasadena.

Avena was at the IX-tapa Cantina for approximately two hours.[2] Avena was drinking and hanging out with his friends when W-1, arrived. Avena had more drinks with W-1.

At some point, W-1 needed to use the restroom. Avena walked W-1 toward the Women's restroom. W-1 told Avena the Women's restroom line was too long, and she could not wait. W-1 decided to use the men's restroom and walked into the men's restroom. Avena could not recall going into the men's restroom but said he probably did to check on W-1. A security guard came into the men's restroom and told W-1 she could not be in the men's restroom. The security guard told Avena and W-1 they had to leave. At that time, Avena still had a drink in his hand. Avena and W-1 exited the men's restroom and began to walk toward the front exit. As Avena approached the exit, a security guard told Avena he had to leave his drink inside the bar. Avena threw his drink on a nearby table, and it spilled over on the table. A security guard behind Avena grabbed Avena's arm and forced him out the front door to make sure Avena would leave.

Once outside, Avena turned around and saw another bigger security guard, approximately 250 to 300 pounds, push W-1 from the back. According to Avena, W-1 fell to her knees. Avena began to question the security guards about their actions. The security guards refused to talk to Avena and told him to leave. Avena then saw PPD officers parked out in front of the bar and approached them. Avena told the PPD officers what happened, and the PPD officers told Avena they would not be able to do anything because that was the job of the security guards. Avena told the officers that he (Avena) worked around the police and that they were supposed to investigate. At some point during the incident, Avena told PPD officers he was a Los Angeles Police Officer, but he could not recall when that occurred. The PPD officers again told Avena there was nothing they could do. Avena then requested that a sergeant respond. The PPD officer told Avena that if he called his supervisor, Avena was going to jail. Avena told the officer that it was false and that he was trying to report what was happening. The officer requested a sergeant, and Avena waited approximately 10 minutes (outside the building) for the sergeant to respond.

> **Note:** The I/O reviewed BWV from an unknown officer and heard the officer tell Avena if he requested a supervisor he would go to jail for being drunk in public. The I/O was unable to determine which officer made the statement because the video was not labeled (BWV-Avena supervisor request).

[2] The I/O contacted the manager of IX-Tapa Cantina, [redacted], who advised during the time of the incident, the IX-Tapa Cantina shared its location with Via Sorriso Ristorante & Bar and operated on Saturday and Sunday's nights only.

Burchett arrived on the scene and met with officers. Burchett later met with Avena and W-1. Burchett told Avena the officers would not be able to do anything. Avena asked Burchett if he was refusing a private person's arrest, which appeared to upset Burchett. According to Avena, Burchett had officers review video surveillance footage. An officer recorded the video on his cell phone and showed it to Avena and W-1. The officer told Avena the reason the security guards pushed W-1 to the ground was that Avena threw his drink on the table, and it spilled. Avena acknowledged that he spilled his drink, but Avena told the PPD officer that did not justify the officers pushing W-1. PPD officers told Avena they would not take a private person's arrest, but they would complete a police report.

At that time, another PPD officer had a different angle of the video and began to show W-1. Avena also wanted to see that video and stood beside W-1. As Avena stood next to W-1, Burchett reached towards Avena and possibly tapped Avena on his shoulder, which caught Avena by surprise. Avena stepped back and put his hand on his neck/head area. Avena said he most likely lost his balance and fell into the wall. Burchett just kept staring at Avena and then directed officers to take Avena into custody. Although Avena fell into the wall, he was not injured. Avena was compliant during the arrest and was put into the back of Badalian's PPD police vehicle. A few minutes later, Burchett opened the back door and told Avena someone named "Goofy" would respond, and Avena would be released. Avena did not know anyone named "Goofy." Avena said PPD officers waited approximately 10-20 minutes, and Burchett returned and told Avena "Goofy" never showed up, so he (Avena) would be transported to the PPD station. Avena could not recall if Badalian told him what he was being arrested for.

While being transported to the PPD station by Badalian, the police vehicle turned and proceeded straight. Due to Avena being handcuffed behind his back, intoxicated, and not having his seatbelt fastened, Avena lost his balance and fell to his left side. Avena hit the side of his face on the interior of the police vehicle. Avena told Badalian to stop the car and help him up. Badalian pulled the vehicle over and assisted Avena. Avena told Badalian he needed help. Badalian requested the Pasadena Fire Department (PFD) to respond. PFD responded and asked Avena several questions, and did a brief assessment. PFD asked Avena if he wanted to go with them, and Avena told them no. Avena was not injured and only complained of pain in his face.

> **Note:** During transport, Badalian's DICVS captured Avena requesting to have his seatbelt fastened because he was "sliding side to side" in the backseat of the police vehicle. Badalian was heard advising Avena that he would pull over and put Avena's seatbelt on. Immediately after requesting to have his seatbelt fastened, Avena was captured slowly falling to his left side and telling Badalian that because he was not seat belted, he fell and struck his head on the interior of

the police vehicle. Avena then said he needed an ambulance. Badalian requested PFD respond. PFD spoke to Avena, who refused to be transported and told PFD he did not need help. The I/O did not observe Avena sliding side to side and did not observe Avena hit his head on the interior of the police vehicle. The I/O also observed that when Avena fell to his left side, the patrol vehicle was proceeding straight and did not observe the police vehicle make any sudden turns, (Avena forward facing DICV).(Avena rear-facing DICV)

When Avena arrived at the PPD station, he was put in a holding cell. Avena advised that he needed to notify his LAPD Watch Commander of his arrest. The jailer told Avena that his (Avena's) Watch Commander had already been notified. Avena was in custody for six hours and then released to the custody of Captain I Michael Applegate, Serial No. 34613, Pacific Patrol Division.

Avena admitted to being intoxicated but said he could care for himself and did not meet the criteria for being drunk in public. Avena denied he ever spat on any security guards. Avena believes he has a drinking problem and expressed that he would take all the help he could get to deal with his drinking problem,(Addendum 3-PAS results).

INVESTIGATOR'S NOTES:

None.

ADDENDA:

1. Addendum 1-PPD CAD Call History CP# PA 2022-102530
2. Addendum 2-PPD # Police Report #2022-102530
3. Addendum 3- Breath test results

SUBMITTED:



Date: 04/20/2023

Camille Spitaleri, Sergeant II, South-Section
Internal Affairs Division.

APPROVED:



Date: 04/20/2023

Robert Peters, Lieutenant II
Officer in Charge, South-Section,
Internal Affairs Division