



Rahm Emanuel  
Mayor

Department of Police · City of Chicago  
3510 South Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson  
Superintendent of Police

12 January 2018

Patricia Banks  
Interim Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4<sup>th</sup> Floor  
Chicago, Illinois 60622

Re: Log # 1076185

**Non-Concurrence with COPA finding and penalty for Allegation #1**  
**Police Officer** [REDACTED] # [REDACTED]  
**Police Officer** [REDACTED] # [REDACTED]

Dear Chief Administrator:

In reviewing the above mentioned Log Investigation:

The Department does not concur with the sustained finding for Allegation #1: "Officers [REDACTED] and [REDACTED] stopped [REDACTED] without lawful justification." COPA sustained the Allegation as a violation of Department Special Order 04-13-09 and the Fourth Amendment. The Department believes Officers [REDACTED] and [REDACTED] did not violate Department Orders as they were issued in 2015 and the officers did not violate the Fourth Amendment. The Department, therefore, does not concur with COPA's recommendation of a twelve (12) day suspension for each officer. The Department instead believes the Allegation against Officers [REDACTED] and [REDACTED] should be classified as *Exonerated*.

### **Summary of the Investigatory Stop**

On 17 July 2015 at 1430 hours, Officers [REDACTED] and [REDACTED] observed [REDACTED] standing on the corner of [REDACTED]. The officers stated that the area where Ms. [REDACTED] was standing was an area known to them to be an area where people sold narcotics. The officers stated Ms. [REDACTED] looked at them, walked away from them, and made a motion with her hands they believed was consistent with a person discarding narcotics to evade arrest. The officers stated they approached Ms. [REDACTED] and she became verbally abusive. The officers handcuffed Ms. [REDACTED] and placed her into their vehicle. The officers stated they attempted to conduct a name check and Ms. [REDACTED] refused to provide her name. The officers released Ms. [REDACTED] when their search failed to find any evidence Ms. [REDACTED] had committed a crime. The officers completed a CPD Contact Card for "Jane Doe." The officers documented on the Contact Card that they stopped Ms. [REDACTED] after they observed her loitering on a corner known for narcotics sales, observed her look in their direction, and observed her walk away from them. Ms. [REDACTED] stated the stop lasted 45 minutes and the officers stated the stop lasted 10



minutes.

Ms. [REDACTED] later filed a civil lawsuit in federal court ([REDACTED]), which is still pending. The officers' depositions for this lawsuit are part of COPA's investigation. The officers provided additional details during their depositions which were not included on their Contact Card, including the fact that they observed Ms. [REDACTED] standing on a CTA bus stop and then remain on the stop after a CTA bus came and left. The officers also stated Ms. [REDACTED] made a motion with her arm upon walking away from them that they believed was an effort to discard narcotics.

**Officers [REDACTED] and [REDACTED] did not violate the Department's Order for Investigative Stops in 2015.**

COPA sustained the allegation against Officers [REDACTED] and [REDACTED] as a violation of Special Order 04-13-09. COPA investigators must be aware that this allegation occurred more than two years ago on 17 July 2015 and, therefore, the officers' actions must be evaluated by the order in effect at that time the allegation occurred. In 2015, S.O. 04-13-09 was called the "Contact Information System." (*Exhibit #1*) Per this order, Officers [REDACTED] and [REDACTED] properly documented their Investigatory Stop of Ms. [REDACTED]. The officers reported that they stopped "Jane Doe" after Ms. [REDACTED] refused to provide any information. The officers reported the date, time, and location of this stop. The officers also provided a brief narrative of the reason for the stop. The officers ensured that this information was properly entered into the Contact Information System. (*Exhibit #2 – Contact Card*) The officers' complied with a 2015 Department Procedure that is no longer in effect.

The Department no longer uses the Contact Information System to document Investigatory Stops. Department Special Order 04-13-09 is now the "Investigatory Stop System." Since 2015, the Department has completely revamped the Investigatory Stop System to ensure officers properly document the reasons for a stop and to ensure supervisors immediately address any deficiencies. The improvements to the Investigatory Stop System include (*Exhibit #3 – 2017 ISR Requirements*):

- Issuance of a revised order for S.O. 04-13-09, the Investigatory Stop System (July 2017)
- New Investigatory Stop Report (ISR), officers must provide a complete narrative articulating all factors that support reasonable articulable suspicion for conducting a stop, a protective pat down, and any additional search beyond a pat down (July 2017)
- New Investigatory Stop Receipt for citizens stopped by officers (June 2016)
- New ISR Deficiency Notification, requiring supervisors to document how a stop or the ISR failed to follow Department Procedures and to address any deficiency with training or progressive discipline when warranted (July 2016)
- New ISR Oversight Observation Report, requiring executive officers to regularly review and audit ISRs (December 2016)



The Department's commitment to improving the Investigatory Stop System included training all officers on the new ISR requirements with preliminary online training, followed by classroom training, again followed by additional online training. Officer ██████ completed preliminary online training on 1 January 2016 followed by classroom training on 18 May 2016. Officer ██████ completed preliminary online training on 01 and 23 January 2016 followed by classroom training on 1 April 2016. Officers ██████ and ██████ received additional follow-up online training on 7 September 2017 and 15 October 2017, respectively.

If the new Investigatory Stop System was in-place when Officers ██████ and ██████ conducted their stop in 2015, the information they included on their 2015 Contact Card would be deficient. Today, the officers would be required to document all of the reasons they conducted this stop. The ISR would have to include specific information about how the officers knew narcotics were sold in the area; information that Ms. ██████ remained on a bus stop while the bus passed; information that Ms. ██████ moved her arm as if to discard an object as she walked away from the officers; and, information about handcuffing Ms. ██████ along with reasons for doing so. The current ISR requires officers to complete check boxes, documenting their actions and observations, and to provide a narrative that "*Must include all factors that support Reasonable Articulate Suspicion.*" (see Exhibit #3, Investigatory Stop Report narrative instructions) Furthermore, the Department now has put into place multiple levels of supervisory review for ISRs to address deficiencies and insure compliance with Department Procedures.

**Officers ██████ and ██████ did not violate the Fourth Amendment.**

COPA's investigation has drawn a legal conclusion from the facts Officers ██████ and ██████ provided in their statements to COPA and in statements during depositions for Ms. ██████ lawsuit. COPA concluded the officers violated the Fourth Amendment as a matter of law. ("*Either way, ██████ was detained, handcuffed and placed in a police vehicle for 10 to 45 minutes without probable cause of criminal activity, in violation of CPD general orders and the 4<sup>th</sup> Amendment.*" COPA Summary Report pg. 14)

COPA's legal conclusion directly conflicts with the legal conclusion and ruling provided by U. S. District Court Judge ██████ in the lawsuit filed by Ms. ██████ (Exhibit #4-Memorandum Opinion and Order) Judge ██████ Memorandum Opinion and Order entered on 28 June 2017 found that the officers did not violate the Fourth Amendment as a matter of law. The order found "...a reasonable jury could conclude that [the officers] had enough reasonable suspicion that [Ms. ██████ was involved in narcotics sales to approach her." (Memorandum pg. 6) The Judge cited the same facts COPA cited in their investigation:



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- Ms. ██████ was in an area known for narcotics activity;
- She looked in the officers' direction, she turned and walked in the opposite direction, and
- She made a motion consistent with discarding narcotics. (Memorandum pg. 6)

In finding that the observations stated by Officers ██████ and ██████ would provide reasonable suspicion that Ms. ██████ was involved in narcotics sales, Judge ██████ cited the Seventh Circuit's ruling in U.S. v. Baskins, "[B]ehavior which is susceptible to an innocent explanation when isolated from its context may still give rise to a reasonable suspicion when considered in light of all the factors at play." Baskins at 401 F.3d 788, 793 (7<sup>th</sup> Cir. 2005).

Judge ██████ order also found the officers did not violate the Fourth Amendment as a matter of law when they handcuffed Ms. ██████ during this stop. "Handcuffing and placing a suspect in the backseat of a police car does not automatically convert an investigatory stop into an arrest." (Memorandum pg. 7, referencing United States v. Stewart, 388 F.3d 1079, 1084-85 (7<sup>th</sup> Cir. 2004)) The Memorandum further stated:

*"In the instant case, [Ms. ██████] was handcuffed after [the officers] perceived her as hostile and aggressive. According to [the officers], the decision to handcuff [Ms. ██████] was made in an effort to ensure that the situation would not 'boil over into something else potentially more dangerous.' The court 'will not substitute its judgement for that of the officers as to the best methods to investigate' when the investigating officers 'believed reasonably that an investigative stop could be effectuated safely only through the use of handcuffs.' United States v. Smith, 3.F.3d 1088, 1094 (7<sup>th</sup> Cir. 1993). Drawing all reasonable inferences in the light most favorable to [the officers], a reasonable jury could conclude that [the officers] reasonably believed that they could not perform their search safely with a hostile and aggressive [Ms. ██████] nearby...A reasonable jury could conclude that [the officers] diligently pursued their investigation in a manner that was likely to confirm or dispel quickly their suspicions." (Memorandum pg. 7-8)*

Judge ██████ did rule that there were genuine issues of material fact and denied Summary Judgement Motions entered by both Ms. ██████ (plaintiff) and the City of Chicago (defendant). However, Judge Gettlemen's legal analysis of this Investigatory Stop was based upon the same facts cited in COPA's investigation and is in direct conflict with COPA's legal conclusions.

## **Conclusion**

The Department does not concur with COPA's finding that Officers ██████ and ██████ violated Department S.O. 04-13-09, as the order was in effect in 2015. Officers ██████ and ██████ did what the Department required of them in 2015. Today, the Department demands more detailed documentation of Investigatory Stops. These new requirements cannot be applied to Officers ██████ and ██████



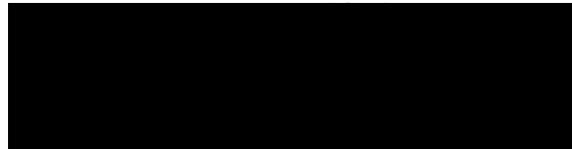
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retroactively. Since 2015, the Department has made significant improvements in officer training and reporting for Investigatory Stops. Officers [REDACTED] and [REDACTED] were trained on the new procedures and have kept their training current.

The Department also does not concur with COPA's finding that Officers [REDACTED] and [REDACTED] violated the Fourth Amendment when they stopped and handcuffed [REDACTED]. The legal analysis and conclusions provided by COPA are inconsistent with the legal analysis and conclusions of U.S. District Court Judge [REDACTED]. Based upon the legal analysis provided by Judge Gettleman and the Department's legal review of this case, the Department believes the allegation that Officers [REDACTED] and [REDACTED] stopped Ms. [REDACTED] without lawful justification should be *Exonerated*.



Eddie T. Johnson  
Superintendent of Police  
Chicago Police Department

ETJ/lpc

# **EXHIBIT #1**

**2015 Special Order 04-13-09 "Contact Information System"**

**CONTACT INFORMATION SYSTEM**

<b>ISSUE DATE:</b>	07 January 2015	<b>EFFECTIVE DATE:</b>	07 January 2015
<b>RESCINDS:</b>	03 April 2014 Version		
<b>INDEX CATEGORY:</b>	Preliminary Investigations		
Rescinded on 01 January 2016 by S04-13-09 (Investigatory Stop System); 01 January 2016			

The "Contact Information System" directive is effective through 31 December 2015.

**I. PURPOSE**

This directive:

- A. delineates the authority and circumstances necessary for conducting an Investigatory Stop.
- B. limits the use of the Contact Information System to the documentation of Investigatory Stops and the enforcement of the Gang and Narcotics-Related Loitering Ordinances.
- C. discontinues the routine documentation of Citizen Encounters.
- D. continues the use of the hard-copy Contact Information Card [CPD-21.101] and the hard-copy Juvenile Contact Information Card [CPD-21.102 (Rev 8/06)].
- E. delineates responsibilities and procedures for:
  1. completing Contact Information Cards and Juvenile Contact Information Cards.
  2. maintaining the Contact Information Database.
  3. accessing information from the Contact Information Database.
- F. maintains the requirement for officers who complete the hard copy version of the Contact Information Card to enter the data documented on the hard copy into the Contact Information Database.
- G. establishes the requirement for officers to document, in the narrative section of the card, a description of the location of occurrence by using the appropriate Incident Reporting Guide (CPD-63.451) location codes.
- H. establishes management responsibility for field supervisors approving contact cards including review, training, and accountability for proper use and entry of contact cards by their subordinates.

**II. ILLINOIS STATE LAW**

725 ILCS 5/107-14 delineates the authority for conducting an **Investigatory Stop**. The statute reads as follows:

"Temporary questioning without arrest. A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of their actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped"

**NOTE:** Members will conduct Investigatory Stops consistent with the Department directive entitled "**Interrogations: Field and Custodial.**"

**III. POLICY**

- A. Department members are responsible for ensuring public safety by deterring and responding to crime. They are also responsible for upholding the rights guaranteed to the public under the United

States Constitution, the State of Illinois Constitution, and the law. Safeguarding the liberties of the public and preventing crime are not mutually exclusive; each can be achieved by fostering trust and confidence between Department members and the public. Members will comport with the policy and procedures of this order to ensure appropriate conduct when interacting with members of the public.

- B. Sworn members who conduct an Investigatory Stop that does not result in an arrest are required to complete a Contact Information Card.

**NOTE:** During an Investigatory Stop, the sworn member may only temporarily restrict a person's freedom of movement as long as reasonably necessary to dispel or confirm the member's reasonable articulable suspicion of criminal activity. The subject cannot continue to be detained solely for the purpose of obtaining the results of a name check of the subject.

- C. The purpose of completing the Contact Information Card is to:

1. ensure sworn members document the facts and circumstances of an Investigatory Stop, including a statement of the facts establishing reasonable, articulable suspicion to stop an individual;
2. ensure appropriate contact information is entered and retained within the contact information database; and
3. enable supervisors to review the facts and circumstances of an Investigatory Stop.

- D. Department members will not engage in racial profiling or other bias-based policing when conducting Investigatory Stops as delineated in the Department directive entitled "**Prohibition Regarding Racial Profiling and Other Bias-Based Policing**" and MCC 8-4-086, Prohibition Against Racial Profiling.

- E. Department members interacting with the public will use Legitimacy and Procedural Justice principles. The goal is to strengthen the police-community relationship through contact, which ultimately improves officer safety while reducing crime and disorder.

#### IV. GENERAL INFORMATION

- A. The Contact Information System is an investigative tool consisting of information obtained in the field and entered into the Contact Information Database.

- B. Contact Information Cards

1. Contact Information Cards will only be used to document:
  - a. Investigatory Stops, and
  - b. enforcement of the Gang and Narcotics-Related Loitering Ordinances consistent with the Department directive entitled "**Gang and Narcotics-Related Enforcement.**"

**NOTE:** Sworn members who seek to document other encounters with individuals will complete the appropriate report, i.e., Information Report [CPD-11.461 (Rev. 3/12)] or a Non-Criminal General Offense Case Report.

2. The Contact Information Card contains:
  - a. information concerning the individual temporarily detained for the Investigatory Stop.
  - b. a narrative section used to describe the circumstances of the contact.

**NOTE:** Sworn members are required to complete the narrative section of the Contact Information Card.

3. Sworn members are responsible for entering all contact cards created during their tours of duty into the electronic system before the end of their tours of duty.

4. Sworn members will complete hard copy Contact Information Cards **only when they do not have access to a PDT**. The original preparing members will subsequently enter contact information from the hard copy into the contact information database before the end of their tours of duty.
  - a. Hard copy Contact Information Cards (CPD-21.101), printed on white bond paper, will be completed for adults.
  - b. Hard copy Juvenile Contact Information Cards (CPD-21.102), printed on yellow bond paper, will be completed for juveniles.
5. Contact Information Cards will not be completed for persons that are included on any other report utilized by Department members for that incident (e.g., Personal Service Traffic Citation, Administrative Notice of Ordinance Violation, case report or arrest report).

**EXCEPTION:** A Contact Information Card may be completed along with an Illinois Traffic Stop Statistical Study - Driver Information Card.

6. Supervisors will review any contact card created by a subordinate and either approve or return it for correction or other action before the end of their tours of duty.

C. Contact Information Database

1. Public Safety Information Technology (PSIT) is responsible for the maintenance and integrity of the contact information database.
2. Access
  - a. All contact card information will be accessible to any sworn Department member and select civilian members for one year after the initial Contact Information Card was generated.
  - b. Pursuant to supervisory approval, personnel assigned to the following bureaus will be allowed access to contact card information for three years based upon articulated investigative need:
    - (1) Bureau of Detectives;
    - (2) Bureau of Organized Crime;
    - (3) Bureau of Internal Affairs.

**NOTE:** The bureau chiefs will establish appropriate record keeping relevant to access and approval.

- c. Other Department members who require access beyond this access policy will submit a To-From-Subject Report through the chain of command to the Commander, PSIT, articulating the investigative need for access. If necessary, the Commander, PSIT, will consult with the Office of Legal Affairs regarding the requested access.
- d. After three years, the contact card information contained within the database will be de-identified pursuant to PSIT practice and record-retention requirements, statutory or judicial. Therefore, no member will have access to personally identifying data from those contact cards.

**NOTE:** The aggregate data from a contact event, such as the date, time, and address of occurrence, in addition to the descriptive racial and demographic data, will be retained by PSIT.

D. Retention

1. The Director, Records Division, will dispose of both electronic and hard copy Contact Information Cards consistent with this and other applicable Department directives, applicable court orders, and the law.
2. All Contact Information Cards and contact card information in the electronic database will be retained for a period of six months after the completion of the Illinois Traffic Stop Statistical Study (TSSS).
3. Six months after the completion of the TSSS,
  - a. all hard copy Contact Information Cards three years and older will be purged.
  - b. all personal identifying information entered into the electronic database three years and older will be purged.
4. All hard copy Contact Information Cards and personal identifying information contained within the database generated after the TSSS retention period and beyond will be retained for a period of three years from the date the contact card was generated.

**NOTE:** Pursuant to a court order entered in Hall, et al. v. City of Chicago, et al., 12 C 6834, the Chicago Police Department and its members are ordered to preserve all data in the Contact Card Information System and to preserve ALL hard copies of Contact Information Cards until further notice.

V. PROCEDURES

A. Investigatory Stop

1. If, as a result of the Investigatory Stop, the sworn member ascertains there is probable cause to arrest and effects the arrest, a Contact Information Card will not be completed and the circumstances of the stop and the probable cause for arrest will be documented on the Arrest Report (CPD-11.420) or other required report as necessary.
2. Sworn members who conduct an Investigatory Stop that does not result in an arrest or other enforcement action are required to complete a Contact Information Card. The circumstances giving rise to the Investigatory Stop and all of the factors that support reasonable, articulable suspicion in order to temporarily detain an individual for investigation will be documented in the narrative portion of the card.
3. **Failure to provide identification during an Investigatory Stop, in and of itself, is not grounds for arrest or further detention.** If, at the conclusion of an Investigatory Stop, the individual is unable or refuses to provide identification and there is no probable cause to arrest, the sworn member will:
  - a. enter "John Doe" or "Jane Doe," as appropriate, in the name field;
  - b. complete as much of the card as possible;
  - c. indicate the refusal in the narrative field;
  - d. describe the reason for the contact and/or the circumstances of the stop in as much detail as possible, including a description of any unusual clothing, manner, or behavior.
4. Sworn members will include a description of the location of occurrence by using the appropriate code as identified in the Incident Reporting Guide (CPD-63.451), e.g., sidewalk, 303; street, 304; park property, 269.

**NOTE:** The location code will be recorded on the first line of the narrative field of the card as follows: "Location Code: (appropriate code)."

5. When Contact Information Cards are completed for more than one person in a group, members will cross-reference contact card numbers in the appropriate fields of the card.

B. Data Entry

1. Sworn members will submit contact information electronically by selecting "Automated Contact Cards" from the CLEAR menu. If electronic access to the CLEAR application is not available, sworn members will complete a hard copy Contact Information Card and forward it to a supervisor for approval.
2. After receiving supervisory approval of the hard copy, the original preparing member will **accurately** enter the card into the Contact Information Database by selecting "CLEAR (Arrest, eTrack)" on the PDT or CLEAR Applications on district-based computers.

**NOTE:** The information entered into the Contact Information Database must directly correspond with the information initially documented on the hard copy.

3. **Sworn members will turn in original approved hard copy Contact Information Cards to the district/unit for retention by the conclusion of their tours of duty.**

C. Supervisory Responsibilities

1. Reviewing supervisors will:
  - a. review and ensure Contact Information Cards are properly completed and conform to Department policy.
    - (1) Supervisors are responsible for ensuring that officers properly document in the narrative section of the Contact Information Card all reasonable, articulable suspicion that justify the Investigatory Stop.
    - (2) Where both a hard card and an electronic contact card are created, supervisors will confirm the hard copy matches the electronic entry and ensure the card is forwarded to the Records Division for retention.
  - b. for properly prepared contact cards, indicate approval in the automated system or by signing the Contact Information Card in the appropriate field.
  - c. for improperly prepared contact cards, return the card back to the preparing sworn member to complete and properly enter the card into the Contact Information Database. When a Contact Information Card is rejected, the reviewing supervisor will:
    - (1) personally inform the preparing sworn member of the reason for the disapproval or rejection;
    - (2) instruct the preparing sworn member to address the error and resubmit the Contact Information Card by the conclusion of the sworn member's next tour of duty.

**NOTE:** If the subject stop did not conform to Department policy, the reviewing supervisor will take appropriate action (reviewing the policy with the member, recommending training, initiating progressive discipline where warranted, etc.).

- (3) verify submission of the corrected Contact Information Card and approve as appropriate.

2. Executive officers, district station supervisors, and other designated supervisors will:
  - a. ensure all approved hard copy Contact Information Cards are forwarded, via the Police Documents Section, to the Records Inquiry Section (Unit 163), Records Division, for records retention.
  - b. monitor the approval of Contact Information Cards within the CLEAR system to ensure the review and approval process is timely.

## VI. OTHER RESPONSIBILITIES

- A. Consistent with Local Records Commission requirements, the Director, Record Division, will ensure that hard copy Contact Information Cards are destroyed and that information in the Contact Information Database is purged consistent with this directive.
- B. The Commander, Inspections Division, will ensure audits of the Contact Information System are conducted on a yearly basis.
- C. Bureau chiefs that have members who have access to the Contact Information System beyond one year will ensure access is consistent with articulated investigative need and that supervisory authorization for access is maintained within unit files.

(Items indicated by italics/double underline have been added or revised)

Garry F. McCarthy  
Superintendent of Police

13-033 CM

## GLOSSARY TERMS:

1. **Racial Profiling**  
Any arrest, detention, interdiction, or other law enforcement action that is based solely on the actual or perceived race, ethnicity, color, national origin or ancestry of the targeted person.
2. **Other Bias Based Policing**  
Any arrest, detention, interdiction, or other law enforcement action that is based solely on the actual or perceived gender, religion, disability, sexual orientation, marital status, parental status, military discharge status, financial status or lawful source of income of the targeted person.

## **EXHIBIT #2**

**Contact Card for "Jane Doe" submitted by Officers [REDACTED] and [REDACTED]**



Contact Details

Contact Source CABS Contact Information Card

Card No. ACC002391461 Contact Date/Time 17-JUL-2015 14:32 PAC Code 1161D Card Type Adult

Contact Type [ ]

Street No. 706 Street Dir. SOUTH Street Name [REDACTED] Apt/Suite [REDACTED]
City CHICAGO State IL Zip [REDACTED]

Township No. [ ] Township Range [ ]

Related Contact Cards

No Related Contact Cards entered.

Person Details

Last Name DOE First Name JANE Middle Initial [REDACTED] Name Suffix [REDACTED]
Nickname [REDACTED] Birth Date [REDACTED] Age 18 Age To 21
Sex MALE Race BLACK Height 507
Weight 130 Build MEDIUM Eye Color BROWN
Hair Color BLACK Hair Style DREADLOCKS Complexion DARK
Phone No. [REDACTED] Cell No. [REDACTED]

Clothing Description RED/WHITE/BLUE SHIRT WITH BLACK SHORTS

Residential Address

Street No. [REDACTED] Street Dir. [ ] Street Name [REDACTED] Apt/Suite [REDACTED]
City [REDACTED] State [ ] Zip [REDACTED]

Employer/School Details

Employer Business Name [REDACTED] School Name [REDACTED]

Street No. [REDACTED] Street Dir. [ ] Street Name [REDACTED] Apt/Suite [REDACTED]
City [REDACTED] State [ ] Zip [REDACTED]

Vehicle Details

License No. [REDACTED] License Type [ ]
License State [ ] License Expiration [REDACTED] VIN No. [REDACTED]
Vehicle Year [REDACTED]
Vehicle Make [ ]
Vehicle Model [ ] Type [ ]
Body Style [ ] Color [ ]

ID Details

Name Verified? [ ] Drivers License No. [REDACTED] State [ ] SSN [REDACTED]
Other ID Type [ ] Other ID No. [REDACTED] Case No. [REDACTED]

Gang Details

NAGIS Verified? N
Listed Gang Name [REDACTED] Faction Name [REDACTED]
Unlisted Gang Name [REDACTED]
Known Hang-Outs [REDACTED]
Type of Gang Activity [ ] Other Activity [REDACTED]

Scar Marks

No Records Found.

Reason for Contact

LOG# 1076185
Attachment [REDACTED]

L.C.303-sidewalk: In summary, RO's observed subject below loitering at the corner of Huron/Homan a corner known for narcotics sales. RO's pulled up to said corner as subject looked in RO's direction and quickly turned away walking oppisite direction. RO's approached for F/I and subject refused to give info to conduct name check.

**Employee Details**

1st Preparing Officer: Star No. [REDACTED] Name [REDACTED]  
2nd Preparing Officer: Star No. [REDACTED] Name [REDACTED]  
Approving Supervisor: Star No. [REDACTED] Name [REDACTED]

Created By PC0AG27 Created Date 18-JUL-2015 00:30



### Contact Card Details - View

#### Contact Card Details

Card No:	ACC002391461	Status:	APPROVED	Contact Date/Time:	17-JUL-2015 1432
Submitting Beat:	1161D	Contact Type:	Investigatory Stop	Card Type:	Adult
RD No:		OCD-I No:		Event No:	09759
Dispersal Order No.:		HotSpot No:		Mission No:	
Contact Address:					
[REDACTED]					Contact Beat: 1133
<b>Reasonable Articuable Suspicion for Investigatory Stop:</b>					
L.C.303-sidewalk: In summary, RO's observed subject below loitering at the corner of Huron/Homan a corner known for narcotics sales. RO's pulled up to said corner as subject looked in RO's direction and quickly turned away walking oppisite direction. RO's approached for F/I and subject refused to give info to conduct name check.					

## **EXHIBIT #3**

**2017 Special Order 04-13-09 "Investigatory Stop System"**

**Investigatory Stop Report**

**Investigatory Stop Receipt**

**Investigatory Stop Report Deficiency Notification**

**Investigatory Stop Report Oversight Observation Report**

**INVESTIGATORY STOP SYSTEM**

ISSUE DATE:	10 July 2017	EFFECTIVE DATE:	10 July 2017
RESCINDS:	10 June 2016 Version		
INDEX CATEGORY:	Preliminary Investigations		

**I. PURPOSE**

This directive:

- A. continues the Investigatory Stop System.
- B. continues to ensure compliance with the rights guaranteed to the public under the United States Constitution, the State of Illinois Constitution, and the law.
- C. continues to delineate the authority and circumstances necessary for conducting an Investigatory Stop.
- D. revises the use of the Investigatory Stop System for the documentation of Investigatory Stops, Protective Pat Downs or other searches resulting from stops, for documenting probable cause stops when no other document captures the reason for the detention, and the enforcement of the Gang and Narcotics-Related Loitering Ordinances.
- E. discontinues the use of the Investigatory Stop Pocket Guide (CPD-11.913).
- F. discontinues the use of the hard copy Investigatory Stop Report (CPD-11.910 Rev. 4/16) and introduces the use of the hard copy Investigatory Stop Report (CPD-11.910 Rev. 7 /17)
- G. continues the use of:
  1. Investigatory Stop Database;
  2. Investigatory Stop Receipt (CPD-11.912); and
  3. Investigatory Stop Report Deficiency Notification (CPD-11.914).
- H. delineates responsibilities and procedures for:
  1. entering and maintaining Investigatory Stop Reports into the Investigatory Stop Database.
  2. completing hard copy Investigatory Stop Reports.
  3. accessing information from the Investigatory Stop Database.
- I. maintains the requirement for sworn members who complete the hard copy version of the Investigatory Stop Report to enter the data documented on the hard copy into the Investigatory Stop Database.
- J. continues the requirement for sworn members to document, in the appropriate field, location of occurrence by using the appropriate Incident Reporting Guide (CPD-63.451) location codes.
- K. continues management responsibility for field supervisors approving Investigatory Stop Reports including review, training, and accountability for proper use and entry of Investigatory Stop Reports by their subordinates.
- L. revises executive officer responsibilities concerning monthly internal audits.
- M. satisfies CALEA Law Enforcement Standard Chapter 1.

**II. DEFINITIONS**

For the purposes of this directive, the following definitions apply:

- A. Investigatory Stop—The temporary detention and questioning of a person in the vicinity where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a criminal offense. The suspect may be detained only for the length of time necessary to confirm or dispel the suspicion of criminal activity. The temporary detention and questioning of a person for the purpose of enforcement of the Gang and Narcotics-Related Loitering Ordinances is an Investigatory Stop.

An Investigatory Stop is not a voluntary contact. A voluntary contact is a consensual encounter between an officer and a person during which the person must feel free to leave the officer's presence. An officer may approach any person at any time for any reason on any basis. However, absent reasonable suspicion or probable cause, that person must be free to walk away at any time. An officer's ability to articulate that no factors existed that would make a reasonable person perceive they were not free to leave is important. The following are some factors the court may consider to determine whether or not a consensual encounter has elevated to an Investigatory Stop or an arrest:

1. Threatening presence of several officers;
2. Display of a weapon by an officer;
3. Use of language or tone of voice indicating that compliance with the officer's request might be compelled;
4. Officer blocks a person's path; or
5. Choice to end the encounter is not available to the person.

- B. Protective Pat Down—A limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity.

- C. Reasonable Articulate Suspicion—Reasonable Articulate Suspicion is an objective legal standard that is less than probable cause but more substantial than a hunch or general suspicion. Reasonable Articulate Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member's training and experience. Reasonable Articulate Suspicion can result from a combination of particular facts, which may appear innocuous in and of themselves, but taken together amount to reasonable suspicion.

Reasonable Articulate Suspicion should be founded on specific and objective facts or observations about how a suspect behaves, what the subject is seen or heard doing, and the circumstances or situation in regard to the suspect that is either witnessed or known by the officer. Accordingly, Reasonable Articulate Suspicion must be described with reference to facts or observations about a particular suspect's actions or the particular circumstances that an officer encounters. The physical characteristics of a suspect are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the suspect.

1. For Investigatory Stops, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is committing, is about to commit, or has committed a criminal offense.
2. For a Protective Pat Down, a sworn member must possess specific and articulable facts, combined with rational inferences from these facts, that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area.

**NOTE:** An Investigatory Stop and a Protective Pat Down are two distinct actions—both require independent, Reasonable Articulate Suspicion (i.e., to stop a person there must be reasonable suspicion of criminal activity, and to stop a person and perform a Protective Pat Down of the person, there must be reasonable suspicion of criminal activity and reasonable suspicion that the person is armed and dangerous or presents a danger of attack).

- D. Probable Cause—*Probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it. This differs from Reasonable Articulate Suspicion in that the facts supporting RAS do not need to meet probable cause requirements, but they must justify more than a mere hunch. The facts should not be viewed with analytical hindsight but instead should be considered from the perspective of a reasonable officer at the time that situation confronted him or her.*
- E. Plain Touch Doctrine—When a sworn member is conducting a lawful Protective Pat Down of a suspect's outer clothing for weapons and encounters an object that, based upon their training and experience, the sworn member believes that the object is contraband, the sworn member may seize the item without a warrant. The object may not be manipulated in order to determine the identity of the object.

### III. POLICY

- A. The Investigatory Stop System is one of the ways the Chicago Police Department, as part of and empowered by the community, ensures that we protect the public, preserve the rights of all members of the community, and enforce the law impartially. Adherence to this policy allows the Department to serve all citizens equally with fairness, dignity, and respect, and to uphold our pledge to not use racial profiling and other bias-based policing.
- B. Department members are responsible for ensuring public safety by deterring and responding to crime. They are also responsible for upholding the rights guaranteed to the public under the United States Constitution, the State of Illinois Constitution, and the law. Safeguarding the liberties of the public and preventing crime are not mutually exclusive; each can be achieved by fostering trust and confidence between Department members and the public. Members will comport with the policy and procedures of this order to ensure appropriate conduct when interacting with members of the public.
- C. Sworn members who conduct an Investigatory Stop are required to complete an Investigatory Stop Report.
- D. The reasons for completing the Investigatory Stop Report is to ensure:
1. sworn members document the facts and circumstances of:
    - a. an Investigatory Stop, including a statement of the facts establishing Reasonable Articulate Suspicion to stop an individual;
    - b. a Probable Cause stop when no other document captures the reason for the detention;
    - c. a Protective Pat Down or other search, including a statement of the facts establishing Reasonable Articulate Suspicion to pat down an individual for potential weapons;
  2. appropriate Investigatory Stop, Probable Cause to stop when no other document captures the reason for detention, Protective Pat Down, or other search information is entered and retained within the Investigatory Stop Database; and
  3. supervisors review the facts and circumstances of Investigatory Stops, Probable Cause stops, Protective Pat Downs, or other searches.
- E. Department members will not engage in racial profiling or other bias-based policing when conducting Investigatory Stops as delineated in the Department directive entitled "**Prohibition Regarding Racial Profiling and Other Bias-Based Policing.**"

- F. Department members interacting with the public will use Legitimacy and Procedural Justice principles. The goal is to strengthen the police-community relationship through contact, which ultimately improves officer safety while reducing crime and disorder.

#### **IV. ILLINOIS STATE LAW**

- A. 725 ILCS 5/107-14 delineates the authority for conducting an Investigatory Stop. The statute reads as follows:

"Temporary questioning without arrest. A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of their actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped."

- B. 725 ILCS 5/108-1.01 delineates the authority for conducting a Protective Pat Down during an Investigatory Stop. The statute reads as follows:

"Search during temporary questioning. When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons. If the officer discovers a weapon, he may take it until the completion of the questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned."

**NOTE:** In this context the word "search" refers to a Protective Pat Down.

#### **V. GUIDELINES FOR INVESTIGATORY STOPS**

Pursuant to Illinois statutory law and U.S. Supreme Court rulings:

- A. An officer may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions.
- B. During an Investigatory Stop, subjects may be asked to identify themselves and to provide an explanation for their actions; however, a failure to do so is not, in and of itself, an arrestable offense or grounds for further detention, and a subject may choose not to answer any of the officer's questions.
- C. Police are not required to give Miranda warnings when conducting on-the-scene questioning during the fact-gathering process.

#### **VI. AUTHORITY TO PERFORM A PROTECTIVE PAT DOWN DURING AN INVESTIGATORY STOP**

- A. Pursuant to Terry v. Ohio and People v. Galvin, authority to perform a Protective Pat Down is limited to the following:
1. When an officer has detained a subject based upon Reasonable Articulable Suspicion that criminal activity is afoot and, during that detention, develops additional Reasonable Articulable Suspicion that the subject is armed and dangerous or reasonably suspects that the person presents a danger of attack to the officer or another, the officer may conduct a Protective Pat Down of the outer clothing of the subject for hard objects that could be used as weapons. The Protective Pat Down is only for the purpose of officer and citizen safety; it is not to search for evidence.
  2. During a Protective Pat Down of the outer clothing of the subject, the officer may not go into the pockets of the subject or reach underneath the outer surface of the garments. If during the Protective Pat Down of the outer clothing, the officer touches an object which the officer

believes is a weapon, the officer may reach into that area of the clothing and retrieve the object.

**NOTE:** Protective Pat Downs will be conducted by a member who is the same gender as the person that is the subject of the Investigatory Stop. If a member of the same gender is not immediately available, officer and public safety is compromised, and it is imperative that an immediate search be conducted, members will not endanger themselves or the public to comply with this requirement. Members will exercise caution when patting down outer garments of persons of the opposite sex.

- B. Pursuant to *Minnesota v. Dickerson* and *People v. Mitchell*, the Plain Touch Doctrine allows officers to seize contraband during a Protective Pat Down after satisfying the following requirements:
1. When conducting a lawful Investigatory Stop and the officer is performing a Protective Pat Down, if the officer plainly feels an item that, based upon that officer's training and experience, the officer believes to be contraband, the officer may seize that item and lawfully charge the person with it.
  2. The Plain Touch Doctrine requires officers to satisfy the following three-part test:
    - a. a lawful Investigatory Stop,
    - b. a lawful Protective Pat Down, and
    - c. the officer by touch must be able to immediately recognize the item to be contraband without any manipulation of the item.

## VII. GENERAL INFORMATION

- A. The Investigatory Stop System is an investigative tool consisting of information obtained in the field and entered into the Investigatory Stop Database.
- B. The Investigatory Stop Database
1. The Investigatory Stop Database will only be used to document:
    - a. Investigatory Stops, Probable Cause stops when no other document captures the reason for the detention, Protective Pat Downs or other searches; and
    - b. enforcement of the Gang and Narcotics-Related Loitering Ordinances consistent with the Department directive entitled "**Gang and Narcotics-Related Enforcement.**"
  2. The Investigatory Stop Database contains:
    - a. information concerning the individual temporarily detained for the Investigatory Stop.
    - b. narrative sections that include a statement of facts to establish Reasonable Articulate Suspicion in order to justify an Investigatory Stop of an individual and, if applicable, to justify a Protective Pat Down.

**NOTE:** Sworn members are required to complete the narrative field in the Investigatory Stop Database.

3. Sworn members will complete hard copy Investigatory Stop Reports only when the electronic Investigatory Stop Database is unavailable and after approval is obtained by their immediate supervisor.
4. Sworn members are responsible for entering all Investigatory Stop Reports created during their tours of duty into the electronic system as soon as possible but no later than the end of their tours of duty consistent with Item VIII-B.

5. Supervisors will review all Investigatory Stop Reports, electronic and hard copy, created by subordinates and either approve or return it for correction or other action before the end of their tours of duty consistent with Item VIII-C-1 of this directive.
6. Procedures for units that routinely do not have access to the Investigatory Stop Database
  - a. Sworn members will complete and submit hard copies of the appropriate Investigatory Stop Report for approval as soon as possible but no later than the end of their tours of duty;
  - b. Supervisors will review all hard copy Investigatory Stop Reports created by subordinates and either approve or return it for correction or other action before the end of their tours of duty consistent with Item VIII-C-1 of this directive; and
  - c. Commanding officers of these units will determine the method of data entry and ensure the information is entered into the Investigatory Stop Database consistent with Item VIII-B-2 of this directive within a reasonable period of time.

C. Access

1. All Investigatory Stop Database information will be accessible to any sworn Department member and select civilian members, e.g., Department statistician, for one year after the initial Investigatory Stop Report was generated.
2. Pursuant to supervisory approval, personnel assigned to the following bureaus will be allowed access to Investigatory Stop information for three years based upon reasonable, articulated investigative need:
  - a. Bureau of Detectives;
  - b. Bureau of Organized Crime;
  - c. Bureau of Internal Affairs.

**NOTE:** The bureau chiefs will establish appropriate record keeping relevant to access and approval.

3. Other Department members who require access beyond this policy will submit a To-From-Subject Report through the chain of command to the Director, Information Services Division, articulating the investigative need for access. If necessary, the Director, Information Services Division, will consult with the Office of Legal Affairs regarding the requested access.
4. After three years, personal identification data contained within the Investigatory Stop Database will be deleted pursuant to Information Services Division practice and record-retention requirements, statutory or judicial. Therefore, no member will have access to personally identifying data from those Investigatory Stop Reports.

**NOTE:** The aggregate data from an Investigatory Stop event, such as the date, time, and address of occurrence, in addition to the descriptive racial and demographic data, will be retained by Information Services Division.

## VIII. PROCEDURES

- A. Investigatory Stop/Probable Cause Stop When No Other Document Captures the Reason for the Detention
  1. Sworn members who conduct an Investigatory Stop, Probable Cause stop when no other document captures the reason for the detention, and, if applicable, a Protective Pat Down or other search in a public place, are required to submit an Investigatory Stop Report into the Investigatory Stop Database. All of the factors that support Reasonable Articulable Suspicion in order to temporarily detain an individual for investigation, Probable Cause when a stop is made and no other document captures the reason for detention, and, if applicable, all of the

factors that support Reasonable Articulate Suspicion in order to perform a Protective Pat Down will be documented in the narrative portions of the database.

**NOTE:** For purposes of this directive, "public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, parks, and the common areas of schools, hospitals, apartment buildings, office buildings, transport facilities, and stores.

2. In addition, Investigatory Stop Reports will be submitted for all Investigatory Stops and Protective Pat Downs **that lead to** an arrest, Personal Service Citation, Administrative Notice of Violation (ANOV), Curfew Violation Report, School Absentee Report, or other enforcement action.
3. Upon the completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number.

**EXCEPTION:** An Investigatory Stop Receipt will not be provided if the subject of the stop is arrested.

4. The following examples illustrate instances when Investigatory Stop Reports, Investigatory Stop Receipts, and other Department reports are required, and are intended to serve as guidelines that can be applied in various circumstances.
  - a. An officer performs a traffic stop on a vehicle after observing the vehicle run a stop sign. The officer issues the driver a Personal Service Citation for failure to stop at a stop sign, and completes and affixes a Traffic Stop Statistical Study sticker to the appropriate copy of the Personal Service Citation consistent with the Department directive "**Illinois Traffic and Pedestrian Stop Statistical Study**." An Investigatory Stop Report will not be completed.
  - b. An officer performs a traffic stop on a vehicle after observing the vehicle run a stop sign. During the traffic stop, the officer observes various factors that develop Reasonable Articulate Suspicion that the driver may be "armed and dangerous" or "presents a danger of attack." The officer conducts a Protective Pat Down on the driver and the vehicle for weapons. No weapons are discovered. The officer issues the driver a Personal Service Citation for failure to stop at a stop sign. Due to the performance of a Protective Pat Down, the officer completes an Investigatory Stop Report and provides a completed Investigatory Stop Receipt to the driver. The officer documents on the Investigatory Stop Report the reason for the stop was a traffic violation, failure to stop at stop sign, and the Reasonable Articulate Suspicion to justify the Protective Pat Down of the driver and the vehicle. When completing the Investigatory Stop Receipt, the officer writes "failure to stop at a stop sign" as the reason for the stop. Additionally, the officer completes and affixes a Traffic Stop Statistical Study sticker to the appropriate copy of the Personal Service Citation consistent with the Department directive "**Illinois Traffic and Pedestrian Stop Statistical Study**."
  - c. An officer performs a traffic stop on a vehicle after observing the vehicle run a stop sign. During the stop, the officer receives a flash message that provides a description of a wanted offender and vehicle for a theft that just occurred in the area of the traffic stop. The driver and the vehicle match the description. The officer conducts an investigation for the theft by questioning the driver regarding his whereabouts at the time of the theft. The officer determines that he does not have probable cause to arrest. The officer issues the driver a Personal Service Citation for failure to stop at a stop sign and completes an Investigatory Stop Report. The officer documents on the Investigatory Stop Report the initial reason for the stop was a traffic violation, failure

to stop at a stop sign, and the officer's Reasonable Articulate Suspicion that the driver committed a theft. Additionally, the officer completes and affixes a Traffic Stop Statistical Study sticker to the appropriate copy of the Personal Service Citation consistent with the Department directive "Illinois Traffic and Pedestrian Stop Statistical Study."

- d. An officer performs a traffic stop on a vehicle after observing the vehicle run a stop sign. The officer issues a verbal warning to the driver for failure to stop at a stop sign, and completes an Illinois Traffic Stop Statistical Study - Driver Information Card consistent with the Department directive entitled "Illinois Traffic and Pedestrian Stop Statistical Study." An Investigatory Stop Report will not be completed.
  - e. An officer responds to a call of shots fired. Upon the officer's arrival on the scene, the officer observes several people in the area. The officer approaches and questions people in the area as to whether or not they heard or saw anything pertaining to the shots fired call. After further investigation by the officer, the officer determines the incident is not bona fide. An Investigatory Stop Report will not be completed.
  - f. An officer observes a man smoking a cigarette on a Chicago Transit Authority platform. The officer detains the individual to ascertain if the man fits the parameters of issuing an Administrative Notice of Violation (ANOV). During the detention and interview, it is learned that the man just lost a family member. The officer decides not to issue an ANOV or arrest the individual. Since there is no other form to document the detention, the officer will document the detention on an Investigatory Stop Report.
5. If an arrest is made based on an Investigatory Stop, an Investigatory Stop Report will be completed in addition to the Arrest Report. Members will indicate in the Investigatory Stop Report that an arrest is related to the Investigatory Stop by checking the appropriate box.
  6. During an Investigatory Stop, the sworn member may only temporarily restrict a person's freedom of movement as long as reasonably necessary to dispel or confirm the member's Reasonable Articulate Suspicion of criminal activity. The subject cannot continue to be detained solely for the purpose of obtaining the results of a name check of the subject or for the completion of required documentation when Reasonable Articulate Suspicion no longer exists.
  7. **Failure to provide identification during an Investigatory Stop, in and of itself, is not grounds for arrest or further detention.** If, at the conclusion of an Investigatory Stop, the individual is unable or refuses to provide identification and there is no probable cause to arrest, the sworn member will:
    - a. enter "John Doe" or "Jane Doe," as appropriate, in the name field;
    - b. provide as much of the stop information as possible;
    - c. indicate the refusal in the narrative field; and
    - d. describe the reason for the stop and/or the circumstances of the stop in as much detail as possible, including a description of any unusual clothing, manner, or behavior.
  8. When Investigatory Stop Reports are submitted for more than one person in a group, members will cross-reference the report numbers in the appropriate fields of the database.

#### B. Data Entry

1. Sworn members will submit an electronic Investigatory Stop Report as soon as possible but no later than the end of their tours of duty by selecting "Automated Investigatory Reports" from the CLEAR menu.
2. If electronic access to the CLEAR application is not available, after receiving approval from a supervisor, sworn members will:
  - a. complete the hard copy Investigatory Stop Report;

- b. accurately enter the Investigatory Stop Report into the Investigatory Stop Database by selecting "Automated Investigatory Reports" from the CLEAR menu if electronic access to the CLEAR application becomes available before the end of their tours of duty.

**NOTE: The information entered into the Investigatory Stop Database must directly correspond with the information initially documented on the hard copy.**

- c. select "yes" in the Investigatory Stop Database that a hard copy Investigatory Stop Report was completed.
  - d. record the ISR number generated by the Investigatory Stop Database onto the hard copy Investigatory Stop Report.
  - e. **forward the completed, hard copy Investigatory Stop Report to their supervisor for approval.**
3. If electronic access to the CLEAR application continues to be unavailable and is restored after the sworn member's tour of duty has ended, unit executive officers will determine the method of data entry and ensure that the Investigatory Stop Report is entered into the Investigatory Stop Database consistent with Item VIII-B-2 of this directive within a reasonable period of time.

**NOTE:** For units without executive officers, the unit commanding officer will designate a supervisor to perform these duties.

### C. Supervisory Responsibilities

1. Reviewing supervisors will:
  - a. approve or reject all submitted Investigatory Stop Reports by the end of their tours of duty.
  - b. review and ensure Investigatory Stop Reports are properly completed and conform to Department policy.
    - (1) Supervisors are responsible for ensuring that members properly document in the narrative sections of all (electronic and hard copy) Investigatory Stop Reports:
      - (a) the Reasonable Articulate Suspicion that justifies the Investigatory Stop and, if performed, Protective Pat Down; or
      - (b) the Probable Cause that led to the stop if no other document captures the reason for the detention and, if performed, Protective Pat Down; and
      - (c) if applicable, the basis and reasons that led to any search of a person or his/her effects that was beyond a Protective Pat Down.
    - (2) When both a hard copy and an electronic Investigatory Stop Report are created, supervisors will confirm the hard copy matches the electronic entry.
  - c. for properly prepared Investigatory Stop Reports, indicate approval in the automated system or by signing the Investigatory Stop Report in the appropriate field.
  - d. for rejected Investigatory Stop Reports:
    - (1) personally inform the preparing sworn member of the reason for the disapproval or rejection;

- (2) complete an Investigatory Stop Report Deficiency Notification for rejections based on the following:
- (a) Failure to document justification for an Investigatory Stop, Protective Pat Down, or other search;
  - (b) Improper justification for an Investigatory Stop, Protective Pat Down, or other search;
  - (c) Submitted hard copy of the Investigatory Stop Report does not match the electronic version submitted in the Investigatory Stop Database; and
  - (d) Investigatory Stop Report submitted in error. Officer's actions did not require the submission of an Investigatory Stop Report.

**NOTE:** When completing the Investigatory Stop Report Deficiency Notification, supervisors will include the action that was taken to address the deficiency, such as reviewing the policy with the member, recommending training, initiating progressive discipline where warranted, etc.

Forward the completed Investigatory Stop Report Deficiency Notification to the Commanding Officer of the Integrity Section, Crime Control Strategies.

- (3) document rejections based on deficiencies, such as typographic errors, incomplete fields, etc., and the corrective action taken in the comments section within the Investigatory Stop Database. Instruct the preparing sworn member to address the error and resubmit the Investigatory Stop Report by the conclusion of the sworn member's tour of duty.

**NOTE:** If an Investigatory Stop Report Deficiency Notification is required, state in the comments section that an Investigatory Stop Report Deficiency Notification will be submitted.

- (4) instruct the preparing sworn member to address the error and resubmit the Investigatory Stop Report by the conclusion of the member's tour of duty.

**EXCEPTION:** Instruct the member not to resubmit the Investigatory Stop Report if an interview with the member reveals that the Investigatory Stop, Protective Pat Down, or other search was not justified or that the Investigatory Stop Report should not have been completed. The Investigatory Stop Report will remain in rejected status for clearance by the Integrity Section of Crime Control Strategies.

- (5) verify submission of the corrected Investigatory Stop Report and approve as appropriate.

e. forward all hard copy Investigatory Stop Reports to the district review officer or member designated by the unit commanding officer for records retention.

2. District review officers or members designated by unit commanding officers will, on a daily basis, forward all hard copy Investigatory Stop Reports, via the Police Documents Section, to the Records Inquiry Section (Unit 163), Records Division, for records retention.

3. Executive officers will:
  - a. ensure supervisors are properly reviewing and approving all submitted Investigatory Stop Reports.
  - b. ensure the submission of Investigatory Stop Reports into the CLEAR system is monitored in order to ensure that the review and approval process is timely.
  - c. ensure all approved hard copy Investigatory Stop Reports are forwarded, via the Police Documents Section, to the Records Inquiry Section (Unit 163), Records Division, for records retention.
  - d. conduct monthly internal audits of Investigatory Stop Reports to ensure compliance with this directive and submit a report of their findings to the commanding officer. If ten or less Investigatory Stop Reports are completed during the audit period, the executive officer will submit a negative report.
  - e. take appropriate action if any deficiencies are noted. If supervisory approvals do not conform to Department policy, the executive officer will take appropriate action (reviewing the policy with the member, recommending training, initiating progressive discipline where warranted, etc.). Additionally, the executive officer will forward and document the action taken in a To-From Subject Report to the Commanding Officer, Integrity Section, Inspections Division.

**NOTE:** In units without executive officers, the unit's exempt commanding officer will designate a supervisor to perform these duties. These duties do not apply to administrative units.

4. On a daily basis, commanding officers and executive officers will be accountable for the proper implementation of this directive.

#### **IX. OTHER RESPONSIBILITIES**

- A. The Information Services Division is responsible for the maintenance and integrity of the Investigatory Stop Database.
- B. Consistent with Local Records Commission requirements, the Director, Records Division, will ensure that hard copy Investigatory Stop Reports are destroyed and that information in the Investigatory Stop Database is purged consistent with this directive.
- C. The Commander, Inspections Division, will ensure audits of the Investigatory Stop System will be conducted.
- D. Bureau chiefs that have members who have access to the Investigatory Stop System beyond one year will ensure access is consistent with articulated investigative need and that supervisory authorization for access is maintained within unit files.
- E. The Integrity Section, Inspections Division, will conduct random audits of the Investigatory Stop System on a continual basis.

#### **X. RETENTION**

- A. Pursuant to 705 ILCS 405/1-7, entitled "Confidentiality of Law Enforcement Records," juvenile Investigatory Stop Reports will be filed and retained separately from adult Investigatory Stop Reports.
- B. The Director, Records Division, will dispose of both electronic and hard copy Investigatory Stop Reports consistent with this and other applicable Department directives, applicable court orders, and the law.
- C. All Investigatory Stop Reports, electronic and hard copy, will be retained for a period of six months after the completion of the Illinois Traffic Stop Statistical Study (TSSS).

- D. Six months after the completion of the TSSS:
1. all hard copy Investigatory Stop Reports three years and older will be purged.
  2. all personal identifying information entered into the electronic database three years and older will be purged.
- E. All hard copy Investigatory Stop Reports and personal identifying information contained within the database generated after the TSSS retention period and beyond will be retained for a period of three years from the date the Investigatory Stop Report was generated.

**NOTE:** Pursuant to a court order entered in Hall, et al. v. City of Chicago, et al., 12 C 6834, the Chicago Police Department and its members are ordered to preserve all data in the Investigatory Stop System and to preserve ALL hard copies of Investigatory Stop Reports until further notice.

(Items indicated by *italics/double underline* were added or revised.)

Eddie T. Johnson  
Superintendent of Police

17-067 DK

**GLOSSARY TERMS:**

1. **Investigatory Stop**

- A. The temporary detention and questioning of a person in the vicinity where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a criminal offense. The suspect may be detained only for the length of time necessary to confirm or dispel the suspicion of criminal activity. The temporary detention and questioning of a person for the purpose of enforcement of the Gang and Narcotics-Related Loitering Ordinances is an Investigatory Stop.

An Investigatory Stop is not a voluntary contact. A voluntary contact is a consensual encounter between an officer and a person during which the person must feel free to leave the officer's presence. An officer may approach any person at any time for any reason on any basis. However, absent reasonable suspicion or probable cause, that person must be free to walk away at any time. An officer's ability to articulate that no factors existed that would make a reasonable person perceive they were not free to leave is important. The following are some factors the court may consider to determine whether or not a consensual encounter has elevated to an Investigatory Stop or an arrest:

1. Threatening presence of several officers;
2. Display of a weapon by an officer;
3. Use of language or tone of voice indicating that compliance with the officer's request might be compelled;
4. Officer blocks a person's path; or
5. Choice to end the encounter is not available to the person.

2. **Protective Pat Down**

A limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity.

3. **Reasonable Articulate Suspicion**

Reasonable Articulate Suspicion is an objective legal standard that is less than probable cause but more substantial than a hunch or general suspicion. Reasonable Articulate Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member's training and experience. Reasonable Articulate Suspicion can result from a combination of particular facts, which may appear innocuous in and of themselves, but taken together amount to reasonable suspicion.

Reasonable Articulate Suspicion should be founded on specific and objective facts or observations about how a suspect behaves, what the subject is seen or heard doing, and the circumstances or situation in regard to the suspect that is either witnessed or known by the officer. Accordingly, Reasonable Articulate Suspicion must be described with reference to facts or observations about a particular suspect's actions or the particular circumstances that an officer encounters. The physical characteristics of a suspect are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the suspect.

- A. For Investigatory Stops, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is committing, is about to commit, or has committed a criminal offense.
- B. For a Protective Pat Down, a sworn member must possess specific and articulable facts, combined with rational inferences from these facts, that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area.

**NOTE:** An Investigatory Stop and a Protective Pat Down are two distinct actions—both require independent, Reasonable Articulable Suspicion (i.e., to stop a person there must be reasonable suspicion of criminal activity, and to stop a person and perform a Protective Pat Down of the person, there must be reasonable suspicion of criminal activity and reasonable suspicion that the person is armed and dangerous or presents a danger of attack).

4. **Probable Cause**

Probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it. This differs from Reasonable Articulable Suspicion in that the facts supporting RAS do not need to meet probable cause requirements, but they must justify more than a mere hunch. The facts should not be viewed with analytical hindsight but instead should be considered from the perspective of a reasonable officer at the time that situation confronted him or her.

5. **Plain Touch Doctrine**

When a sworn member is conducting a lawful Protective Pat Down of a suspect's outer clothing for weapons and encounters an object that, based upon their training and experience, the sworn member believes that the object is contraband, the sworn member may seize the item without a warrant. The object may not be manipulated in order to determine the identity of the object.

6. **Racial Profiling or Other Bias-Based Policing**

In making routine or spontaneous law enforcement decisions, such as investigatory stops, traffic stops and arrests, Chicago Police Department officers may not use race, ethnicity, color, national origin, ancestry, religion, disability, gender, gender identity, sexual orientation, marital status, parental status, military discharge status, financial status, or lawful source of income, except that officers may rely on the listed characteristics in a specific suspect description.

7. **Legitimacy and Procedural Justice**

The Department's commitment to professionalism, obligation, leadership, integrity, courage, and excellence has driven many meaningful public safety achievements. The Chicago Police Department conducts training and establishes procedures consistent with the concept of Legitimacy and Procedural Justice, with the goal of strengthening our relationship with the community and ultimately improving officer safety and efficiency. The concept of Legitimacy and Procedural Justice consists of the following four principles:

1. Giving others a voice (listening)
2. Neutrality in decision making
3. Respectful treatment and
4. Trustworthiness.

By fostering an environment where procedural justice principles become standard practice, the Department can create an organizational culture that fosters a true partnership with the public and leads to safer and more prosperous communities.

8. **Public Place**

Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, parks, and the common areas of schools, hospitals, apartment buildings, office buildings, transport facilities, and stores.





**INVESTIGATORY STOP RECEIPT** | Event  
CHICAGO POLICE DEPARTMENT | No.

You were the subject of an Investigatory Stop by the Chicago Police Department.

Officer \_\_\_\_\_  
(Print) Name Star No.

Officer \_\_\_\_\_  
(Print) Name Star No.

Reason(s) for the Stop (Check all that apply).

- ACTIONS INDICATIVE OF ENGAGING IN DRUG TRANSACTION
- FITS DESCRIPTION FROM FLASH MESSAGE
- FITS DESCRIPTION OF AN OFFENDER AS DESCRIBED BY VICTIM OR WITNESS
- ACTIONS INDICATIVE OF "CASING" VICTIM OR LOCATION
- PROXIMITY TO THE REPORTED CRIME LOCATION
- GANG/MARCOTIC RELATED ENFORCEMENT
- OTHER (Specify) \_\_\_\_\_

CPD-11.912 (Rev. 6/16)

**CHICAGO ALTERNATIVE POLICING STRATEGY (CAPS)**  
**SAFE NEIGHBORHOODS ARE EVERYBODY'S BUSINESS**

The police alone cannot solve the problems of crime in our City. It takes an active and informed community working with the police and other City agencies to really make a difference. Join your neighbors and your neighborhood police officers as we work together to reduce crime and improve the quality of life in our City. Become part of the CAPS team in your community. To find out how, call **311** or visit online at: <http://www.chicagopolice.org>.



**DATE SENT:** \_\_\_\_\_ **RETURN NO LATER THAN:** \_\_\_\_\_

Unit No.	Beat No.	Watch	Date & Time of ISR	ISR Number
Member's Name			Rank	Star Number
Member's Name			Rank	Star Number
Approving Supervisor			Rank	Star Number

Investigatory Stop Reports were **APPROVED** by a Supervisor but subsequent review identified the deficiencies noted below:

Failure to provide sufficient justification to support an Investigatory Stop, Protective Pat Down or other search (NO Reasonable Articulable Suspicion).	
Improper justification for an Investigatory Stop, Protective Pat Down or related search.	
Hard copy of the Investigatory Stop Report does not match the electronic version submitted in the Investigatory Stop Database.	
Checked the hard/paper copy on the electronic submission but no hard/paper copy was submitted to Records Inquiry Section.	
Investigatory Stop Report should not have been completed. Officer's actions did not require the submission of an Investigatory Stop Report.	

Investigatory Stop Reports were **REJECTED** by a Supervisor but subsequent review identified the deficiencies noted below:

Report rejected, but NO deficiency report completed by the Supervisor.	
Supervisor who rejected the ISR did not explain the reason for the rejection.	
Supervisor returned the report using the Administrative Rejection, but NO administrative errors were discovered.	
Supervisor rejected report, but did not describe the remedial action(s) addressed to the officer (for example reviewed special order, reviewed 4th amendment, mentored, provided guidance, etc.).	

Investigatory Stop Reports were **REVIEWED** by the Integrity Section and review identified the deficiencies noted below:

Investigatory Stop Report not created when an arrest was initiated by an Investigatory Stop.	
Investigatory Stop Report in status other than approved or final left longer than 7 days.	
Other	

Supervisors/Approvers will submit a report to the Integrity Section, Bureau of Organizational Development, within 5 days of receiving this report. The Supervisors/Approvers will speak to the affected members and address \_\_\_\_\_ in \_\_\_\_\_ detail compliance with Special Order S04-13-09 entitled "Investigatory Stop System."

Supervisors/Approvers will detail steps taken to enforce compliance with affected member.

**REPLY IN TO-FROM SUBJECT REPORT FORMAT AND RETURN TO UNIT 115 WITH THIS FORM AND ANY ASSOCIATED PAPERWORK BY ABOVE LISTED DATE.**

FOR UNIT 115 USE ONLY	
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## **EXHIBIT #4**

**Memorandum Opinion and Order issued by Judge** 

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[REDACTED]	)	
	)	
Plaintiff,	)	Case No. 16 C 234
v.	)	
	)	Judge [REDACTED]
OFFICER [REDACTED]	)	
OFFICER [REDACTED] and the	)	
CITY OF CHICAGO,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiff [REDACTED] has brought a five count amended complaint against Chicago Police Department Officers [REDACTED] [REDACTED] and [REDACTED] and the City of Chicago. Count I asserts a claim for illegal search and seizure in violation of the Fourth Amendment to the United States Constitution and failure to intervene. Count II is a claim for excessive force, also in violation of the Fourth Amendment, and failure to intervene. Count III is a state law claim for false imprisonment and Count IV is a state law claim for battery. Count V is a claim for indemnification brought against the City. Plaintiff has moved for partial summary judgment on her illegal seizure and false imprisonment claims, and asks the court to find that defendants are not entitled to qualified immunity for individual liability. For the reasons described below, the motion is denied.

FACTS<sup>1</sup>

On July 17, 2015, Officer [REDACTED] and Officer [REDACTED] (“defendants”) were patrolling a two-block area that was the scene of recent shootings involving rival gang members and was known as a “hot spot” due to a high volume of narcotics trafficking. Defendants, as part of a tactical unit that was trained to focus on guns, drugs, and gangs, and detect narcotics sales, drove an unmarked<sup>2</sup> Chicago police car. While they were patrolling, defendants noticed plaintiff standing alone on a corner near a bus stop.<sup>3</sup> Defendants continued to patrol, and when they returned to the area no more than five minutes later plaintiff was still standing on the corner alone. Defendants found this odd because the bus had just passed, but plaintiff did not board. Defendants saw plaintiff look in their direction, perhaps making eye contact, after which she started walking away from defendants.

When plaintiff started walking away from defendants they drove in her direction, attempting to get her attention. Plaintiff ignored defendants, who then saw plaintiff move her left hand in a “tossing” or “flinging” motion, as if to drop something behind her. Defendants

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<sup>1</sup> The following facts are, unless otherwise specified, undisputed for the purposes of this motion and taken from the parties’ Local Rule 56.1 statements, responses, and attached exhibits. The court notes plaintiff’s objections to defendants’ responses to plaintiff’s L.R. 56.1 statement and deems the following statements admitted: 6–9; 11–23; 25–26; 36–40; 42–43; 46–48; 50–61; and 68–74. Additionally, because plaintiff failed to respond to defendants’ L.R. 56.1 statement of additional facts, the court deems those facts admitted. Robinson v. Bandy, 524 Fed.Appx. 302, 305 (7th Cir. 2013) (citing Raymond v. Ameritech Corp., 442 F.3d 600, 608 (7th Cir. 2006)).

<sup>2</sup> The unmarked car had municipal license plates and spot lights on both sides of the windshield. The parties agree that it was identifiable as a police vehicle, and plaintiff concedes for the purposes of this motion that she knew it was a police vehicle.

<sup>3</sup> According to plaintiff, she was with her girlfriend at the time. Plaintiff’s girlfriend claims to have been at or near the scene throughout the incident. Defendants recall that plaintiff was alone. Plaintiff concedes that she was alone for the purposes of this motion.

parked the car and pursued plaintiff on foot, announcing that they were Chicago Police Officers. Defendants asked plaintiff for her name and identification, but she refused to comply. Instead, plaintiff became belligerent, cursing at the officers and making aggressive movements with her hands, including clenching her right hand. Because they perceived plaintiff as aggressive and hostile, defendants handcuffed her so the situation would not “boil over into something else potentially more dangerous.” Defendants did not pat plaintiff down or search her in any way.

After defendants handcuffed plaintiff, they placed her into the back of their vehicle and took turns searching the immediate area for narcotics. While one defendant searched for narcotics, the other defendant stayed in the vehicle with plaintiff and searched a database to determine if she was a known gang member.<sup>4</sup> This entire process took approximately ten minutes. Plaintiff continued to yell at and argue with defendants throughout this time. Once defendants completed their search, they helped plaintiff out of the vehicle, removed her handcuffs, and gave her a Contact Card, which noted that they had observed her loitering in a hot spot known for narcotics sales. At that point, plaintiff was free to go and she did just that.

## **DISCUSSION**

### **I. Legal Standard**

Plaintiff has moved for summary judgment on her illegal seizure and false imprisonment claims, asking the court to find that defendants are not entitled to qualified immunity for individual liability. The court will address these issues in turn.

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<sup>4</sup> Defendants were unable to determine whether plaintiff was a gang member because she refused to give them her name.

Plaintiff alleges that defendants violated her right to be free from unreasonable seizure and falsely imprisoned her when they handcuffed her and detained her in their vehicle while they searched for narcotics. Although the parties ultimately disagree on a number of issues, for the purposes of her motion for summary judgment plaintiff concedes defendants' version of events, arguing that she is still entitled to relief.

Summary judgment is appropriate when the moving papers and affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once a moving party has met its burden, the nonmovant must go beyond the pleadings and set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c); Becker v. Tennenbaum-Hill Assoc., Inc., 914 F.2d 107, 110 (7th Cir. 1990). The court considers the evidence as a whole and draws all reasonable inferences in the light most favorable to the party opposing the motion. Green v. Carlson, 826 F.2d 647, 651 (7th Cir. 1987).

A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The nonmoving party must, however, "do more than simply show that there is some metaphysical doubt about the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). "There mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient, there must be some evidence on which the jury could reasonably find for the [nonmoving party]." Anderson, 477 U.S. at 252.

## II. Analysis

### A. Seizure

With respect to the seizure, there are two separate claims at issue. See Pike v. Foster, 2016 WL 537940, \*3 (N.D. Ill. Feb. 11, 2016). The first is whether defendants had reasonable suspicion to stop plaintiff. The second is whether the seizure afterwards, including handcuffing and detaining plaintiff, was reasonable. Id. According to plaintiff, the answer to both of these inquiries is no.

“Police officers may conduct a brief investigatory stop of a person when they have reasonable, articulable suspicion that criminal activity is afoot.” Id. at \*4 (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)). Reasonable suspicion is less demanding than probable cause. Id. (citing United States. v. Sokolow, 490 U.S. 1, 7 (1989)). There must be “at least a minimum level of objective justification for making the stop.” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). This standard requires more than an “inarticulate hunch.” Terry, 392 U.S. at 22. Courts “examine the totality of the circumstances known to the police at the time of the stop, including the experience of the officers and the behavior and characteristics of the suspect.” Pike, 2016 WL 537940 at \*4 (citing United States. v. Lenoir, 318 F.3d 725, 729 (7th Cir. 2003)). “When determining whether an investigatory stop was unreasonable under the Fourth Amendment, courts examine (a) ‘whether the police were aware of specific and articulable facts giving rise to a reasonable suspicion’; and (b) ‘whether the degree of the intrusion was reasonably related to the known facts.’” Pike, 2016 WL 5347940 at \*3 (quoting United States. v. Tilmon, 19 F.3d 1221, 1224 (7th Cir. 1994); United States. v. Bullock, 632 F.3d 1004, 1012 (7th Cir. 2011)).

Plaintiff argues that defendants lacked a reasonable suspicion to conduct an investigatory stop because plaintiff's behavior was not indicative of illegal behavior. In particular, plaintiff argues that walking away from police officers and refusing to answer their questions is not illegal, and that defendants did not have a reasonable suspicion that plaintiff discarded narcotics when she made a "flinging" motion with her hand because neither defendant actually saw an object leave her hand when she did so. As defendants point out, however, plaintiff's actions did not occur in isolation. Plaintiff fails to consider the totality of the circumstances surrounding her interactions with defendants.

Plaintiff is correct that her presence on that corner is not, in itself, enough to give rise to a reasonable suspicion of criminal activity. Matz v. Klotka, 769 F.3d 517, 523 (7th Cir. 2014). Neither is plaintiff's decision to walk away from defendants when they initially tried to get her attention. Id. However, plaintiff's behavior must be viewed in light of the surrounding circumstances. While defendants observed plaintiff in an area known for narcotics activity, they saw her look in their direction, perhaps making eye contact. Although defendants were in an unmarked vehicle, it was easily recognizable as a police vehicle. After noticing defendants, plaintiff turned and walked in the opposite direction while making a motion that suggested to defendants, in their experience, that she was discarding narcotics. At this point, a reasonable jury could conclude that defendants had enough reasonable suspicion that plaintiff was involved in narcotics sales to approach her. See United States v. Baskin, 401 F.3d 788, 793 (7th Cir. 2005) ("[B]ehavior which is susceptible to an innocent explanation when isolated from its context may still give rise to a reasonable suspicion when considered in light of all the factors at play.").

Because there is a question of material fact as to whether defendants had a reasonable suspicion to stop plaintiff, the only remaining issue is whether the degree of intrusion was reasonably related to the known facts. Tilmon, 19 F.3d at 1224. With respect to plaintiff's claim, the question is whether defendants had reason to handcuff plaintiff and keep her in the car while they searched the area for narcotics, or whether doing so amounted to an illegal seizure and false arrest.

Handcuffing and placing a suspect in the backseat of a police car does not automatically convert an investigatory stop into an arrest. United States v. Stewart, 388 F.3d 1079, 1084–85 (7th Cir. 2004). There is no litmus test for determining when a seizure exceeds the bounds of an investigatory stop. Id. (citing Tilmon, 19 F.3d at 1224). The “permissible scope of a Terry stop has expanded in recent years to include the use of handcuffs and temporary detention in squad cars.” Stewart, 388 F.3d at 1084. An investigatory stop exceeds Terry's scope “[w]hen an officer's use of force during such a Terry stop becomes so disproportionate to the purpose of such a stop in light of the surrounding circumstances - and the purpose may include ensuring the safety of the officers or others.” Rabin v. Flynn, 725 F.3d 628, 633–34 (7th Cir. 2013). “There is no bright-line rule as to how long an investigative detention may last; instead we look to whether the police diligently pursued a means of investigating that was likely to confirm or dispel quickly their suspicions.” Id. at 634 (internal quotations omitted).

In the instant case, plaintiff was handcuffed after defendants perceived her as hostile and aggressive. According to defendants, the decision to handcuff plaintiff was made in an effort to ensure that the situation would not “boil over into something else potentially more dangerous.” The court “will not substitute its judgment for that of the officers as to the best methods to

investigate” when the investigating officers “believed reasonably that an investigative stop could be effectuated safely only through the use of handcuffs.” United States v. Smith, 3 F.3d 1088, 1094 (7th Cir. 1993). Drawing all reasonable inferences in the light most favorable to defendants, a reasonable jury could conclude that defendants reasonably believed that they could not perform their search safely with a hostile and aggressive plaintiff nearby. Additionally, plaintiff was detained just long enough for defendants to search the immediate area for narcotics and attempt to determine if she was affiliated with a street gang. This took approximately ten minutes. A reasonable jury could conclude that defendants diligently pursued their investigation in a manner that was likely to confirm or dispel quickly their suspicions.

Plaintiff urges the court to consider Justice Kennedy’s admonishment that handcuffing individuals during Terry stops should be “neither routine nor unduly prolonged.” Muehler v. Mena, 544 U.S. 93, 102 (2005) (Kennedy, J., concurring). The court has done so, and notes that the record, when construed in the light most favorable to defendants, does not suggest that the decision to handcuff plaintiff was either. First, defendants did not handcuff plaintiff immediately, but rather waited until after she became hostile and aggressive. Second, plaintiff remained handcuffed only for approximately ten minutes while defendants conducted their search. Based on these facts, which are undisputed for the purposes of this motion, a reasonable jury could conclude that plaintiff was detained and handcuffed as part of a lawful Terry stop.

Finally, plaintiff is correct that the court is bound by Florida v. Royer, 460 U.S. 491 (1983). Plaintiff’s claim that Royer is analogous, however, is incorrect. Not only are the facts completely inapposite, the Royer Court held that an investigatory stop exceeded Terry’s scope when police took the suspect’s identification and plane ticket, brought him to a small

interrogation room inside of the airport, and searched his luggage. In so holding, the Court found the record devoid of “any facts which would support a finding that the legitimate law enforcement purposes which justified the detention in the first instance were furthered by removing Royer to the police room prior to the officer’s attempt to gain his consent to a search of his luggage.” *Id.* At 504. In the instant case, the record suggests that defendants had a legitimate reason to detain plaintiff (to investigate suspected narcotics activity) and that they handcuffed plaintiff, who was hostile and uncooperative, in order to further that investigation. The holding in *Royer* does nothing to invalidate defendants’ conduct. The court finds that the other cases that plaintiff cites to support her position are not binding, persuasive, or instructive.

#### **B. Qualified Immunity**

Government officials are protected by qualified immunity when they are “performing discretionary functions . . . insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Siebert v. Severino*, 256 F.3d 648, 654 (7th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). A violation is clearly established if: (1) “the violation is so obvious that a reasonable state actor would know that what they are doing violates the Constitution,” or (2) “if a closely analogous case establishes that the conduct is unconstitutional.” *Id.* (citing *Brokaw v. Mercer County*, 235 F.3d 1000, 1022 (7th Cir. 2000)). Plaintiff argues that defendants violated her clearly established constitutional rights under both of these prongs and therefore are not entitled to qualified immunity. The court disagrees.

As an initial matter, in arguing that defendants are not entitled to qualified immunity, plaintiff asserts in her motion for summary judgment that “where the facts a *plaintiff* alleges”

(emphasis added) establish a constitutional violation, government officials are not entitled to qualified immunity. For the purposes of the instant motion, however, plaintiff concedes the facts as defendants present them. As discussed above, *those* facts, at the very least, create a genuine issue of material fact as to whether defendants violated plaintiff's clearly established rights.

As for the first prong, the court has discussed at length why it does not find that defendants violated plaintiff's clearly established rights. Accordingly, the court cannot find that defendants are not entitled to qualified immunity under the first prong. As for the second prong, plaintiff has not provided the court with a closely analogous case that establishes that defendants' conduct was unconstitutional, and the court knows of none. Of the cases plaintiff has cited, only Royer is controlling, and, as discussed above, it is far from analogous, much less closely analogous. Nothing in Royer put defendants on notice that their actions violated plaintiff's rights in any way. Because there is a genuine issue of material fact as to whether defendants' decisions to approach and ultimately detain plaintiff were reasonable, the court cannot find that defendants are not entitled to qualified immunity.<sup>5</sup>

### CONCLUSION

For the reasons described above, plaintiff's motion for summary judgment (Doc. 44) is denied in its entirety. This matter is set for a report on status July 20, 2017, at 9:00 a.m.

ENTER: June 28, 2017

  
  
United States District Judge

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<sup>5</sup> The court notes that the purpose of qualified immunity is to avoid the necessity of conducting the type of discovery and motion practice that has already occurred in this case, Donovan v. City of Milwaukee, 17 F.3d 944, 947 (7th Cir. 1994) (internal quotations omitted), and that defendants have not requested to court to invoke the doctrine.