

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	December 7, 2018
Time of Incident:	11:38 PM
Location of Incident:	120 E. Kensington Ave.
Date of COPA Notification:	December 20, 2018
Time of COPA Notification:	9:00 AM

On December 7, 2018 the complainant, [REDACTED] alleged that Officers [REDACTED] and [REDACTED] arrested him without justification. [REDACTED] further alleged that once at the [REDACTED] District Station, the officers had him strip down to his boxers. After interviewing [REDACTED] and reviewing available evidence, COPA recommends all allegations be Exonerated.

**II. INVOLVED PARTIES**

Involved Officer #1:	[REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 2012, Police Officer, Unit [REDACTED] ([REDACTED] – Area South), Date of Birth: [REDACTED] 1984, Male, Hispanic
Involved Officer #2:	[REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 2012, Police Officer, Unit [REDACTED] Date of Birth: [REDACTED] 1979, Male, Black
Involved Officer #3:	[REDACTED] Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 2002, Police Officer, Unit [REDACTED] Date of Birth: [REDACTED] 1978, Male, White
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED] 1983, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer [REDACTED] [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
	2. Made [REDACTED] disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated

Officer █████	1. Arrested █████ without justification, in violation of Rule 2 and Rule 6.  2. Made █████ disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated  Exonerated
Officer █████	1. Arrested █████ without justification, in violation of Rule 2 and Rule 6.  2. Made █████ disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated  Exonerated

**IV. APPLICABLE RULES AND LAWS**

Rules

1. **Rule 2:** Prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
3. **Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.

General Orders

1. **G06-01-03:** Conducting Strip Searches.

Federal Laws

1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

**V. INVESTIGATION<sup>1</sup>**

**a. Interviews<sup>2</sup>**

COPA interviewed the complainant, █████ on January 3, 2019.<sup>3</sup> On December 7, 2018, █████ was parked in the alley/loading area at 120 E. Kensington. █████ related the car was off and he was waiting for a friend. After about five minutes, an unmarked police car containing three officers drove through the alley and noticed █████ in the car. The officers reversed their SUV, exited their car, and opened █████ driver’s side door. Nothing was said to █████ before the officer opened the car door. The officers immediately removed █████ from the car. █████ was handcuffed

<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Interviews of the Officers were not conducted based on the complainant’s statements, COPA determined the officers had not violated any rules, regulations or laws. See analysis

<sup>3</sup> Att. 7

and patted him down, which included going into [REDACTED] pockets.<sup>4</sup> [REDACTED] denied that the officers ever asked for his license or insurance. The officers found a substance in [REDACTED] vehicle, and the officers began searching the car. Per [REDACTED] the substance was inside the driver's side door handle. [REDACTED] did not know what the substance was, as he was driving his girlfriend [REDACTED] vehicle, and denied the substance was his. [REDACTED] denied telling the officers that he sold ecstasy, and he was uncertain if [REDACTED] used ecstasy. The officers asked [REDACTED] where guns could be found and when [REDACTED] could not assist them, they related they were arresting him and towing his car. The officers also made a comment that one of them was sleeping in the back, and his partners had to wake him up because of [REDACTED]. Once at the police station, the officers stated they smelled marijuana on [REDACTED]. The officers made [REDACTED] strip down to his boxer shorts and instructed to squat. [REDACTED] stated that marijuana fell from his boxers after he was made to squat. [REDACTED] stated he had less than seven grams of cannabis in two bags. About two hours later, the officers brought [REDACTED] to lockup. [REDACTED] vehicle was impounded, but he eventually recovered it after paying a fine. [REDACTED] believed he was arrested without justification because he was waiting for a friend in a parking/unloading area. [REDACTED] acknowledged that he did not fully recall everything the officers stated to him.

[REDACTED] submitted a **Web Complaint** to COPA on December 19, 2018.<sup>5</sup> [REDACTED] wrote that on December 7, 2018 at approximately 11:35 PM, he was in a friend's vehicle and parked in the rear unloading area at 120 E. Kensington. [REDACTED] related that his vehicle was turned off with no lights on. An unmarked CPD SUV then drove down the alley and passed [REDACTED] before it "suddenly stopped and backed up to the side of my car." Three officers approached and one opened [REDACTED] car door. The officers had not said anything to [REDACTED] at this point, nor turned on their emergency lights. Once the passenger officer opened the door, he "looked into the pocket of the door and pulled out a small plastic bag with a blue substance inside." [REDACTED] was then removed from the vehicle, patted down, then put in the police SUV. While in the squad car, the officers asked [REDACTED] where they could find guns, and they "taunted, questioned and cursed," [REDACTED] reported that one officer "complained that [REDACTED] made the other officers wake him up." Once at the police station, an officer told [REDACTED] he smelled weed. The officer proceeded to bring [REDACTED] "into a small cell and had [REDACTED] remove all [his] clothes down to [his] underwear." Next, the officer had [REDACTED] perform "several types of squats and other movements," which resulted in the officers recovering five grams of cannabis from [REDACTED]. [REDACTED] received a ticket for no seat belt and a ticket for no insurance. [REDACTED] alleged that the officers never asked him for insurance. [REDACTED] was also ticketed for parking in the alley.

#### **b. Digital Evidence**

No Body Worn Camera (BWC) footage was available as Unit [REDACTED] officers are not assigned BWC.

#### **c. Physical Evidence**

No relevant physical evidence was obtained pertaining to the present investigation.

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<sup>4</sup> An allegation was not served related to the officers searching in [REDACTED] pockets as [REDACTED] acknowledged suspect narcotic was found in his car, making this a custodial search and not an investigatory stop.

<sup>5</sup> Att. 6

#### d. Documentary Evidence

██████████ **Arrest Report** was obtained from December 7, 2018 under **RD #** ██████████<sup>6</sup> ██████████ was arrested at approximately 11:28 PM in the alley near 301 E. Kensington Ave.<sup>7</sup> ██████████ was charged with felony possession of a controlled substance, felony manufacture/delivery of cannabis, and traffic citations for no seat belt and no insurance. The 2013 Chevrolet Impala that ██████████ was driving with Illinois license plate ██████████ was impounded. Per this report, the arresting officers saw ██████████ sitting in a vehicle parked in an alley, so they engaged their emergency equipment, stopped ██████████ and announced themselves. As Officer ██████████ approached, he saw that ██████████ was not wearing a seatbelt. Officer ██████████ asked ██████████ for his driver's license and registration, but ██████████ "failed to provide insurance." While ██████████ was getting his ID, Officer ██████████ saw a "clear knotted plastic bag, containing a blue in color powder substance [...] on the driver's side coin tray." ██████████ was asked to exit his vehicle and was arrested. While performing a custodial search, officers recovered three "clear, knotted plastic bags, containing a green, leaf like substance [...] located on offender's waistband." In the presence of all three officers, ██████████ waived his Miranda Rights and stated he sold ecstasy for his girlfriend because "she needs to stay up at work [...]."

An **Original Case Incident Report** was located for **RD #** ██████████ which contained no additional, relevant information.<sup>8</sup>

An **Office of Emergency Management and Communications (OEMC) Event Query Report** for **Event Number** ██████████ was initiated on December 7, 2018 at approximately 11:38 PM.<sup>9</sup> Beat ██████████ (Officers ██████████ and ██████████ initiated a traffic stop at this time.<sup>10</sup> About one minute later, the officers searched ██████████ license plate. The event was closed at about 3:12 AM.

A criminal docket was found for the charges against ██████████ stemming from his December 7, 2018 arrest.<sup>11</sup> **Case Number** ██████████ was filed in the Cook County Clerk of the Circuit Court on December 8, 2018. ██████████ was charged with felony possession of a controlled substance, felony cannabis manufacture/deliver, and two traffic citations. On January 18, 2019, a judgement of nolle prosequi was entered for all charges.

COPA identified that a vehicle bearing Illinois license plate ██████████ was issued a **citation for parking in an alley** on December 7, 2018.<sup>12</sup>

#### e. Additional Evidence

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<sup>6</sup> Att. 13

<sup>7</sup> This address is approximately 0.20 miles from where ██████████ alleged he had his CPD interaction. However, ██████████ made no complaints to COPA about this discrepancy and it is possible he was incorrect about the address, or that the officers made an error in identifying the address. This is not considered by COPA to be a material discrepancy.

<sup>8</sup> Att. 14

<sup>9</sup> Att. 15

<sup>10</sup> While not assigned to Beat ██████████ Attendance and Assignment records indicate that Officer ██████████ was assigned to the same car as Officers ██████████ and ██████████ on December 7, 2018 (Att. 26).

<sup>11</sup> Att. 20

<sup>12</sup> Att. 21

COPA used commercial database research to confirm that the vehicle operated by [REDACTED] on December 7, 2018 was registered to an individual named [REDACTED]<sup>13</sup>

## VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

**Allegation 1** against Officer [REDACTED] Officer [REDACTED] and Officer [REDACTED] that they arrested [REDACTED] without justification, is **Exonerated**. [REDACTED] believed he was legally parked because he was in a loading area in an alley and waiting for a friend. Per information obtained from the City of Chicago's Department of Business Affairs and Consumer Protection, "Loading zones are designated areas in the parking lane for the loading and unloading of deliveries to buildings. These zones are for commercial vehicles or vehicles that have a valid Non-Commercial Loading Zone Permit only."<sup>14</sup> <sup>15</sup> Based on this information, loading zones do not exist in allies. Therefore, his claim that he was in a loading zone and should not have been ticketed is erroneous.

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<sup>13</sup> Att. 19

<sup>14</sup> Source: [https://www.chicago.gov/city/en/depts/bacp/sbc/loading\\_zones.html](https://www.chicago.gov/city/en/depts/bacp/sbc/loading_zones.html).

<sup>15</sup> Att. 22

Further, the officers cited that [REDACTED] was in violation of Chicago Municipal Code 9-64-130-A in his arrest report. Per this ordinance, “It shall be unlawful to park any vehicle in any alley for a period of time longer than is necessary for the expeditious loading, unloading, pick-up or delivery of materials from such vehicle.”<sup>16</sup> [REDACTED] acknowledged he was waiting in his car for about five minutes as he sat in the driver’s seat. Since [REDACTED] was illegally parked, the officers had probable cause to further investigate. By [REDACTED] own admission, they saw narcotics in his car in plain sight. At that point, [REDACTED] was in possession of narcotics and his arrest was legal and justified. As such, this allegation is Exonerated.

**Allegation 2** against all three officers, that they made [REDACTED] disrobe to only his boxer shorts, is **Exonerated**. By [REDACTED] own admission, he had marijuana in his boxer shorts. Therefore, it is reasonable that the officers smelled cannabis and needed to find it before [REDACTED] could go to lock up. Per CPD General Order G06-01-03, a strip search occurs when officers have “an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.” [REDACTED] undergarments were not manipulated or inspected, and his genitals, anus, and buttocks were not exposed. Per [REDACTED] the officers just had him squat, presumably to force the cannabis lose without any manipulation or exposure. As such, this was not a strip search and remained a custodial search. Officers cannot allow an arrestee into lockup with contraband and this allegation is therefore Exonerated.

**VIII. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer [REDACTED] [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.  2. Made [REDACTED] disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated  Exonerated
Officer [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.  2. Made [REDACTED] disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated  Exonerated
Officer [REDACTED]	1. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.  2. Made [REDACTED] disrobe to only his boxer shorts, in violation of Rule 2, Rule 6, and Rule 8.	Exonerated  Exonerated

<sup>16</sup> Att. 24

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Approved:



5/31/19

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Andrea Kersten  
*Deputy Chief Administrator*

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Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	[REDACTED]
<b>Investigator:</b>	[REDACTED]
<b>Supervising Investigator:</b>	[REDACTED]
<b>Deputy Chief Administrator:</b>	Andrea Kersten