SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 17, 2018
Time of Incident:	1:00 AM
Location of Incident:	Beat
Date of COPA Notification:	November 5, 2011
Time of COPA Notification:	04:00 AM
struck, which caused to flewas made to arrest for flew	was involved in a traffic accident with a parked vehicle. conted by an armed civilian, who was angry about his car being e in fear. When officers arrived at the scene, the determination eing the scene and other minor offenses, which resulted in his alleged that Officers failed to investigate "aggravated", aggravated
II. INVOLVED PARTIE	S^1
Involved Officer #1:	Date of Appointment: Employee ID: Date of Appointment: 2008 Rank: Field Training Officer: Unit of Assignment: DOB: 1974 Gender: Female Race: Hispanic
Involved Officer #2:	DOA:, 2017 Rank: Probationary Police Officer UOA:, 208:, 1995 Gender: Female Race: Black
Involved Officer #3:	Appointment:, 2016 Rank: Police Officer Unit of Assignment:DOB:, 1991 Gender: Male Race: White
Involved Officer #4:	Date of Appointment:, 2012 Rank: Police Officer Unit of Assignment:, 1983 Gender: Male Race: Black

¹ Officers **1988**, **1988**, **1988**, and **1988** were not interviewed in connections with this investigation because it was clear from the body-worn cameras and documentary evidence that the allegations against them would be exonerated.

Involved Officer #5:	Date of Appointment:, 2008 Rank: Field Training Officer Unit of Assignment:, 1972 Gender: Male Race: Hispanic
Involved Officer #6:	Date of Appointment:, 2017 Rank: Probationary Police Officer Unit of Assignment:, Gender: Male Race: Unknown
Involved Individual #1:	: Black Gender Male DOB: 1986
Involved Individual #2:	: Black Gender: Female DOB 1987

III. ALLEGATIONS

Officer	Allegation	Finding
Officer	1. On June 17, 2018, Officer arrested without justification.	EXONERATED
	2. On June 17, 2018, Officer failed to investigate complaints by that threatened him with a gun.	UNFOUNDED
	3. On June 17, 2018, Officer had the vehicle belonging to towed without justification.	EXONERATED
	4. On June 17, 2018, Officer failed give Miranda warnings to	SUSTAINED
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	4. On June 17, 2018, Officer failed give Miranda warnings to	EXONERATED
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IV. APPLICABLE RULES AND LAWS

Rules

- 1. Rule 1: prohibits an officer from violating any law or ordinance.
- 2. Rule 3: prohibits an officer from engaging in any conduct that would amount to a failure to promote the Department's policy or goals.
- 3. Rule 6: prohibits an officer from disobeying any order or directive, whether written or oral.
- 4. Rule 10: requires an officer to be attentive to his or her duties.

General Orders

- 1. General Order G04-03, Custodial Interrogations
- 2. General Order G04-01, Preliminary Investigations
- 3. General Order G07-03, Vehicle Towing and Relocation Operations

Special Orders

- 1. Special Order S07-03-05, Impoundment of Vehicles for Municipal Code Violations
- 2. Special Order S04-13-09, Investigatory Stop System
- 3. Special Order S04-14-05, Traffic Violators, Name Checks, and Bonding

Federal Laws

- 1. U.S. Constitution Fourth Amendment
- 2. U.S. Constitution Fifth Amendment

State Laws

- 1. 625 ILCS 5.0/18B-103,392.82, Cell Phone Use While Operating a Motor Vehicle
- 2. 625 ILCS 5.0/11-502B, Transporting Open Alcohol
- 3. 625 ILCS 5.0/11-402-A, Leaving the Scene of an Accident
- 4. Municipal Code 9-92-035, Authority to Impound Fleeing Vehicle

V. INVESTIGATION ²

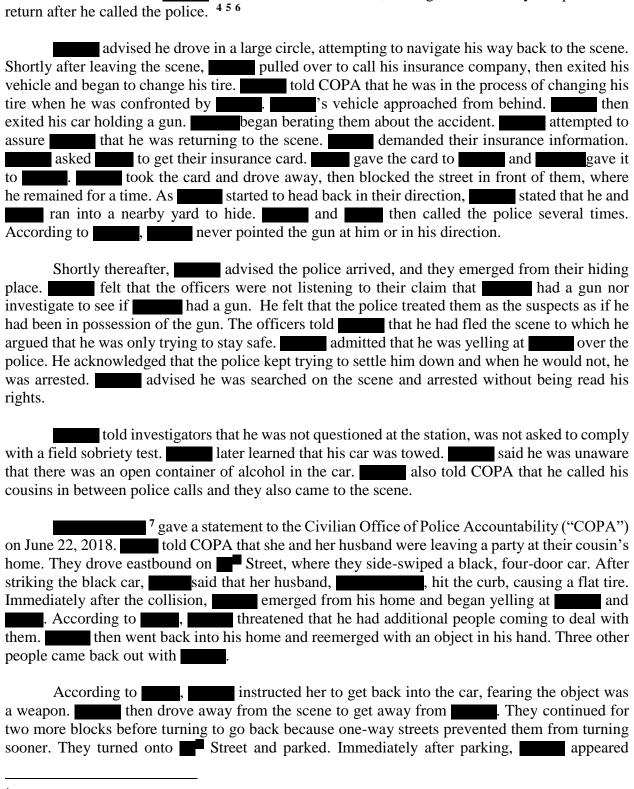
A. Interviews

on June 22, 2018. In his statement, total COPA that he and his wife, were returning home after a party. While driving, was changing the song on his phone when he side-swiped a parked car on Street. The car continued up the curb, where regained control and stopped the car. The tire "busted" after striking the curb, causing it to rapidly lose air pressure. A man, now known to be care, came out of his home, went back into his house, then came back out with an unknown object in his hand.

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² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Attachment 10



and two additional men. made the decision to leave, fearing for their safety and planned to

⁴ Attachment 55

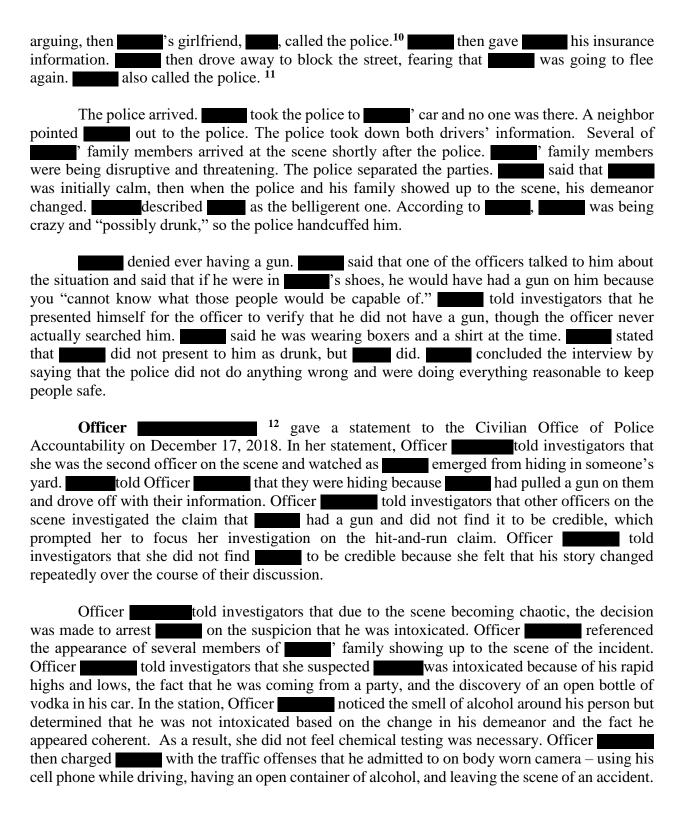
⁵ Attachment 52

⁶ Attachment 54

⁷ Attachment 9

behind them in a white SUV. was immediately combative with them. told that they had insurance. then handed the insurance information to the whole who took the information, drove off and parked his car in a manner that blocked the street and their exit. The asked to call the police, telling her that the had a gun. then commence to change the tire.
called 9-1-18 and told them her location. Dispatchers told to stay put. While was changing the tire, stated that started to head back down the street in their direction. At this point, advised that ceased changing the tire and told to run. and ran to hide in a nearby yard. then called the police repeatedly. After the last call, they noticed the police lights. They came out with their hands up. said that the police immediately seized upon and took him aside, not letting interact with him.
tried to explain to the officer that they fled for their safety, not because they were trying to flee the scene. She attempted to explain that she called the police to report the man with the gun but felt that the police were treating them as the suspects. She notified the police that the man in the white truck, was the assailant. felt that no one was listening to her. saw family members on the scene, who tried comforting her. watching as her husband is arrested asked for an explanation and was directed to speak with the Sergeant on scene. stated, when she spoke with Sergeant he was very confrontational with her, told her that the white truck was not on the scene and the information she provided irrelevant. Sergeant then told her to gather her belongings from the vehicle because it was being seized.
While at the station, stated that Officer expressed that she (Officer believed that she, not her husband, was actually driving to which denied. Officer told that was being released with traffic citations. said that no one would tell her where the car was located or return her phone. She advised they left several hours later with all of their belongings except the car.
⁹ gave a statement to the Civilian Officer of Police Accountability on July 20, 2018. In his interview, told COPA that at around 1:30 AM, he was upstairs when he heard a crash. His daughter was looking out the window and told him that someone hit a tree. When he went outside to check on the person who hit the tree, he saw that his car had also been hit and knocked onto the sidewalk. As he came down to investigate, the person, now known to be was pulling away from the tree and then drove away.
got into his other vehicle, a white SUV, and followed for a few blocks to see if he would stop and turn around. said that was unaware that was following him. said that exited his vehicle and began to change his tire. described the damage to car as "the tire came off the car. He was riding on his rim." confronted sabout fleeing the scene. According to told that he was planning to come back to the scene after he changed his tire.

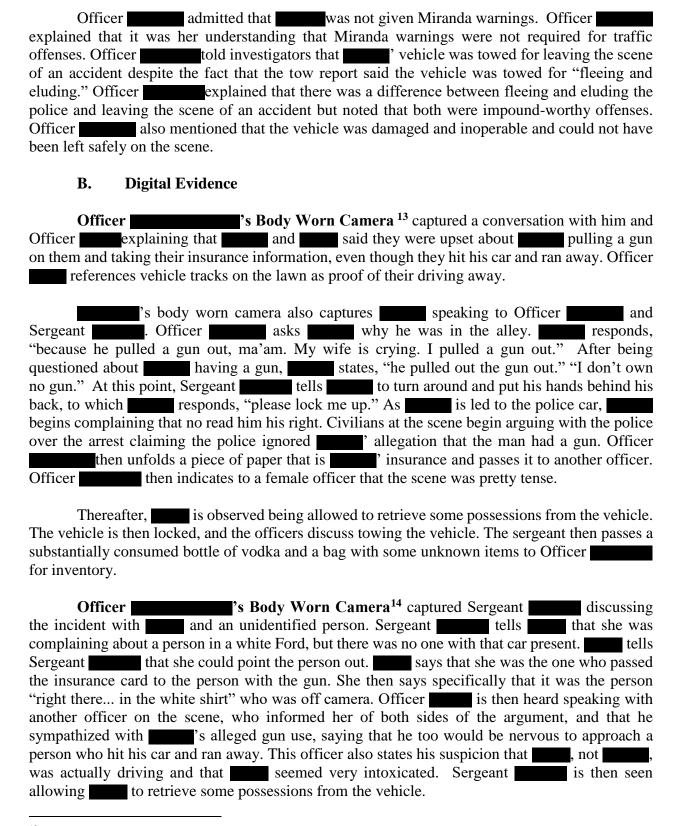
⁸ Attachment 509 Attachment 4



¹⁰ Attachment 51

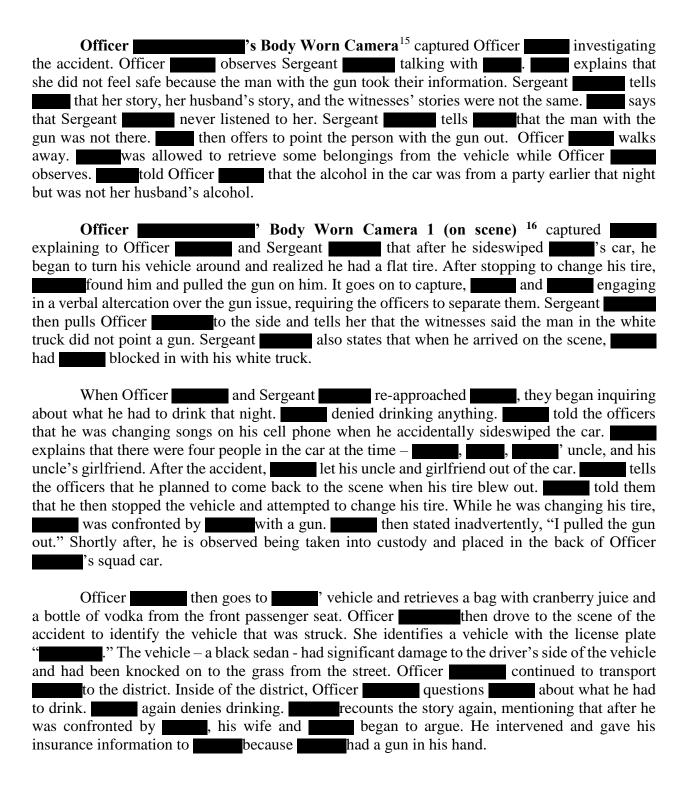
¹¹ Attachment 53

¹² Attachment 44



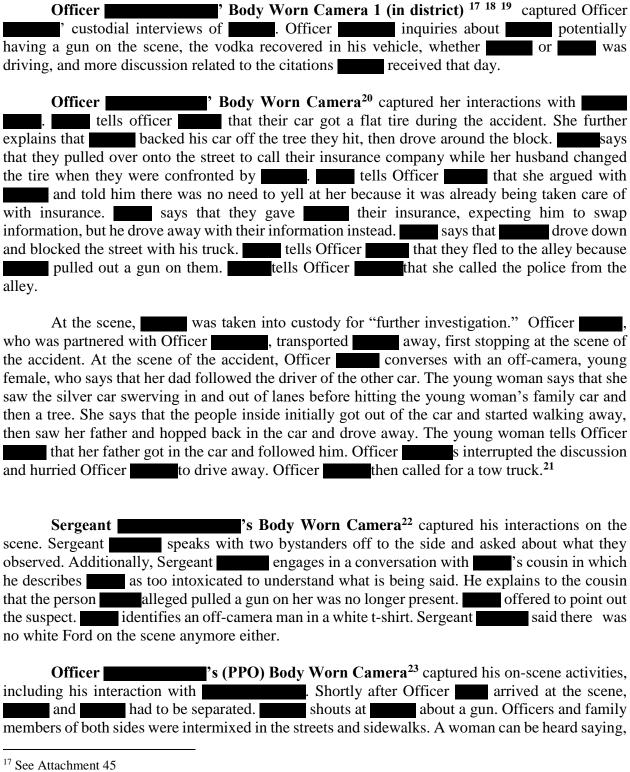
¹³ See Attachment 45

¹⁴ See Attachment 45



¹⁵ See Attachment 45

¹⁶ See Attachment 45



¹⁸ See Attachment 45

¹⁹ See Attachment 45

²⁰ See Attachment 45

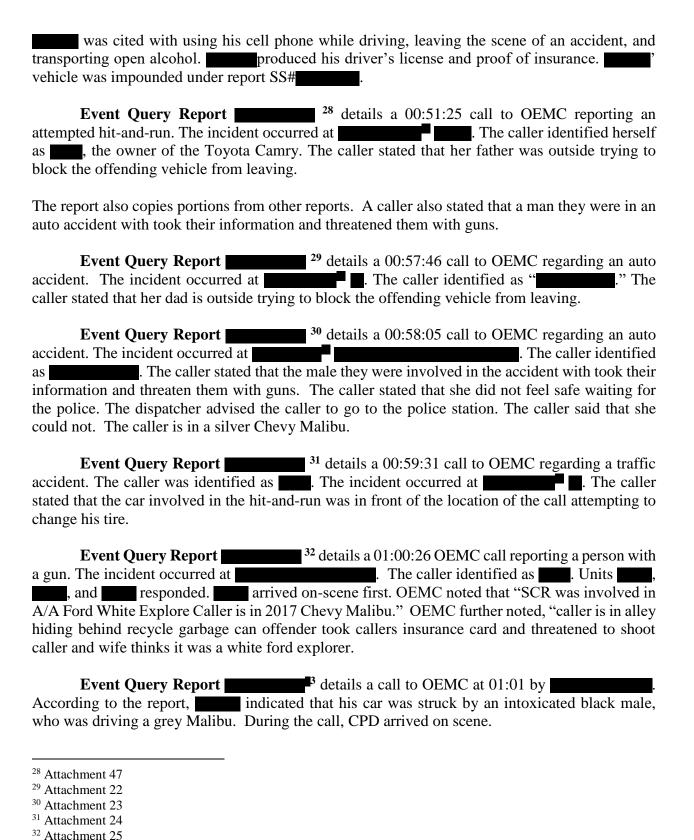
²¹ Attachment 56

²² See Attachment 45

²³ See Attachment 45

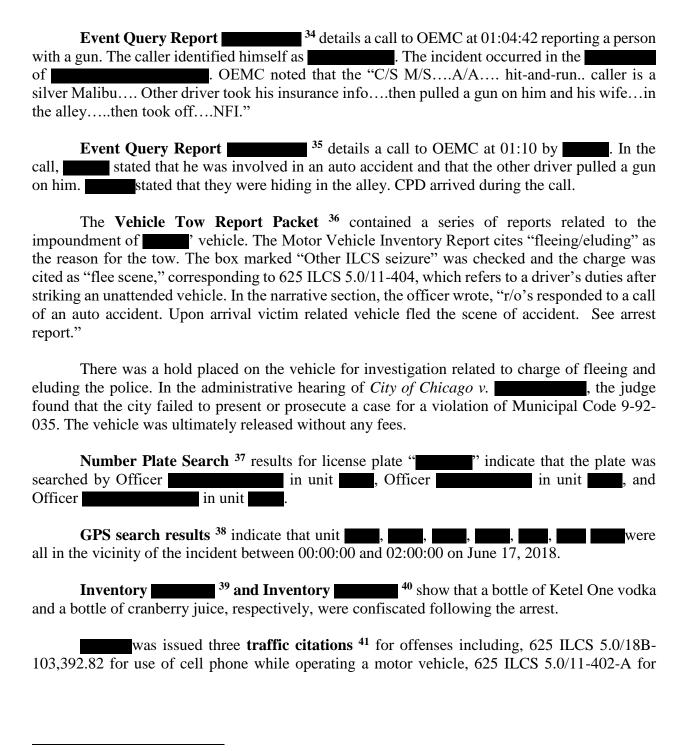
"he said he left because the dude pulled a gun on him." reacts saying, "I don't have no gun. I don't own no gun." Later, produced in because he thought they would run. tells Officer that he called the police and said may have had a gun. Officer appears to agree that committed a hit-and-run. and his daughter express concern over family lingering in the area near their home. is arrested. postulates that may have dumped a gun in the alley. Sergeant appears to check the alley for the same.
Officer s Body Worn Camera ²⁴ captured his interaction with a witness near the scene of the collision who is believed to be stated 's daughter, stated.
Event Number Audio ²⁵ captured a call from , at 0049hours, who said that a car struck her parked car and a tree, then drove away. The incident occurred at and
Zone Audio 0000 – 0200 hours ²⁶ captured the zone radio transmissions on June 17, 2018. At approximately 01:01:00 into the audio, a report of a man with a gun in the vicinity of came across the radio. There were no further details at the time. A call was made requesting assistance for the responding unit. Later, the dispatcher broadcasts that the caller and his wife were hiding in the alley. Unit found the unoccupied vehicle belonging to the "offender." The "victim" informed the responding unit that his car had been struck by a hit-and-run driver. Several minutes later, the officers were still unable to locate the offender. The description of a black male with a white shirt and black pants was given.
Someone responded to a request for information about additional passengers to the fleeing vehicle that all of the parties were there on scene. LEADS was responding slowly, so license plates and drivers' license numbers were unable to be run. requested an RD number and was given called to request a tow.
C. Documentary Evidence
In the Arrest Report for RD# 27 Arresting Officer wrote that , driving a vehicle with the license plate at an and found the arrestee in a nearby yard. Officer noted that a bottle of Kettle One Vodka with a broken seal was recovered from the passenger side floor. Officer transported the arrestee to the District for possible DUI and "due to scene becoming chaotic." Upon further investigation, Officer determined that was not intoxicated. Was then cited with the charges he admitted on body worn camera. According to the report, admitted that he looked away while driving to change the music on his phone and struck the vehicle with the license plate admitted that he continued to where he discovered that he had a flat tire.

 ²⁴ See Attachment 45
 25 Attachment 48
 26 Attachment 58
 27 Attachment 11



³³ Attachment 37

¹³



³⁴ Attachment 8

³⁵ Attachment 38

³⁶ Attachment 40

³⁷ Attachment 34

³⁸ Attachments 32 & 33

³⁹ Attachment 17

⁴⁰ Attachment 18

⁴¹ Attachment 6

leaving the scene of an accident, and 625 ILCS 5.0/11-502-B for transporting open alcohol in the passenger cabin. Each citation was dismissed for want of prosecution 42 43 44 .

D. Additional Evidence

Officer 's Body Worn Camera⁴⁵ did not add any novel information to the investigation.

VI. ANALYSIS

I. 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. <u>Not Sustained</u> where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
- 3. <u>Unfounded</u> where it is determined by clear and convincing evidence that an allegation is false or not factual; or
- 4. <u>Exonerated</u> 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.

Allegations against all officers:

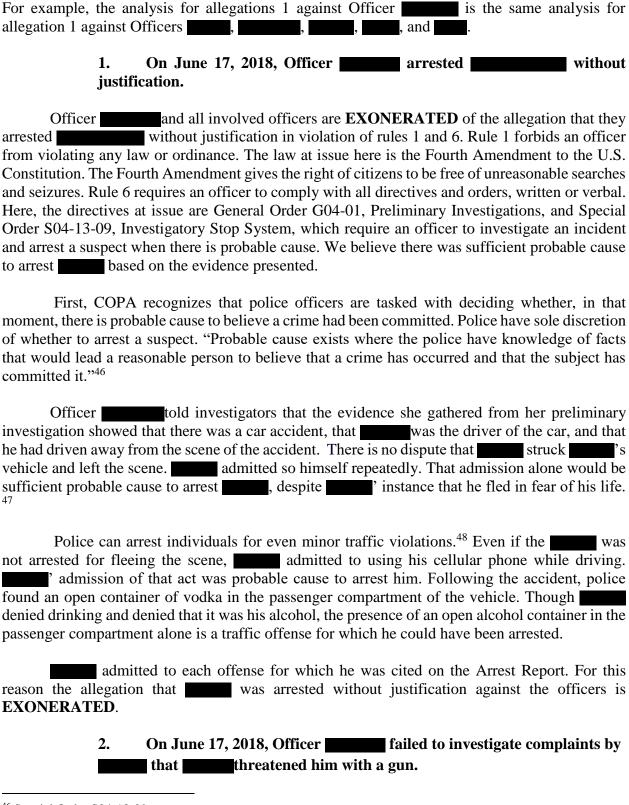
The following analysis applies to the allegations made against each officer respectively.

⁴³ Attachment 14

⁴⁴ Attachment 15

⁴²Attachment 13

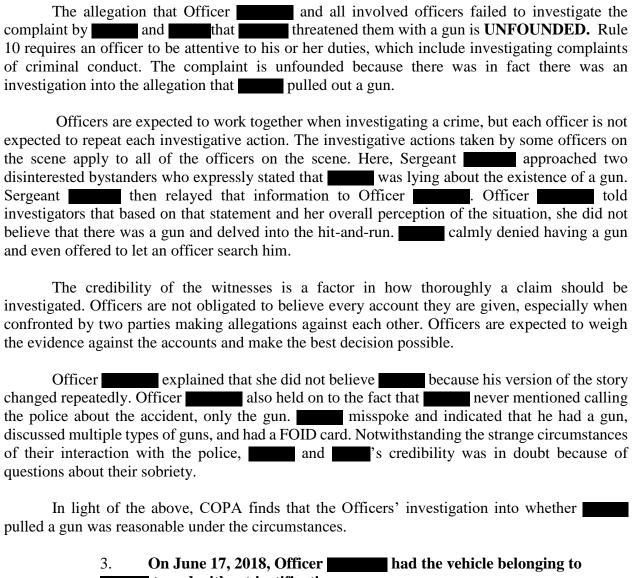
⁴⁵ See Attachment 45



⁴⁶ Special Order S04-13-09.

⁴⁷ Officers did consider defense but found it to be unpersuasive under the circumstances. That will be addressed more in the next allegation.

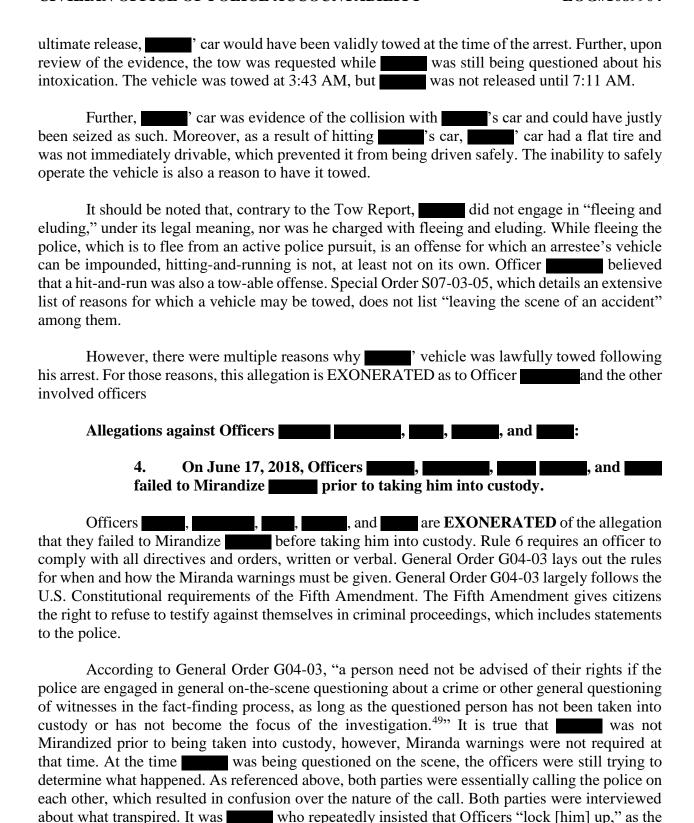
⁴⁸ Atwater v. Lago Vista, 532 U.S. 318 (2001)



towed without justification.

The law at issue is the Fourth Amendment's prohibition against unlawful seizures. Rule 6 prohibits an officer from violating any order or directive. General Order G07-03 and Special Orders S07-03-05 and S04-14-05 set the rules for when a car may be impounded following an arrest or municipal violation. General Order G07-03 authorizes a vehicle to be towed when it has evidentiary value, when it cannot be safely driven to the detention facility, or when the arrestee does not authorize someone else to take control. Additionally, MCC 7-24-226 authorizes police to tow a vehicle when the driver is intoxicated. Several of these rules apply here.

According to the Arrest Report, was arrested for suspicion of driving under the influence of alcohol and a bottle of vodka was inventoried from the vehicle. General Order G07-03 says a tow will be canceled if an arrestee is released, unless the vehicle is being held for further investigation or the vehicle is seized pursuant to a Driving Under the Influence arrest. Despite his

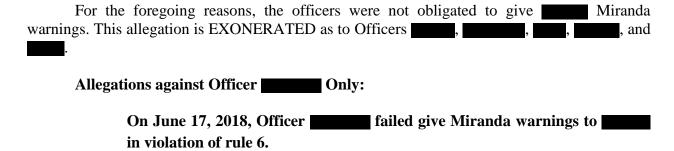


⁴⁹ The phrase "become the focus of the investigation" refers to outdated law and is a higher threshold than the Constitutional requirements. The issue was not addressed in this case because of the intervening circumstances of the chaotic scene causing the officers to move the investigation to a safer location. See below.

18

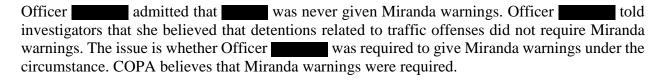
officers asked him about what had occurred. Prior to making the decision to arrest also questioned a number of other disinterested parties.

Additionally, according to the G04-03, Miranda "warnings need not be given on the scene immediately to a person in custody when the urgency of a situation poses a threat to the public safety or the safety of the officer." Here, we know that the scene was chaotic. Officers were not entirely clear on what call they were responding to or the identities of the involved parties. At the time of the investigation, officers had been told there was a suspect with a gun, which was never recovered. Both parties had family members on the scene, some were being aggressive with the officers. Multiple officers discussed the tension on the scene and the fear that more people would need to be arrested.



This allegation is **SUSTAINED.** Rule 6 prohibits an officer from violating any order or directive General Order G04-03 says expressly that:

"[b]efore the interrogation of an individual **who is in custody**, including in the field, **regardless of the offense**, the sworn investigating member will, in the presence of another sworn Department member if possible, expressly warn the individual of their constitutional rights by orally reciting each of the warnings and obtaining a response for each warning." (Emphasis added.)



As discussed above, there is a distinction regarding whether Miranda is proper for traffic offences: in the field while on scene and in the station while in custody. As explained above, none of the officers, including whether Miranda while on the scene.

However, once was in custody, Officer was required to give Miranda warnings prior to continuing to question General Order G04-03 defines "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or has otherwise been deprived of his freedom of action by the authorities in any significant way." G04-03 references *Berkemer v. McCarty*, which states that "...a person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in

Miranda, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested.⁵⁰"

Similar to here, the underlying arrest in *Berkemer* was for driving under the influence, where the suspect was arrested for suspicion of DUI and was interviewed at the police station subsequent to his arrest without being given Miranda warnings. The Court in *Berkemer* found that subsequent interrogation without advisement of his *Miranda* rights was improper. Here, was questioned in the field about his sobriety and about the traffic offenses for which he was later cited before being arrested. According to *Berkemer*, the on-scene investigation was proper.

After His arrest, was again questioned without being given Miranda warnings. Specifically, was questioned about whether he was actually driving the vehicle, where he was coming from, whether he drank while there, the alcohol found in the vehicle, and why he left the scene. Based on the *Berkemer* standard, Officer was required to give Miranda warnings to prior to initiating her questions at the station. This is in line with the General Orders. Officer expressed her belief that Miranda warnings were not required because the questions only pertained to traffic violations. To Officer credit, Berkemer also held that *Miranda* warnings are not necessary during the routine traffic stop out in the field. But, again, once the subject is in custody, **regardless of the offense**, an arrestee must be given his/her *Miranda* rights before custodial questioning.

The allegation that Officer failed to give Miranda warnings in violation of rule 6 is **SUSTAINED.** 51

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer

i. Complimentary and Disciplinary History

Officer 'training and complimentary history were considered in determining discipline for this case. Officer received a reprimand September 2018 for court appearance violation. Officer also has a Sustained allegation for log 1090379, for failure to perform job duties, that resulted in no-penalty from July 2018.

Recommended Penalty, by Allegation

Officer acknowledged that she was unaware of the necessity to Mirandize an individual while in custody, related to traffic offenses. COPA recommends a discipline of

⁵⁰ Berkemer v. McCarty, 468 U.S. 420, 434 (1984).

⁵¹ It should be noted that this is only a violation of the General Orders and not a violation of the U.S. Constitution. The 5th amendment rights against self-incrimination are only violated when admissions are used in criminal case against declarant. *Chavez v. Martinez*, 538 U.S. 760 (2003). Here, ultimately was not charged with driving under the influence and all of the traffic tickets were dismissed without prosecution.

violation-noted. COPA also recommends that Officer receive the necessary applicable training to ensure her understanding of the law in this regard.

VIII. CONCLUSION

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

Officer	Allegation	Findings/ Recommendations
Officer	1. On June 17, 2018, Officer arrested without justification.	EXONERATED
	2. On June 17, 2018, Officer failed to investigate complaints by that threatened him with a gun.	UNFOUNDED
	3. On June 17, 2018, Officer had the vehicle belonging to towed without justification.	EXONERATED
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Approved:



Appendix A

Assigned Investigative Staff

Squad#:	
Investigator:	
Supervising Investigator:	
Deputy Chief Administrator:	
Attorney:	