

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	December 22, 2018
Time of Incident:	8:25 AM
Location of Incident:	[REDACTED]
Date of COPA Notification:	January 31, 2019
Time of COPA Notification:	1:15 PM

On December 22, 2018, Officers [REDACTED] and [REDACTED] responded to a call for service at a residence, then performed a traffic stop on [REDACTED]. [REDACTED] was arrested for driving under the influence (DUI) and he received two traffic citations for failing to stop at stop signs. [REDACTED] alleged he was arrested and cited without justification. After interviewing [REDACTED], reviewing available evidence, and watching relevant Department video, COPA finds all allegations are Exonerated. COPA’s findings are further discussed in the Analysis portion of this report.

**II. INVOLVED PARTIES**

Involved Officer #1:	[REDACTED], Star # [REDACTED], Employee ID # [REDACTED], Date of Appointment: [REDACTED] 2018, Probationary Police Officer, District [REDACTED], Date of Birth: [REDACTED], 1989, Male, Black
Involved Officer #2:	[REDACTED], Star # [REDACTED], Employee ID # [REDACTED], Date of Appointment: April [REDACTED], 2008, Police Officer as Field Training Officer, District [REDACTED], Date of Birth: [REDACTED], 1979, Male, Hispanic
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED], 1969, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer [REDACTED]	1. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
	2. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated

	3. Charged [REDACTED] with driving under the influence without justification, in violation of Rule 2 and Rule 6.	Exonerated
Officer [REDACTED]	1. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
	2. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.	Exonerated
	3. Charged [REDACTED] with driving under the influence without justification, in violation of Rule 2 and Rule 6.	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.

Special Orders

1. **S04-8:** Driving While Under the Influence (DUI) and Zero Tolerance.

2. **S04-08-01:** DUI Investigations – Chemical Testing Procedures.

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**

COPA interviewed the complainant, [REDACTED], on January 31, 2019.<sup>2</sup> On December 22, 2018, [REDACTED] was pursued by CPD after someone complained that [REDACTED] was causing a disturbance at [REDACTED], the home of his then-girlfriend [REDACTED] [phonetic]. [REDACTED] spent the night and had one beer at approximately 11:00 PM. [REDACTED] and [REDACTED] had an argument. [REDACTED] left, but tried to get back into [REDACTED]’s home by ringing the back doorbell. When

<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> Att. 3

█████ did not answer, █████ left in his car. █████ stated that his car was parked in the alley and he denied seeing a police car when he drove off.<sup>3</sup> █████ first noticed a marked police SUV with its lights on after he was roughly one block from █████'s home. Two officers (Officers █████ and █████) told █████ that he ran two stop signs. █████ acknowledged running through one, as he was looking for somewhere to park. Officer █████ approached on the driver's side, asked for a driver's license, and related █████ was involved in a disturbance. Officer █████ told █████ that he smelled alcohol. █████ admitted to the officer that he had one beer and he provided his driver's license. The officers went to their car and when they returned, █████ was asked out of the vehicle, searched by Officer █████, handcuffed, and his car was searched by Officer █████. The officers told █████ he was arrested for driving under the influence (DUI).

█████ was brought to the █████ District station, where he performed three tests: following a pen with his eyes, walking in a straight line, and a breathalyzer. Per █████, he blew into the device three times and each time, the officers related he did not blow hard enough. The officers told him that he failed the breathalyzer because he did not blow hard enough.

█████ denied that he was intoxicated, sick, or threw up in his vehicle. Per █████, he had been helping █████ in her basement and it was dirt on his clothes, not vomit. █████ believed he had no reason to be pulled over.<sup>4</sup>

#### b. Digital Evidence

The following relevant **Body Worn Camera (BWC)** and **In Car Camera (ICC)** was obtained from █████'s arrest on December 22, 2018.<sup>5</sup>

#### *Officer █████*

At about 8:08 PM, Officers █████ and █████ heard a radio call for service at █████ █████, with a woman complaining about a man refusing to leave her home. The officers pulled into an alley at about 8:14 AM, announced they saw someone, then announced that said individual ran a stop sign. The officers used their sirens at about 8:15 AM and exited their car shortly after. Officer █████ approached █████ on the driver's side asked and █████ why his friend called the police. █████ responded that his friend owed him money. █████ provided his ID and the officers went to the squad car. Officer █████ told Officer █████ that █████ "had barf all over him, we got to at least see if he's okay to drive."<sup>6</sup>

The officers returned to █████'s vehicle and Officer █████ told █████ they were bringing him to the police station for a breathalyzer test. █████ denied he was under the influence and admitted he "had a couple beers."<sup>7</sup> Officer █████ opened █████'s car door and asked him to exit. █████ stated he did not want to go to jail, then stated he was going to park

<sup>3</sup> █████ was inconsistent as to when he first saw the squad car, where he stopped, and how many stop signs he passed.

<sup>4</sup> COPA did not interview the officers in this case because BWC confirmed that the officers' actions were within policy.

<sup>5</sup> Att. 25

<sup>6</sup> Approximately 8:18 AM mark of Officer █████'s BWC.

<sup>7</sup> Approximately 8:22 AM mark of Officer █████'s BWC.

his car across the street. Officer ██████ told ██████ not to move his car. ██████ then removed the keys from ignition and exited his car. ██████ initially attempted to walk to passenger's side of his car, when the officers performed a pat down and handcuffed ██████. The officers put ██████ in the backseat of the squad car at about 8:27 AM and began searching ██████'s vehicle. What appears to be vomit was seen on the driver's side of the vehicle at about 8:33 AM. The officers returned to their car and drove off at approximately 8:36 AM.

The officers arrived at the police station at about 8:41 AM and escorted ██████ inside. Officer ██████ told ██████ that ██████ appeared to be under the influence of alcohol and asked if he wanted to take field sobriety tests. ██████ agreed, and the officers began the horizontal gaze nystagmus test at approximately 8:51 AM. ██████ kept moving his head slightly, after he was told to only move his eyes. Next, Officer ██████ instructed ██████ to walk and turn. At approximately 8:56 AM, Officer ██████ instructed ██████ to stand with a leg extended off the ground. Officer ██████ began reading ██████ the warning to motorist at about 9:00 AM, and ██████ agreed to take the breathalyzer. Later, Officer ██████ told ██████ that he had failed his breathalyzer test.<sup>8</sup> ██████ refused to answer any questions.

#### **Officer ██████**

At approximately 8:14 AM, Officer ██████ announced that he saw ██████ and related ██████ was trying to flee. The officers pulled ██████ over and Officer ██████ approached ██████'s car on the passenger's side. After speaking with each other in the squad car, the officers returned to ██████'s car and told him to exit. Officer ██████ handcuffed ██████ and the officers put him in their squad car. The officers proceeded to search ██████'s vehicle. At about 8:31 AM, Officer ██████ opened the driver's door and immediately announced, "Aw fuck, I'm not driving this shit," presumably because of the smell of vomit. Officer ██████ returned to the squad car shortly after. Officer ██████ asked ██████ what occurred with his friend. ██████ responded that they were playing cards and his friend got upset because she was losing and owed ██████ money. When Officer ██████ asked ██████ why he took off from the alley, ██████ did not respond. The officers drove off and arrived at the police station at about 8:41 AM. After escorting ██████ into the station, Officer ██████ told another Department member that ██████ decided "to take off on us and then he's like running every stop sign and he's all vomit everywhere."<sup>9</sup> ██████ agreed to take field sobriety tests, which the officers performed. At about 8:53 AM, believed vomit was seen on the front of ██████'s shirt.

#### **Beat ██████ (Officers ██████ and ██████)**

ICC shows the officers entering an alley where a red sedan, known to be occupied by ██████, was facing the officers. ██████ reversed out of the east end of the alley, then turned north onto Loomis St. ██████ went past a stop sign at ██████ St. and Loomis. ██████ continued north on Loomis and turned west onto ██████ St., past a second stop sign. ██████ turned south onto Bishop, where came to stop outside of ██████.<sup>10</sup> The officers approached ██████'s vehicle shortly after.

<sup>8</sup> Officer ██████'s BWC did not capture ██████ performing the breathalyzer test or the subsequent result(s).

<sup>9</sup> Approximately 8:44 AM mark of Officer ██████'s BWC.

<sup>10</sup> See Att. 26 for a map depicting ██████'s approximate path of travel.

### c. Physical Evidence

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

### d. Documentary Evidence

██████████'s **Arrest Report** was obtained from December 22, 2018.<sup>11</sup> ██████████ was arrested near ██████████. at approximately 8:24 AM. ██████████ received two traffic citations for failing to stop at a stop sign and one misdemeanor charge for DUI. Per this report, Officers ██████████ and ██████████ “responded to a call of a disturbance, at ██████████.” The officers saw ██████████ on the side of the home. Upon seeing the officers, ██████████ “fled to the rear of the residence” and entered a vehicle, “which was parked in the alley.” ██████████ then backed out the alley as the officers approached. The officers turned on their emergency equipment, and ██████████ failed to stop at stop signs at ██████████ and at ██████████. ██████████ turned west onto ██████████ and stopped at ██████████. Officer ██████████ approached on the driver’s side “and observed a strong odor of alcoholic beverage emanating from arrestee’s breath and body, red glassy bloodshot eyes, and [██████████] mumbled when asked to produce a valid IL DL and where arrestee was coming from.” Officer ██████████ also saw vomit on ██████████ and inside of his car. ██████████ reportedly, “was indifferent and had poor ability to follow instruction, when instructed to exit the vehicle.” ██████████ also tried to turn the ignition on “after he was instructed not to.” ██████████ eventually exited his car and was told stand still. ██████████ “failed to comply and walked around the passenger side [of his] vehicle in order to close the driver side door.” ██████████ was arrested and taken to the ██████████ District “for a D.U.I. investigation.” During transportation, the officers “smelled a strong odor of alcohol beverage.”

Once at the police station, the officers performed “the horizontal gaze nystagmus test,” during which ██████████ “continued to move his head” and officers saw “jerking of the eye and lack of smooth pursuit.” When the officers conducted the “walk and turn test,” ██████████ began before the officers finished instructions. ██████████ did not “touch heel to toe” and “stopped after the first nine [...] steps and asked, ‘what now.’” During the “one leg stand test, arrestee stopped counting” and was instructed to start over. ██████████ began again “and placed the left foot down at the start [of] the count.” Officer ██████████ read ██████████ a warning to motorist and ██████████ agreed to take a breathalyzer. ██████████ “failed to follow instruction and test resulted in insufficient sample [...] after 3 attempts.” ██████████ refused further questions, and the officers concluded ██████████ was under the influence of alcohol. Per lockup keeper remarks, ██████████ admitted “to having a few drinks.”

The following relevant **Office of Emergency Management and Communications (OEMC) Event Query Reports** were obtained in relation to ██████████'s December 22, 2018 arrest.

- **Event Number** ██████████ initiated at roughly 7:39 AM.<sup>12</sup> A caller named ██████████ reported a bald, black male, wearing black, and with a dark complexion was “sitting out front in a [dark] red/burgundy Pontiac – getting in and out of the car and ringing

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<sup>11</sup> Att. 8

<sup>12</sup> Att. 12

the door bell and knocking on the window.” ██████ reported the male was a friend who refused to leave “after he was asked to leave from a card game last night.” Beat ██████ (Officer ██████ and Officer ██████ was dispatched at about 8:09 AM, ran ██████’s license plate at about 8:16 AM, and ran his driver’s license at about 8:20 AM, before going to the ██████ District with one subject at roughly 8:30 AM.

- **Event Numbers** ██████ and ██████ were initiated at about 12:19 PM, with requests to tow ██████’s vehicle from ██████.<sup>13</sup>

During his COPA interview, ██████ provided copies of three traffic citations he received on December 22, 2018.<sup>14</sup> Two citations were for failing to stop at a stop sign, and one was for DUI. COPA also identified the dockets for these citations through the Cook County Clerk of the Circuit Court.<sup>15 16</sup> These cases are ongoing, with an upcoming court date of July 3, 2019.

## 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

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<sup>13</sup> Atts. 10, 11

<sup>14</sup> Att. 7

<sup>15</sup> Att. 28

<sup>16</sup> The docket information listed the citations’ date of issuance as November 22, 2018. COPA believes this is a clerical or typographical error, and that the citations are actually from December 22, 2018.

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 both officers, that they detained ██████ without justification, is **Exonerated**. The officers initially approached ██████ in the alley to ask him about ██████’s 911 call. ██████ proceeded to lead the officers on an approximately quarter mile journey away from ██████, that included driving through two stop signs making three turns before he stopped. While available video is unclear as to whether ██████ stopped at the stop sign at ██████ and Loomis, ICC shows he ran the stop sign at ██████ and ██████. ██████ also admitted to running a stop sign while looking for somewhere to park. Because the officers were investigating a 911 call, ██████ fled from the officers, and ██████ ran at least one stop sign, the officers had sufficient probable cause to stop him and this allegation is Exonerated.

Further, ██████’s assertion that he did not see the officers until he was one block from ██████’s home is improbable and diminishes his credibility. ██████ was directly facing the officers when he exited the alley. It is highly unlikely that he would not have seen them until he was one block from ██████’s residence. Either ██████ is attempting to lessen his culpability in the situation, or he was simply too intoxicated to accurately recall the events of the incident.

**Allegation 2** against both officers, that they arrested ██████ without justification, is also **Exonerated**. The officers had probable cause to arrest ██████ for DUI. They were responding to a 911 call from ██████ in which she stated ██████ refused to leave her home and was behaving oddly. When the officers encountered ██████, he drove away from officers, went through two stop signs, upon approach officers smelled alcohol, and vomit was observed on his clothes and in his car. While ██████ denied he was intoxicated, he admitted to Officer ██████ that he had “a couple beers.” Based on these factors, the officers had reason to believe ██████ was intoxicated and bring him to the station for further investigation. As such, this allegation is Exonerated.

Additionally, ██████’s assertion that he had dirt on his clothing, not vomit, further weakens his credibility. Based on the officers’ reactions, which were captured on their BWC footage, they clearly smelled vomit. Whether ██████ was intentionally evasive in his answers to COPA or merely too intoxicated during the incident to accurately recall the events, his credibility is certainly weakened.

**Allegation 3** against Officer ██████ and Officer ██████, that they charged ██████ with DUI without justification, is also **Exonerated**. The same factors detailed in the analysis for allegation 2 created the basis for ██████’s misdemeanor DUI charge. ██████ was apparently under the impression he was charged with DUI because he did not blow hard enough during the breathalyzer. In fact, his behavior, the field sobriety tests, his admission to drinking, and the presence of vomit created the basis for believing he was intoxicated on alcohol while driving, and this allegation is Exonerated.

**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officer [REDACTED]	1. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.  2. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.  3. Charged [REDACTED] with driving under the influence without justification, in violation of Rule 2 and Rule 6.	Exonerated  Exonerated  Exonerated
Officer [REDACTED]	1. Detained [REDACTED] without justification, in violation of Rule 2 and Rule 6.  2. Arrested [REDACTED] without justification, in violation of Rule 2 and Rule 6.  3. Charged [REDACTED] with driving under the influence without justification, in violation of Rule 2 and Rule 6.	Exonerated  Exonerated  Exonerated

Approved:

[REDACTED]

June 28, 2019

\_\_\_\_\_  
 Andrea Kersten  
 Deputy Chief Administrator – Chief Investigator

\_\_\_\_\_  
 Date



Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	██████████
<b>Investigator:</b>	████████████████████, #██████████
<b>Supervising Investigator:</b>	████████████████████, #██████████
<b>Deputy Chief Administrator:</b>	████████████████████, #██████████