Not Sustained

# SUMMARY REPORT OF INVESTIGATION

# I. EXECUTIVE SUMMARY

Date / time of In	cident:		January 26	2019 appr	oximately 7:00 i	
		January 26, 2019, approximately 7:00 p.m.				
Location of Incident:		Chicago, Illinois				
Date / time of Co	OPA Not	ification:	January 28,	, 2019, 10:3	9 a.m.	
ustifying the deternything to justify Accountability ('	d his car suspecte ention and y his dete 'COPA") ons.	prior to rele ed hand-to- d frisk.	easing himhand transa alleged a e searches. A	According action while improper se after investig	under CPD su arch and seizure gation, The Civil	""), frisked fficers, had arveillance, thereby, denying that he did lian Office of Police ove or to disprove
Involved Officer	:#1:		ppointment:		Employee ID# 2013; Rank: Poli B: , 19	
Involved Officer #2:  Date of A		ppointment:, DOB:, 1900, M/ W.  ppointment:, Employee ID#;  ppointment:, 2000; Rank: Police Officer;  ssignment:, DOB:, 1976; M/W.				
Involved Individ	lual #1:		, DOB:	, 197	79, M/B	
III. ALLE	EGATIO	NS				
Officer	Allegat	ion				Finding
Officer	January miscon	26, 2019, a	at approxima	ntely 7:00p.r o, Illinois, ing acts or o	that on or about, at or near you committee omissions:	

2. Searched without justification.

	3. Searched 's vehicle without justification.	Not Sustained
Officer	It is alleged by the Complaint that on or about January 26, 2019, at approximately 7:00p.m., at or near Street, Chicago, Illinois, you committed misconduct through the following acts or omissions:	
	1. Detained without justification.	Not Sustained
	2. Searched without justification.	Not Sustained
	3. Searched system 's vehicle without justification.	Not Sustained

## IV. APPLICABLE RULES AND LAWS

#### Rules

- 1. Rule 1, CPD Rules of Conduct (prohibiting legal violations)
- 2. Rule 6, CPD Rules of Conduct (prohibiting disobedience of CPD directives)
- 3. Rule 8, CPD Rules of Conduct (prohibiting maltreatment)

# Special Orders

1. CPD Special Order S04-13-09 *Investigatory Stop System* (effective date: July 10, 2017)

## Federal Laws

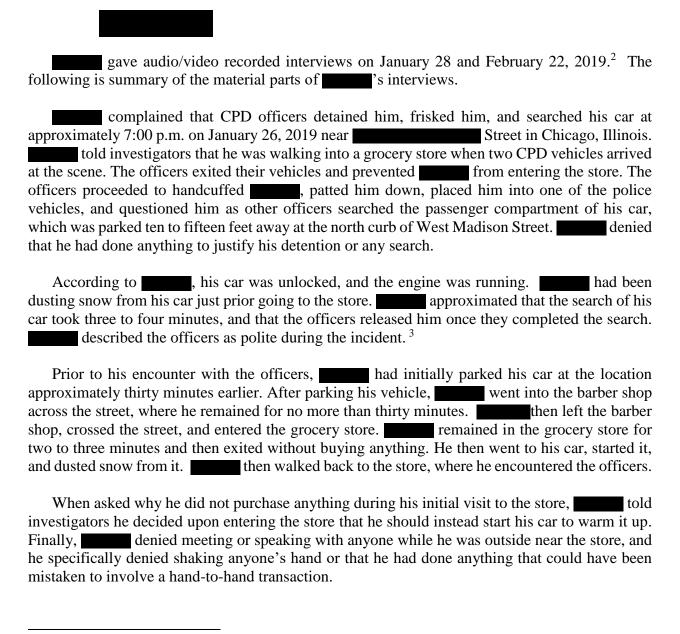
1. U. S. Constitution, Fourth Amendment

## State Laws

- 1. 725 ILCS 5/107-14
- 2. 725 ILCS 5/108-1.01

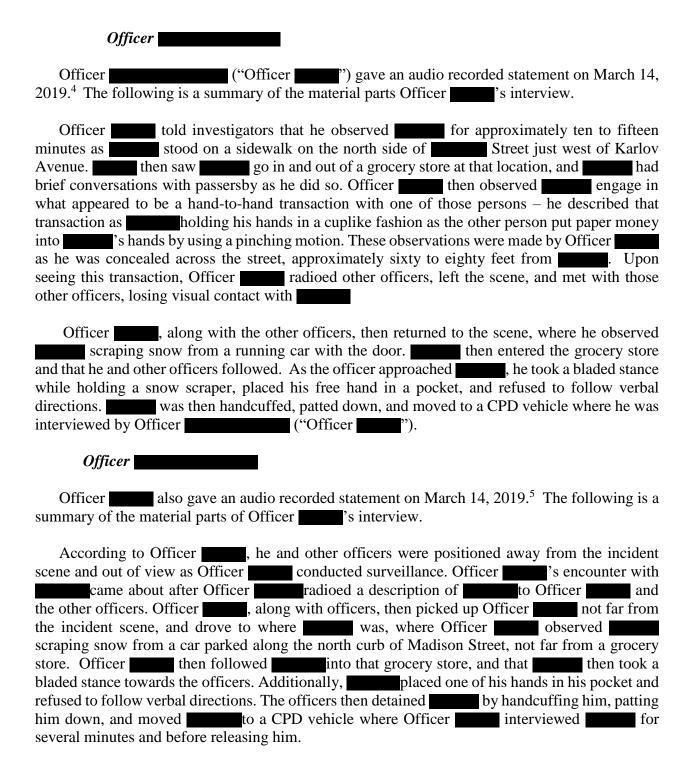
## V. INVESTIGATION<sup>1</sup>

#### a. Interviews



<sup>&</sup>lt;sup>1</sup>COPA investigated. The following is a summary of the material evidence gathered and relied upon in our analysis. <sup>2</sup>Attachment 5 is an audio recording of summary 28, 2019 interview. Attachment 17 is an audio recording of his February 22, 2019 interview.

complained that an officer who identified himself as Officer used a cell phone to take a photograph of sid card. During Officer sides are confirmed that he did in fact take a cell phone photograph of sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for purposes of completing an investigatory stop report relating to sides are card for p



#### VI. LEGAL STANDARD

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

<sup>&</sup>lt;sup>4</sup>Attachments 30 and 31 comprise an audio recording of that statement.

<sup>&</sup>lt;sup>5</sup>Attachment 26 is an audio recording of that statement.

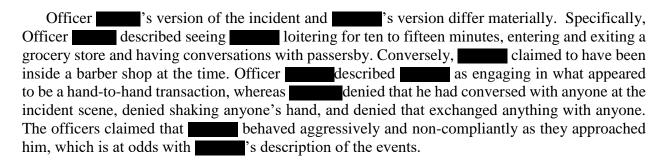
- 1. <u>Sustained</u> where it is determined the allegation is supported by a preponderance of the evidence;
- 2. <u>Not Sustained</u> where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
- 3. <u>Unfounded</u> where it is determined by clear 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.

#### VII. ANALYSIS

#### Differing Accounts



# Allegation 1

The propriety of the officers' actions in detaining depends upon whether they had reasonable suspicion that committed a criminal offense, that he was about to commit a criminal offense, or that he was in the act of committing a criminal offense. If Officer shows description of shows behavior is true, then the officers would have arguably had reasonable

<sup>&</sup>lt;sup>6</sup>People v. Timmsen, 2016 IL 118181, ¶9; 725 ILCS 5/107-14; CPD Special Order S04-13-09 Investigatory Stop System (effective date: July 10, 2017), Section V.

suspicion to detain. However, if success account is true, then the officers' actions would most likely would not have reasonable suspicion. We find both versions largely plausible, though both also contained some unlikely elements. For example, account of leaving his car running with a passenger door open as he returned to the store is questionable. Similarly, Officer ability to discern visually from sixty to eighty feet away at night during a snowstorm that received paper money from another person is also questionable. For these reasons, and 's and the officer's accounts to be material different with one account no more credible than the other, COPA is unable to determine what most likely occurred. Accordingly, Allegation 1 is not sustained.

# Allegation 2

The propriety of the officers' actions in patting down depends upon whether they had reasonable suspicion that was armed and dangerous or that presented a danger of attack to the officers or others. <sup>7</sup> The applicable standard for resolving those questions is whether a reasonable, objective officer under the same circumstances would have suspicions of the same dangers. However, as with allegation 2, we are unable to determine which materially different account is more true than the other. Accordingly, allegation is also not sustained.

# Allegation 3

In this case, the propriety of a search of sea had probable cause to believe that the vehicle contained evidence of a crime. 9 Again, for the same reasons. Allegation 3 is therefore also not sustained.

#### VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer	It is alleged by the Complaint that on or about January 26, 2019, at approximately 7:00p.m., at or near Street, Chicago, Illinois, you committed misconduct through the following acts or omissions:	
	4. Detained without justification.	Not Sustained
	5. Searched without justification.	Not Sustained

<sup>&</sup>lt;sup>7</sup>See Terry v. Ohio, 392 U.S. 1, 27 (1968); 725 ILCS 5/108-1.01; CPD Special Order S04-13-09 Investigatory Stop System (effective date: July 10, 2017), Section VI.

<sup>&</sup>lt;sup>8</sup>See Terry v. Ohio, supra, 392 U.S. at 27.

<sup>&</sup>lt;sup>9</sup>See Collins v. Virginia, 584 U. S. \_\_\_, slip op. at 5 (May 29, 2018), citing California v. Carney, 471 U. S. 386, 392 -93 (1985).

	6. Searched justification.	's vehicle without	Not Sustained	
Officer	It is alleged by the Complaint that on or about January 26, 2019, at approximately 7:00p.m., at or near Street, Chicago, Illinois, you committed misconduct through the following acts or omissions:			
	4. Detained	without justification.	Not Sustained	
	5. Searched	without justification.	Not Sustained	
	6. Searched justification.	's vehicle without	Not Sustained	
Approved:				
		August 29, 2019		
Andrea Kersten Deputy Chief Inv	vestigator	Date		

# Appendix A

Assigned Investigative Staff

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