

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / time of Incident:	January 26, 2019, approximately 7:00 p.m.
Location of Incident:	████████████████████ Chicago, Illinois
Date / time of COPA Notification:	January 28, 2019, 10:39 a.m.

Chicago Police Department (“CPD”) officers detained ██████████ (“████████”), frisked him, and searched his car prior to releasing him. According to interviewed officers, ██████████ had participated in a suspected hand-to-hand transaction while under CPD surveillance, thereby justifying the detention and frisk. ██████████ alleged improper search and seizure, denying that he did anything to justify his detention or the searches. After investigation, The Civilian Office of Police Accountability (“COPA”) determined there is insufficient evidence to prove or to disprove ██████████’s allegations.

II. INVOLVED PARTIES

Involved Officer #1:	██████████, Star # ██████████, Employee ID# ██████████; Date of Appointment: ██████████, 2013; Rank: Police Officer; Unit of Assignment: ██████/█████, DOB: ██████████, 1986; M/W.
Involved Officer #2:	██████████, Star # ██████████, Employee ID# ██████████; Date of Appointment: ██████████, 2000; Rank: Police Officer; Unit of Assignment: ██████/█████, DOB: ██████████, 1976; M/W.
Involved Individual #1:	██████████, DOB: ██████████, 1979, M/B

III. ALLEGATIONS

Officer	Allegation	Finding
Officer ██████████	It is alleged by the Complain ██████████ 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. 2. Searched ██████████ without justification.	Not Sustained Not Sustained

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

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. INVESTIGATION¹

a. Interviews

██████████

██████████ gave audio/video recorded interviews on January 28 and February 22, 2019.² The following is summary of the material parts of ██████████'s interviews.

██████████ complained that CPD officers detained him, frisked him, and searched his car at approximately 7:00 p.m. on January 26, 2019 near ██████████ Street in Chicago, Illinois. ██████████ told investigators that he was walking into a grocery store when two CPD vehicles arrived at the scene. The officers exited their vehicles and prevented ██████████ from entering the store. The officers proceeded to handcuff ██████████, patted him down, placed him into one of the police vehicles, and questioned him as other officers searched the passenger compartment of his car, which was parked ten to fifteen feet away at the north curb of West Madison Street. ██████████ denied that he had done anything to justify his detention or any search.

According to ██████████, his car was unlocked, and the engine was running. ██████████ had been dusting snow from his car just prior going to the store. ██████████ approximated that the search of his car took three to four minutes, and that the officers released him once they completed the search. ██████████ described the officers as polite during the incident.³

Prior to his encounter with the officers, ██████████ had initially parked his car at the location approximately thirty minutes earlier. After parking his vehicle, ██████████ went into the barber shop across the street, where he remained for no more than thirty minutes. ██████████ then left the barber shop, crossed the street, and entered the grocery store. ██████████ remained in the grocery store for two to three minutes and then exited without buying anything. He then went to his car, started it, and dusted snow from it. ██████████ then walked back to the store, where he encountered the officers.

When asked why he did not purchase anything during his initial visit to the store, ██████████ told investigators he decided upon entering the store that he should instead start his car to warm it up. Finally, ██████████ denied meeting or speaking with anyone while he was outside near the store, and he specifically denied shaking anyone's hand or that he had done anything that could have been mistaken to involve a hand-to-hand transaction.

¹COPA investigated. The following is a summary of the material evidence gathered and relied upon in our analysis.

²Attachment 5 is an audio recording of ██████████'s January 28, 2019 interview. Attachment 17 is an audio recording of his February 22, 2019 interview.

³██████████ complained that an officer who identified himself as Officer ██████████ used a cell phone to take a photograph of ██████████'s id card. During Officer ██████████'s statement, Officer ██████████ confirmed that he did in fact take a cell phone photograph of ██████████'s id card for purposes of completing an investigatory stop report relating to ██████████'s detention. (See Attachment 26, which is an audio recording of Officer ██████████'s statement. See also Attachment 11, which is a printout of that investigatory stop report.) Officer ██████████ further stated that he subsequently deleted that photograph after the report's completion. See Attachment 26. Prior to serving allegations upon Officer ██████████, COPA determined that ██████████'s complaint concerning Officer ██████████'s behavior in taking that photograph was not expressly prohibited by law or by CPD rule.

Officer ██████████

Officer ██████████ (“Officer ██████████”) gave an audio recorded statement on March 14, 2019.⁴ The following is a summary of the material parts Officer ██████████’s interview.

Officer ██████████ told investigators that he observed ██████████ for approximately ten to fifteen minutes as ██████████ stood on a sidewalk on the north side of ██████████ Street just west of Karlov Avenue. ██████████ then saw ██████████ go in and out of a grocery store at that location, and ██████████ had brief conversations with passersby as he did so. Officer ██████████ then observed ██████████ engage in what appeared to be a hand-to-hand transaction with one of those persons – he described that transaction as ██████████ holding his hands in a cuplike fashion as the other person put paper money into ██████████’s hands by using a pinching motion. These observations were made by Officer ██████████ as he was concealed across the street, approximately sixty to eighty feet from ██████████. Upon seeing this transaction, Officer ██████████ radioed other officers, left the scene, and met with those other officers, losing visual contact with ██████████

Officer ██████████, along with the other officers, then returned to the scene, where he observed ██████████ scraping snow from a running car with the door. ██████████ then entered the grocery store and that he and other officers followed. As the officer approached ██████████, he took a bladed stance while holding a snow scraper, placed his free hand in a pocket, and refused to follow verbal directions. ██████████ was then handcuffed, patted down, and moved to a CPD vehicle where he was interviewed by Officer ██████████ (“Officer ██████████”).

Officer ██████████

Officer ██████████ also gave an audio recorded statement on March 14, 2019.⁵ The following is a summary of the material parts of Officer ██████████’s interview.

According to Officer ██████████, he and other officers were positioned away from the incident scene and out of view as Officer ██████████ conducted surveillance. Officer ██████████’s encounter with ██████████ came about after Officer ██████████ radioed a description of ██████████ to Officer ██████████ and the other officers. Officer ██████████, along with officers, then picked up Officer ██████████ not far from the incident scene, and drove to where ██████████ was, where Officer ██████████ observed ██████████ scraping snow from a car parked along the north curb of Madison Street, not far from a grocery store. Officer ██████████ then followed ██████████ into that grocery store, and that ██████████ then took a bladed stance towards the officers. Additionally, ██████████ placed one of his hands in his pocket and refused to follow verbal directions. The officers then detained ██████████ by handcuffing him, patting him down, and moved ██████████ to a CPD vehicle where Officer ██████████ interviewed ██████████ for several minutes and before releasing him.

VI. LEGAL STANDARD

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

⁴Attachments 30 and 31 comprise an audio recording of that statement.

⁵Attachment 26 is an audio recording of that statement.

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

Differing Accounts

Officer ██████'s version of the incident and ██████'s version differ materially. Specifically, Officer ██████ described seeing ██████ loitering for ten to fifteen minutes, entering and exiting a grocery store and having conversations with passersby. Conversely, ██████ claimed to have been inside a barber shop at the time. Officer ██████ described ██████ as engaging in what appeared to be a hand-to-hand transaction, whereas ██████ denied that he had conversed with anyone at the incident scene, denied shaking anyone's hand, and denied that exchanged anything with anyone. The officers claimed that ██████ behaved aggressively and non-compliantly as they approached him, which is at odds with ██████'s description of the events.

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.⁶ If Officer ██████'s description of ██████'s behavior is true, then the officers would have arguably had reasonable

⁶*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 [REDACTED]. However, if [REDACTED]'s account is true, then the officers' actions would most likely not have reasonable suspicion. We find both versions largely plausible, though both also contained some unlikely elements. For example, [REDACTED]'s account of leaving his car running with a passenger door open as he returned to the store is questionable. Similarly, Officer [REDACTED]'s ability to discern visually from sixty to eighty feet away at night during a snowstorm that [REDACTED] received paper money from another person is also questionable. For these reasons, and because we find [REDACTED]'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 [REDACTED] depends upon whether they had reasonable suspicion that [REDACTED] was armed and dangerous or that [REDACTED] presented a danger of attack to the officers or others.⁷ The applicable standard for resolving those questions is whether a reasonable, objective officer under the same circumstances would have suspicions of the same dangers.⁸ 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 [REDACTED]'s vehicle depends upon whether the officers 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 [REDACTED]	It is alleged by the Complaint [REDACTED] that on or about January 26, 2019, at approximately 7:00p.m., at or near [REDACTED] Street, Chicago, Illinois, you committed misconduct through the following acts or omissions:	
	4. Detained [REDACTED] without justification.	Not Sustained
	5. Searched [REDACTED] without justification.	Not Sustained

⁷See *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.

⁸See *Terry v. Ohio*, *supra*, 392 U.S. at 27.

⁹See *Collins v. Virginia*, 584 U. S. ___, slip op. at 5 (May 29, 2018), *citing California v. Carney*, 471 U. S. 386, 392 – 93 (1985).

	<p>6. Searched [REDACTED]'s vehicle without justification.</p>	<p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<p>It is alleged by the Complaint [REDACTED] that on or about January 26, 2019, at approximately 7:00p.m., at or near [REDACTED] Street, Chicago, Illinois, you committed misconduct through the following acts or omissions:</p> <p>4. Detained [REDACTED] without justification.</p> <p>5. Searched [REDACTED] without justification.</p> <p>6. Searched [REDACTED]'s vehicle without justification.</p>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p>

Approved:

[REDACTED]

August 29, 2019

Andrea Kersten
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	Squad █
Investigator:	██████████
Supervising Investigator:	██████████████████
Deputy Chief Administrator:	Andrea Kersten