

SUMMARY REPORT OF INVESTIGATION¹

Date/Time/Location of Incident:	November 12, 2016, 12:00 p.m., [REDACTED]
Date/Time of COPA Notification:	November 15, 2016, 12:48 p.m.
Involved Officer #1:	[REDACTED], star # [REDACTED], employee ID# [REDACTED], Date of Appointment: [REDACTED], 2007, PO, Unit [REDACTED], DOB, Male, Hispanic
Involved Officer #2:	[REDACTED], star # [REDACTED], employee ID# [REDACTED], Date of Appointment: [REDACTED], 2011, PO, Unit [REDACTED], DOB, Male, White
Involved Individual #1:	[REDACTED], DOB: [REDACTED], 1957, Male, White
Case Type:	[REDACTED] – Excessive Force – No Injury

I. ALLEGATIONS

Officer	Allegation	Finding
Officer [REDACTED]	The complainant alleged that on 12 November 2016, at approximately 1016 hours, at [REDACTED], you: 1. “slammed” him against a car; 2. improperly searched inside his underpants on the street; and 3. handcuffed him too tightly	Not Sustained Exonerated Not Sustained
Officer [REDACTED]	The complainant alleged that on 12 November 2016, at approximately 1016 hours, at [REDACTED], you: 1. “slammed” him against a car; 2. improperly searched inside his underpants on the street; 3. handcuffed him too tightly; 4. failed to secure him during transport 5. took his cell phone and failed to inventory or return it; 6. took \$10 USC and failed to inventory or return it.	Not Sustained Unfounded Unfounded Not Sustained Not Sustained Not Sustained

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

II. SUMMARY OF EVIDENCE²

On November 12, 2016, Officer [REDACTED] (“Officer [REDACTED]”) and Officer [REDACTED] (“Officer [REDACTED]”) were conducting a narcotics surveillance when they observed [REDACTED] (“[REDACTED]”) purchase narcotics.³ Officers [REDACTED] and [REDACTED] arrested [REDACTED] for possession. According to [REDACTED] when Officers [REDACTED] and [REDACTED] approached him, they grabbed him, dragged him about five feet to the police vehicle, and flung him on hood of the vehicle. [REDACTED] told the officers he had one bag in his wallet. Officers [REDACTED] and [REDACTED] improperly search him by dropping his pants to his knees and checked inside his underpants. Officers [REDACTED] and [REDACTED] placed [REDACTED] in handcuffs, which were so tight they dug into his skin. Then, they placed [REDACTED] in the back seat without a seatbelt and he was thrown about in the backseat during transport. [REDACTED] did not seek medical treatment due to limited financial resources.⁴

Officers [REDACTED] and [REDACTED] deny [REDACTED]’ allegations. According to Officers [REDACTED] and [REDACTED], [REDACTED] was cooperative and they did not need to slam [REDACTED] against the vehicle. [REDACTED] admitted he had used one bag of narcotics before he was stopped and handed the officers the other bag of narcotics. Officer [REDACTED] handcuffed [REDACTED] per procedure and without complaint from [REDACTED]. Officer [REDACTED] conducted a quick pat down of [REDACTED]’ outer garments for police safety before guiding him into the police vehicle. Officer [REDACTED] did not recall transporting [REDACTED], but stated [REDACTED] had on a seatbelt. At the station, Officer [REDACTED] conducted a custodial search, which included checking [REDACTED]’ waistband area.⁵

[REDACTED], further alleged, during processing at the police station, Officer [REDACTED] took his wallet, money, and cell phone. When [REDACTED] was released and collected his personal items, he was missing his cell phone and \$10.00.⁶ Officer [REDACTED] denied handling [REDACTED]’ cell phone. Officer [REDACTED] indicated, from the police report, [REDACTED] had \$3.00 that he would have kept and lockup personnel would have bagged the money in front of [REDACTED].⁷ Department Reports corroborate Officer [REDACTED] and [REDACTED]’s accounts that they were conducting narcotics surveillance that resulted in three arrests, [REDACTED], [REDACTED] and [REDACTED].⁸ Inventory Reports documented three cell phones were recovered. One cell phone was attributed to [REDACTED], and two cell phones were attributed to [REDACTED].⁹

III. LEGAL STANDARD

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

²COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

³ Attachments 26, 34.

⁴ Attachment 14.

⁵ Attachments 26, 34.

⁶ Attachment 14.

⁷ Attachments 26, 4.

⁸ Attachments 4-8.

⁹ Attachment 44.

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.

IV. ANALYSIS AND CONCLUSION

COPA finds the allegation that Officers ██████ and ██████ "slammed" ██████ against a car is **Not Sustained** because there is insufficient evidence to determine whether ██████ was slammed into the car. Officers are expected to use the least amount of appropriate force, based on the totality of the circumstances, to resolve confrontations.¹⁰ Both ██████ and Officers ██████ and ██████ stated ██████ cooperated with the officers and no force was necessary. However, ██████ stated the officers threw him against their vehicle, and Officers ██████ and ██████ deny using such force. Because there are no independent witnesses or video to corroborate the incident as described by ██████ or the officers. Therefore, there is insufficient evidence to determine whether Officers ██████ and ██████ "slammed" ██████ against a car.

COPA finds the allegation that Officer ██████ improperly searched inside his underpants on the street is **Exonerated** because the evidence shows Officer ██████ did search ██████' underpants as part of a custodial search. A custodial search is a warrantless search of a person under arrest with or without probable cause to believe there is any contraband or evidence subject to seizure on the person. This type of search is justified by the need to keep contraband and weapons out of jail, to preserve any possible evidence, and to protect the officer. [*Chimel v. California*, 395 U.S. 752 (1969); *New York v. Belton*, 453 U.S. 454 (1981)].¹¹ ██████ stated the

¹⁰ General Order G03-02-02, "Force Options," II. B and F, effective January 1, 2016.

¹¹ General Order G06-01-02, "Restraining Arrestees," IV. A., effective January 1, 2016.

officers searched inside his underpants on the street. Officer ██████ denied searching ██████. Officer ██████ denied searching ██████' underpants on the street, but admitted he grabbed and shook ██████' underpants as part of a custodial search at the police station. Considering contraband had been recovered from ██████, it was reasonable for Officer ██████ to search ██████' underpants to determine whether he had any contraband hidden inside.

COPA finds the allegation that Officer ██████ handcuffed ██████ too tightly is **Not Sustained** because there is insufficient evidence to determine whether ██████' handcuffs were tighter than necessary, and Officer ██████, knowingly, did not adjust them. An officer is prohibited from mistreating any individual.¹² ██████ stated the handcuffs were tight enough they were digging into his skin, and the officers ignored his complaints. Officer ██████ stated he handcuffed ██████ and received no complaints that they were too tight. Officer ██████ stated ██████ did not complain about his handcuffs. There are no independent witnesses, medical records, video or photographs to corroborate the incident as described by ██████ or the officers.

COPA finds the allegations that Officer ██████ improperly searched inside ██████ underpants on the street and handcuffed him too tightly are **Unfounded** because, as discussed above, Officer ██████ admitted to performing the actions not Officer ██████.

COPA finds the allegation that Officer ██████ failed to secure ██████ during transport is **Not Sustained** because there is insufficient evidence to determine whether ██████ was restrained with a seatbelt during transport. An individual restrained by handcuffs will be secured by means of the seat belt.¹³ ██████ stated Officer ██████ did not place him in a seatbelt. Officer ██████ did not recall transporting ██████ in his vehicle, but stated ██████ was secured by a seat belt. There are no independent witnesses or video evidence to corroborate the incident as described by ██████ or Officer ██████.

COPA finds the allegation that Officer ██████ took ██████' cell phone and failed to inventory or return it is **Not Sustained** because there is insufficient evidence to determine whether ██████ had a cell phone and whether Officer ██████ took it and failed to inventory it. An arresting officer will inventory all personal property in the arrestee's possession except the property identified for lockup personnel to accept.¹⁴ Officer ██████ stated he did not handle ██████' cell phone. There were three cell phones inventoried and three individuals arrested for this event. Two cell phones were inventoried under ██████'s name, and no cell phone was inventoried under ██████' name. However, there are no independent witnesses, video or any evidence to indicate how many cell phones ██████ had on his person or whether ██████ had a cell phone on his person. Therefore, there is insufficient evidence to determine whether Officer ██████ took ██████' cell phone and failed to inventory or return it.

COPA finds the allegations that Officer ██████ took \$10 USC and ██████' cell phone and failed to inventory or return them is **Not Sustained** because there is insufficient evidence to determine whether ██████ had \$10 USC on his person at the time of his arrest, and whether Officer ██████ took it. Lockup personnel will accept and inventory an arrestee's personal property of \$500.00 or less, United States currency.¹⁵ Officer ██████ pointed out that ██████' Arrest Report

¹² Resources, "Rules and Regulations of the Chicago Police Department," V. Rules of Conduct, Rule 8.

¹³ Uniform and Property U02-01-08, "Vehicles Equipped with Protective Dividers," effective February 7, 1985.

¹⁴ Special Order, S07-01-01, "Inventorying Arrestees' Personal Property," effective December 4, 2015.

¹⁵ *Id.*

documented he only had \$3.00 on his person, which lockup personnel would have processed. There are no independent witnesses or video to corroborate the incident as described by [REDACTED] or Officer [REDACTED].

Approved:



Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

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