

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	3/21/18
Time of Incident:	6:40 PM
Location of Incident:	810 W. 59 th St.
Date of COPA Notification:	4/19/19
Time of COPA Notification:	9:08 AM

II. INVOLVED PARTIES

Involved Officer #1:	Officer ██████████, star # ██████, employee ID# ██████, Date of Appointment ██████12, rank PO, Unit of Assignment ██████, DOB ██████85, Male, White Hispanic
Involved Officer #2:	Officer ██████████, star # ██████, employee ID# ██████, Date of Appointment ██████13, rank PO, Unit of Assignment ██████, DOB ██████84, Male, White Hispanic
Involved Officer #3:	Officer ██████████, star # ██████, employee ID# ██████, Date of Appointment ██████/13, rank, Unit of Assignment ██████, DOB ██████/85, Male, White Hispanic
Involved Individual #1:	██████████, Male, Black, DOB ██████78

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer ██████████	1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer ██████████ searched ██████████ person by reaching into his pockets, without justification in violation of Rule 6.	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.

	<p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] arrested [REDACTED] without justification in violation of Rule 6.</p> <p>3. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] transported [REDACTED] to the 007th District station without justification in violation of Rule 6.</p> <p>4. On or about March 23, 2018 at approximately 2230 hours at the 007th District station, Officer [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of Rules 5, 6 and General Order GO6-01-01.</p> <p>5. On or about March 23, 2018 at approximately 2230 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported witnessing multiple hand to hand transactions from [REDACTED] in violation of Rule 14.</p> <p>6. On or about March 23, 2018 at approximately 2230 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported that he issued [REDACTED] a ticket and then released him, when in fact he placed [REDACTED] in the back of the squad car for transport to the District 007 station in violation of Rule 14.</p>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained / Written Reprimand and Training</p> <p>Not Sustained</p> <p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<p>1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] searched [REDACTED] person by reaching into his pockets, without justification in violation of Rule 6.</p> <p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED]</p>	<p>Not Sustained</p> <p>Not Sustained</p>

	<p>██████████ arrested ██████████ without justification in violation of Rule 6.</p> <p>3. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer ██████████ transported ██████████ to the 007th District station without justification in violation of Rule 6.</p> <p>4. On or about March 23, 2018 at approximately 2230 hours at the 007th District station, Officer ██████████ failed to complete an arrest report for the arrest of ██████████ in violation of Rules 5, 6 and General Order GO6-01-01.</p> <p>5. On or about March 23, 2018 at approximately 22:30 hours Officer ██████████ made a willful and material false statement of fact on Investigatory Stop Report # ██████████ when he reported witnessing multiple hand to hand transactions from ██████████ in violation of Rule 14.</p> <p>6. On or about March 23, 2018 at approximately 22:30 hours Officer ██████████ made a willful and material false statement of fact on Investigatory Stop Report # ██████████ when he reported that he issued ██████████ ticket and then released him, when in fact he placed ██████████ the back of the squad car for transport to the District 007 station in violation of Rule 14.</p>	<p>Not Sustained</p> <p>Sustained/ Written Reprimand and Training</p> <p>Not Sustained</p> <p>Not Sustained</p>
<p>Officer ██████████ ██████████</p>	<p>1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer ██████████ arrested ██████████ without justification in violation of Rule 6.</p> <p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer ██████████ placed ██████████ in a squad car for transport to the 007th District station without justification in violation of Rule 6.</p>	<p>Not Sustained</p> <p>Not Sustained</p>

	<p>3. On or about March 23, 2018 at approximately 2230 hours at the 007th District station, Officer [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of Rules 5, 6 and General Order GO6-01-01.</p>	<p>Sustained/ Written Reprimand and Training</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 5: Failure to Perform Any Duty
2. Rule 6: Disobedience of an order or directive whether written or oral
3. Rule 14: Making a false report, written or oral

General Orders

1. General Order G06-01-01: Field Arrest Procedures
2. General Order G06-01: Processing Persons under Department Control

Special Orders

1. S04-13-09 Investigatory Stop System
1. Fourth Amendment-U.S. Constitution

V. INVESTIGATION

a. Interviews

On April 25, 2018 [REDACTED]² gave a statement to COPA at 1615 W. Chicago Ave. [REDACTED] stated that on March 23, 2018, he was crossing the street at 59th and Halsted, when he saw a "detector car" driving eastbound. As he was crossing the lot, the police vehicle got into the turning lane to turn into the gas station lot. He stepped into the restaurant, called [REDACTED], next to the gas station to place an order and stepped outside. As he stepped outside, all the police officers in the car jumped out and grabbed him. Mr. [REDACTED] described the officers as young but could not distinguish their race other than that they were not black. The officers had been in an unmarked car, but Mr. [REDACTED] knew they were police because of their municipal plates. He asked why he was being detained and denied breaking the law. The three officers grabbed him and placed him in handcuffs. Mr. [REDACTED] complained about the handcuffs being too tight. The officers then performed a test and determined the cuffs were not too tight. The

² Attachment 19

officers searched Mr. ██████ person and found several cartons of cigarettes and a small amount of marijuana. Mr. ██████ was placed in the back of a marked police vehicle and taken to the station at 63rd and Loomis. At the police station, he asked again what he was in custody for, but no one would talk to him. He was told he would have to speak with his arresting officer. He stated that one of the officers told him he was being taken in because of his attitude and his questioning of the legal the authority the officers had to detain him. He was written a ticket for selling cigarettes. Mr. ██████ denied that he was selling cigarettes on this date, though admitted he has often sold cigarettes in the past. He said he was taken to a holding room and then released from the back door of the station.

On July 23, 2019, Officer ██████³ (hereafter Officer ██████) gave a statement to COPA at 1615 W. Chicago Ave. Officer ██████ began his statement by requesting to make a correction to Investigator Stop Report ISR ██████. Officer ██████ wished to clarify the last sentence in the narrative of the report by adding that the subject (██████) was transported to the 007th District. He stated that Mr. ██████ was taken to the 007th District station because the officers needed to weigh the amount of cannabis recovered from his person. Additionally, Officer ██████ did not possess the correct ticket book to write a citation for cannabis. The interview was briefly paused to give Officer ██████ the opportunity to view his body worn camera footage from that evening. After viewing the body worn footage, Officer ██████ declined to make any further changes to his ISR.

Officer ██████ stated that on March 23, 2018 at approximately 10:00 PM he was on duty as a tactical Chicago police officer. That night, he was working with Officer ██████ and Officer ██████. Throughout their shift, they were in the vicinity of 810 W. 59th St. Officer ██████ stated that the convenience store on that corner was a known area for problems such as loitering, drug sales and public intoxication. The business was part of a criminal trespass affidavit program in which a business posts signs about criminal trespass and agrees to a heightened police presence in the area. Officer ██████ stated that throughout the shift that evening he and the other officers were driving around 810 W. 59th St., when he witnessed Mr. ██████ conducting hand-to-hand transactions in the gas station parking lot on multiple, separate occasions. Officer ██████ observed these transactions from the car but could not recall how many times he observed the transactions, though he was certain it was more than once. At that time Mr. ██████ was standing in between the ██████ station and the ██████ next door. The officers then pulled into the lot and approached Mr. ██████. Officer ██████ approached Mr. ██████ for a field interview and asked for identification. Mr. ██████ began fumbling around in his pockets in a manner Officer ██████ interpreted as evasive. During this time, Officer ██████ observed packages of cigarettes in Mr. ██████ pockets and Mr. ██████ became verbally aggressive. Officer ██████ then attempted to handcuff Mr. ██████. Officer ██████ stated that he began a protective pat down but was not able to complete it due to Mr. ██████ aggressive actions. Officer ██████ stated that he believed a protective pat down could include a search of a subject's pockets. He acknowledged that his search included the bulges on the front of Mr. ██████ attire. During his search numerous packs of cigarettes were found. After Mr. ██████ was handcuffed, Officer ██████, assisted by another officer, continued to search Mr. ██████ for weapons. Officer ██████ insisted that during this time, Mr. ██████ was detained but not under arrest.

³ Attachments 30 & 31

Officer [REDACTED] questioned Mr. [REDACTED] about dangerous materials or drugs on his person. Mr. [REDACTED] admitted to having a bag of marijuana. Officer [REDACTED] found a small bag of marijuana during the search. Mr. [REDACTED] was not arrested for possession of the marijuana because at that time, marijuana in that small an amount was subject to a civil law citation, which is distinct from an administrative notice of violation. Mr. [REDACTED] was placed into separate police vehicle that was called to the scene. Officer [REDACTED] car did not have a cage for transport. Officer [REDACTED] stated that they transported Mr. [REDACTED], because, while the penalty for under 10 grams of marijuana was a civil law citation, officers on the street at that time were not issued civil law citation books, therefore he had to be taken back to district station where he could be given a ticket.

Officer [REDACTED] was given the opportunity to watch a segment of his body worn camera footage from that evening in which he can be heard telling Mr. [REDACTED], "You could have just got a ticket." Officer [REDACTED] stated that telling him that was a tactic to get him to cooperate. He denied that Mr. [REDACTED] defiant language and behavior was a factor in the decision to transport him. Officer [REDACTED] once again stated that despite being transported, Mr. [REDACTED] was not under arrest.

On July 23, 2019 Officer [REDACTED]⁴ (hereafter Officer [REDACTED]) gave a statement to COPA at 1615 W. Chicago Ave. Officer [REDACTED] related the same basic information as Officer [REDACTED]. Officer [REDACTED] stated that he remembers officers in the car witnessing multiple hand-to-hand transactions between Mr. [REDACTED] and unknown individuals while in the gas station lot but did not recall which officer witnessed those transactions. After witnessing the transactions, Officer [REDACTED] and his partners pulled into the gas station to conduct an investigatory stop. In the parking lot were two men, Mr. [REDACTED] and another man named [REDACTED]. Officer [REDACTED] approached Mr. [REDACTED] to question him. He stated that while speaking to Mr. [REDACTED], he noticed that Officer [REDACTED] was having a hard time with Mr. [REDACTED] so he moved over to assist him. He said Officer [REDACTED] was attempting to conduct a pat down and Mr. [REDACTED] was attempting to reach into his own pockets. Officer [REDACTED] did not know what Mr. [REDACTED] might be reaching for. Officer [REDACTED] helped Officer [REDACTED] place handcuffs on Mr. [REDACTED], and then returned to questioning Mr. [REDACTED]. After a short time, Officer [REDACTED] noticed that Mr. [REDACTED] was still giving Officer [REDACTED] a hard time, so he came back to help. By this time, Officer [REDACTED] had taken several packages of cigarettes out of Mr. [REDACTED] pockets and placed them on the back of the squad car. Officer [REDACTED] assisted Officer [REDACTED] in going through Mr. [REDACTED] pockets. He stated he was checking for contraband. After the searches were complete, Officer [REDACTED] told Officer [REDACTED] that they were arresting Mr. [REDACTED] for trespassing. They brought Mr. [REDACTED] in for the trespass and brought Mr. [REDACTED] in for tickets. He stated that once they wrote Mr. [REDACTED] tickets for selling cigarettes and for possession of cannabis, they let him go. He stated that cigarettes selling is arrestable offence depending on the circumstances. The cannabis was a small amount only requiring a citation. He stated that one reason for the transport of Mr. [REDACTED] to the station is that the tickets given for cannabis had recently changed and officers in the field were not issued ticket books with the new tickets. Therefore, to write a citation for cannabis, they had to bring Mr. [REDACTED] to the district station. Officer [REDACTED] stated that he did not write the ISR and his name was only included because he was present. Officer [REDACTED] stated he did not recall what information he contributed to the ISR.

⁴ Attachment 29

On July 19, 2019, Officer ██████⁵ gave a statement to COPA at 1615 W. Chicago Ave. Officer ██████ related the same basic information as Officers ██████ and ██████. Officer ██████ stated that from a parked car located east of the gas station (approximately 500 feet away), he observed Mr. ██████ engage in multiple hand-to-hand transactions. Officer ██████ could not recall how many transactions nor how long he observed Mr. ██████. Mr. ██████ was standing directly in front of the gas station at the time. After witnessing the transactions, the officers pulled into the gas station to conduct a field interview of Mr. ██████. Officer ██████ did not interview Mr. ██████. Officer ██████ entered the ██████ to speak with the on-site manager. He approached the manager to get a signed complaint for trespass against Mr. ██████. The manager agreed to sign a complaint for trespass, but against Mr. ██████ not Mr. ██████. After speaking with the manager, Officer ██████ stepped outside. By this time, Mr. ██████ was detained by Officer ██████. Officer ██████ approached Mr. ██████ and detained him after the owner confirmed he wanted him removed from the property. Officer ██████ had little interaction with Mr. ██████. However, Officer ██████ did conduct a search of Mr. ██████ prior to his being transported to the 007th District Station. Officer ██████ believed Mr. ██████ to be under arrest for cannabis and selling loose cigarettes at the time he conducted the search. Officer ██████ did not know why ██████ was being transported rather than receiving a ticket on scene. He said that Officer ██████ made that decision. After Mr. ██████ was taken to the 007th District, he was placed in lock-up before being released. Officer ██████ stated that the decision of whether to fully process an arrestee or release them with a ticket is left with the arresting officer.

b. Digital Evidence

Body-worn camera⁶ footage shows that Officers ██████, ██████ and ██████ pulled into the parking lot of the ██████ at 810 W. 59th and immediately approached Mr. ██████ and Mr. ██████. Officer ██████ primarily spoke with Mr. ██████ while Officer ██████ spoke with Mr. ██████. Officer ██████ went inside the ██████ to speak with the manager. Inside the ██████, the manager confirmed he would sign a trespassing complaint against Mr. ██████, but not Mr. ██████.

Outside, Officer ██████ asked Mr. ██████ for identification. Mr. ██████ stated that he had it and proceeded to rummage in several different pockets. Officer ██████ stopped him and insisted that he would get it himself. Officer ██████ then began to search Mr. ██████ pockets. Mr. ██████ protested and told Officer ██████ he did not consent to a search and insisted the search was illegal. Mr. ██████ became agitated and argumentative. Officer ██████ loudly asked him to calm down and attempted to place him in handcuffs. Mr. ██████ resisted Officer ██████ attempts to handcuff him and Officer ██████ came to assist. The officers then placed Mr. ██████ in handcuffs and continued to search in his pockets. They discovered numerous packs of cigarettes on his person. Officer ██████ accused Mr. ██████ of selling cigarettes. Mr. ██████ denied it. Mr. ██████ continued to argue with the officers. Officer ██████ told him he “could have just gotten a ticket” if he had been more cooperative.

⁵ Attachment 32

⁶ Attachment 24

Mr. ██████ complained about tight handcuffs. Officer ██████ tested the handcuffs and concluded they were not too tight. Officer ██████ asked Mr. ██████ if he has any drugs or anything harmful on his person, Mr. ██████ admitted to having a pocket knife and a small amount of marijuana. While Officer ██████ continued to search Mr. ██████, additional officers arrived and escorted Mr. ██████ to a vehicle with a cage. Once Officer ██████ found the package of marijuana and the knife, he took Mr. ██████ to the same vehicle for transport. Mr. ██████ asked if he is being arrested, and Officer ██████ told him that he was being arrested.

Footage retrieved from the **in-car camera**⁷ showed that Mr. ██████ and Mr. ██████ were placed in the back of a squad car with a cage. The video ended when the car pulled into the parking garage of the 007th district station.

Photographs⁸ of Mr. ██████ were taken at COPA after he gave his statement. The photographs show some redness on his wrists.

GPS Data from Caboodle⁹ for Beat ██████ show that in the time leading up to the incident, the vehicle for Beat ██████ was constantly in motion just before the incident. The vehicle was near 810 W. 59th in the minutes leading up to the incident.

c. Documentary Evidence

The **Investigatory Stop Report**¹⁰ lists Officer ██████ as the first preparing officer and Officer ██████ as the second preparing officer. The report details an investigatory stop at 810 W. 59th St. on March 23, 2018. The individual stopped was identified as Mr. ██████. According to the report, officers observed Mr. ██████ engaged in various hand-to-hand transactions. The report stated that officer conducted a field interview, discovered that Mr. ██████ was selling cigarettes, and a protective pat down was conducted after observing large bulges in his jacket and pants. The officers found cannabis in his left pant pocket. The report states that Mr. ██████ was released after being given a citation.

An **Administrative Notice of Ordinance Violation**¹¹ (ANOV) was issued to Mr. ██████ on March 23, 2018 for selling loose cigarettes on a public way.

A **Civil Law Citation**¹² was issued to Mr. ██████ for possession of cannabis on a public way. The citation was issued on March 23, 2018 at 10:24 PM. The narrative states the cannabis was in a knotted bag found in Mr. ██████ left pant pocket.

VI. LEGAL STANDARD

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

⁷ Attachment 24

⁸ Attachment 25

⁹ Attachment 33

¹⁰ Attachment 4

¹¹ Attachment 5

¹² Attachment 5

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 I 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 is has found to be more probably true than not). If the evidence gathered in an investigation establishes that it 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 the proposition ... is true” *Id.* at 28.

VII. ANALYSIS

Allegations against Officer [REDACTED] & Officer [REDACTED]

Allegation 1: Officers [REDACTED] & [REDACTED] searched [REDACTED] person by reaching into his pockets, without justification

For this allegation COPA must first determine if Officers [REDACTED] and [REDACTED] actions toward Mr. [REDACTED] constituted a search authorized under the law.

Officers are not permitted to conduct a limited search for weapons during every valid investigatory stop. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). “The officer may subject the person to a limited search for weapons . . . only if the officer reasonably believes that the person is armed and dangerous.” *Id.* (citation omitted). A protective pat down is generally a limited search of the outer clothing of a person for weapons for the protection of the sworn member or others in the area.¹³ “If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach

¹³ See Special Order S04-13-09

into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity.”¹⁴

Police may perform a full custodial search incident to a lawful arrest. The Supreme Court set the bounds of searches incident to arrest in *Chimel v. California*, a case in which officers searched the arrestee's entire three-bedroom house. 395 U.S. 752, 754 (1969). *Chimel* set forth the general rule that arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, could search both “the person arrested” and “the area within his immediate control.” *Id.* at 763. In *United States v. Robinson*, the Court held that the mere fact of a lawful arrest justifies a search of the arrestee and area within his immediate control; probable cause that weapons or evidence will be found is not required. 414 U.S. 218, 235 (1973). A search incident to arrest may precede an actual custodial arrest (i.e. when an individual is taken into formal police custody versus merely being seized) so long as probable cause to arrest existed at the time of the search. *People v. Hall*, 90 Ill. App. 3d 1073, 1077 (1st Dist. 1980). However, under Illinois law a search incident to arrest is only permitted when there is an actual custodial arrest at some point during the encounter.

The evidence conclusively demonstrates Officer [REDACTED] and [REDACTED] searched Mr. [REDACTED] by reaching into his pockets. However, the officers assert that they observed Mr. [REDACTED] conduct multiple hand-to-hand transactions in area known for the illegal sale of loose cigarettes. If the officers did observe these transactions, probable cause to arrest Mr. [REDACTED] would exist,¹⁵ and the search would be lawful pursuant to the search incident to arrest exception. However, without corroborating external evidence (i.e. video, independent witnesses, etc.) or more consistent officer statements, COPA is unable to determine by clear and convincing evidence that the officers observed the hand-to-hand transactions. Therefore, COPA cannot determine by clear and convincing evidence that the search was justified, and the allegation is **Not Sustained**.

Allegation 2: Officers [REDACTED] & [REDACTED] arrested [REDACTED] without justification.

For the second allegation, COPA must determine whether [REDACTED] was arrested and whether that arrest was justified under the law.

“An arrest is distinguishable from an investigatory stop based on the length of detention and the scope of the investigation following the initial stop.” *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 60 (citing *People v. Bennett*, 376 Ill. App. 3d 554, 565 (1st. Dist. 2007)). An officer must have probable cause to arrest a subject. *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)). “Probable cause to arrest exists when the totality of the facts and circumstances known to a police officer would lead a person of reasonable caution to believe that the person apprehended has committed a crime, and its existence depends on the totality of the circumstances at the time of the arrest.” *People v. D.W. (In re D.W.)*, 341 Ill. App. 3d 517, 526 (1st Dist. 2003). The officer’s subjective belief is not determinative; rather probable cause is an objective standard. *People v. Chapman*, 194 Ill. 2d 186, 218-19, (2000).

¹⁴ *Id.*

¹⁵ The legal standard for probable cause and COPAs finding that an arrest occurred are explained in detail below.

Even though the officers made it clear in their statements that it was not their intent was to process Mr. [REDACTED] as an arrestee, COPA concludes that the officers did, in fact, arrest of Mr. [REDACTED]. The body worn camera and in car camera show that Mr. [REDACTED] was handcuffed, placed in the back of a squad car and transported to the 007th District Station. Further, on the body-worn camera Mr. [REDACTED] asks if he is under arrest and Officer [REDACTED] confirms that he is. While Officer [REDACTED] was the officer primarily responsible for interacting with Mr. [REDACTED], Officer [REDACTED] participated in the arrest and transport of Mr. [REDACTED] and has an independent duty to make sure all his law enforcement actions are lawful. While the penalty for this offense is normally a ticket for an administrative notice of violation, an arrest is within the officer's discretion under applicable law. Further, the search of Mr. [REDACTED] pockets revealed he was in possession of marijuana which is also an arrestable offense. In this case, while an arrest for selling cigarettes may seem excessive, it was within the officers' discretion.

However, COPA is unable to determine whether that arrest was lawful. As explained above, the officers had probable cause to arrest Mr. [REDACTED] only if they in fact observed Mr. [REDACTED] conduct multiple hand-to-hand transactions in an area known for illegal sales of loose cigarettes and the contraband recovered was lawfully obtained. COPA is unable to determine whether they did observe these transactions. Therefore, because COPA cannot determine whether or not the arrest was lawful, Allegation 2 against Officer [REDACTED] and Officer [REDACTED] is **Not Sustained**.

Allegation 3: Officer [REDACTED] & [REDACTED] transported [REDACTED] to the 007th District station without justification.

For the third allegation, the question is whether Officers [REDACTED] & [REDACTED] were within policy when they caused Mr. [REDACTED] to be transported to the 007th District.

As stated above, the selling of cigarettes on a public way is an arrestable offense, subject to the discretion of the arresting officer. General Order G06-01-01 states that members will transport an arrestee immediately to the appropriate Department facility in a Department vehicle equipped with a protective divider or a squadrol. In this case, that is what happened. Officer [REDACTED] called for a car equipped with a cage and Mr. [REDACTED] was transported to the 007th District, the nearest lock-up facility. As discussed above, if the officers did, in fact, observe hand-to-hand transactions, the search and arrest were lawful, and thus, the transport was lawful. However, because COPA cannot determine whether the observations of hand-to-hand transaction occurred, there is insufficient evidence to determine that whether Mr. [REDACTED] was lawfully under arrest. Therefore, there is insufficient evidence to determine whether he should have been transported to the station, and this allegation is **Not Sustained**.

Allegation 4: Officer [REDACTED] & [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of General Order GO6-01-01.

As stated above, on March 23, 2018 Mr. [REDACTED] was placed under arrest and transported to the 007th District Police Station. The only record of this encounter is Investigatory Stop Report ISR [REDACTED], which states that Mr. [REDACTED] was issued a citation and then released. No mention is made of his arrest or his transport. No arrest report was filled out. According to General Order

G06-01-01 (G), when an arrestee is transported to the district of arrest, “the arresting officer will, without unnecessary delay, complete the Automated Arrest Record at the facility and electronically submit the arrest report to the watch operation lieutenant or HSF designated supervisor of the facility.” In this case, Mr. [REDACTED] was an arrestee and he was transported the district of arrest, but no arrest report was submitted. In some instances, individuals may be released from the police station without charges, but that action must be approved by the watch operations lieutenant and documented in Automated Arrest Report.¹⁶ However, there is no evidence that this took place, and in fact, the officers stated he was transported, ticketed and released. As arresting officers, both officers had the same responsibilities to complete an arrest report. Therefore, based on a preponderance of the evidence Allegation 4 is **Sustained** for both officers.

Allegation 5: Officer [REDACTED] & [REDACTED] made willful and material false statements of fact on Investigatory Stop Report # [REDACTED] when they reported witnessing multiple hand-to-hand transactions from [REDACTED].

In order to sustain Allegation 5, COPA must find that Officer [REDACTED] and Officer [REDACTED] made willful and material false statements of fact on [REDACTED]. This allegation calls into question whether these officers witnessed [REDACTED] making multiple hand-to-hand transactions leading up to the arrest. The multiple hand-to-hand transactions were the basis for the officers in this case having probable cause to detain, search and arrest Mr. [REDACTED]. Therefore, statements related the hand-to-hand transactions are material. However, in this case, COPA finds that there is insufficient evidence to determine whether they observed the hand-to-hand transactions. Officer [REDACTED] states that they witnessed the transactions from a parked location five hundred feet from the [REDACTED], while Officer [REDACTED] states that they witnessed several transactions throughout their shift while driving by the [REDACTED]. Additionally, Officer [REDACTED] states he did not witness any hand-to-hand transactions. While it is possible that these inconsistencies are merely due to the fact that this incident occurred over a hour prior to the officers making their statements, it is also possible that the officers did not actually observe hand-to-hand transactions. In either instance, there is insufficient evidence to conclude that the statement was in fact false or that there were any willful attempts at deception when completing the ISR. Thus, based upon a preponderance of the evidence, Allegation 5 is **Not Sustained**.

Allegation 6: Officer [REDACTED] & [REDACTED] made willful and material false statements of fact on Investigatory Stop Report # [REDACTED] when they reported that they issued [REDACTED] a ticket and then released him, when in fact they placed [REDACTED] in the back of the squad car for transport to the District 007 station.

The Investigatory Stop Report in this case states that Mr. [REDACTED] was issued a citation and then released. While on their face these facts are true, they omit an important detail: that Mr. [REDACTED] was transported to the 007th Station against his will. As previously discussed, there is insufficient evidence to determine whether the decision to transport Mr. [REDACTED] was lawful. In any case, the lack of any documentation for this transport is troubling. When he was asked about the omission and given an opportunity to correct it, Officer [REDACTED] ultimately declined to change the report. He stated that an Investigatory Stop Report is just a summary of events and is focused on the initial reason for the detention of the subject. From his comments COPA can surmise that

¹⁶ See G06-01-01, II, J

Officer [REDACTED] believes that the transport of Mr. [REDACTED] was a fact that was unnecessary to include in the report. While COPA disagrees with this assessment, Officer [REDACTED] subjective understanding is relevant to assessing whether the false statement was willful. If Officer [REDACTED] believes, however incorrectly, that the transport of Mr. [REDACTED] did not belong on the report then the omission of the transport was due to misunderstanding of policy rather than willful deception. Additionally, Officer [REDACTED] stated that he did not write the ISR and his name was only included because he was present. Officer [REDACTED] stated he did not recall what information he contributed to the ISR.

In order to sustain an allegation for a false statement on an official report, COPA must find that the false statement, or in this case omission, was willful and material. Based on the statements, there is insufficient evidence to determine that the omission was willful. Therefore, based on a preponderance of the evidence, Allegation 6 is **Not Sustained**.

Allegations Against Officer [REDACTED]

Allegations 1 & 2: Officer [REDACTED] arrested and transported [REDACTED] without justification.

Officer [REDACTED] had little interaction with Mr. [REDACTED]. However, Officer [REDACTED] claimed he observed Mr. [REDACTED] engage in multiple hand-to-hand transactions and conducted a search of Mr. [REDACTED] prior to his being transported to the 007th District Station. Officer [REDACTED] stated that he believed Mr. [REDACTED] to be under arrest for cannabis and selling loose cigarettes at the time he conducted the search. Officer [REDACTED] stated he did not know why Mr. [REDACTED] was being transported rather than receiving a ticket on scene. However, as discussed for the other officers involved in this case, the arrest and transport of Mr. [REDACTED] was only lawful if the officers observed multiple hand-to-hand transactions but there is not sufficient evidence to determine that they did. Therefore, based on a preponderance of the evidence, Allegations 1 and 2 against Officer [REDACTED] are **Not Sustained**.

Allegation 3: Officer [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of General Order GO6-01-01.

While Officer [REDACTED] had the least contact with Mr. [REDACTED] of the three officers in this case, he was involved in Mr. [REDACTED] arrest. Officer [REDACTED] stated that he believed the decision of whether to fully process an arrestee or release them with a ticket is left with the arresting officer. However, he had the same duty as Officers [REDACTED] and [REDACTED] to comply with General Order G06-01-01. As no arrest report was filed, Officer [REDACTED] failed to comply with the order. Therefore, based on a preponderance of the evidence, Allegation 3 is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer [REDACTED]

i. Complimentary and Disciplinary History

1. **Complimentary:** 3 Physical Fitness Emblems of Recognition, 4 Department Commendations, 37 Honorable Mentions, 3 Complimentary Letters, 2 Unit Meritorious Performance Awards
 2. **Disciplinary:** None
- ii. **Recommended Penalty, by Allegation**
 1. **Allegation No. 4:** Written Reprimand/ 4th Amendment Training
- b. Officer [REDACTED]
- i. **Complimentary and Disciplinary History**
 1. **Complimentary:** 1 Military Service Award, 1 Attendance Recognitions Award, 1 Emblem of Physical Fitness, 3 Department Commendations, 38 Honorable Mentions, 6 Complimentary Letters, 1 Life Saving Award, 1 Unit Meritorious Performance Award
 2. **Disciplinary:** 1 Spar (Failed Court Appearance)
 - ii. **Recommended Penalty, by Allegation**
 1. **Allegation No. 4:** Written Reprimand/ 4th Amendment Training
- c. Officer [REDACTED]
- i. **Complimentary and Disciplinary History**
 1. **Complimentary:** 3 Physical Fitness Emblems of Recognition, 32 Honorable Mentions, 1 Department Commendation, 5 Complimentary Letters, 1 Unit Meritorious Performance Award
 2. **Disciplinary:** None
 - ii. **Recommended Penalty, by Allegation**
 1. **Allegation No. 3:** Written Reprimand/ 4th Amendment Training

While the officers may have been lawful in their search, arrest, and transportation of Mr. [REDACTED], they failed to document the arrest in an arrest report as required. However, the conduct of the officers appears to be based in a fundamental misunderstanding of law and procedure as it relates to searches and arrests of individuals. Therefore, COPA recommends a written reprimand for each officer and additional 4th Amendment training.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	<p>1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] searched [REDACTED] person by reaching into his pockets, without justification in violation of Rule 6.</p>	Not Sustained
	<p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] arrested [REDACTED] without justification in violation of Rule 6.</p>	Not Sustained
	<p>3. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] transported [REDACTED] to the 007th District station without justification in violation of Rule 6.</p>	Not Sustained
	<p>4. On or about March 23, 2018 at approximately 2230 hours at the 007th District station, Officer [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of Rules 5, 6 and General Order GO6-01-01.</p>	Sustained / Written Reprimand and Training
	<p>5. On or about March 23, 2018 at approximately 2230 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported witnessing multiple hand to hand transactions from [REDACTED] in violation of Rule 14.</p>	Not Sustained
	<p>6. On or about March 23, 2018 at approximately 2230 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported that he issued [REDACTED] a ticket and then released him, when in fact he placed [REDACTED] in the back of the squad car for transport to the District 007 station in violation of Rule 14.</p>	Not Sustained
Officer [REDACTED]	<p>1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] searched [REDACTED]</p>	Not Sustained

	<p>person by reaching into his pockets, without justification in violation of Rule 6.</p> <p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] arrested [REDACTED] without justification in violation of Rule 6.</p> <p>3. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] transported [REDACTED] to the 007th District station without justification in violation of Rule 6.</p> <p>4. On or about March 23, 2018 at approximately 2230 hours at the 007th District station, Officer [REDACTED] failed to complete an arrest report for the arrest of [REDACTED] in violation of Rules 5, 6 and General Order GO6-01-01.</p> <p>5. On or about March 23, 2018 at approximately 22:30 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported witnessing multiple hand to hand transactions from [REDACTED] in violation of Rule 14.</p> <p>6. On or about March 23, 2018 at approximately 22:30 hours Officer [REDACTED] made a willful and material false statement of fact on Investigatory Stop Report # [REDACTED] when he reported that he issued [REDACTED] a ticket and then released him, when in fact he placed [REDACTED] in the back of the squad car for transport to the District 007 station in violation of Rule 14.</p>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained/ Written Reprimand and Training</p> <p>Not Sustained</p> <p>Not Sustained</p>
<p>Officer [REDACTED]</p>	<p>1. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] arrested [REDACTED] without justification in violation of Rule 6.</p> <p>2. On or about March 23, 2018 at approximately 2200 hours at or near 810 W. 59th St. Officer [REDACTED] placed [REDACTED] in a</p>	<p>Not Sustained</p>

Appendix A

Assigned Investigative Staff

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