

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 31, 2019
Time of Incident:	12:47 am
Location of Incident:	8600 S. Ashland Ave., Chicago, IL 60620
Date of COPA Notification:	September 3, 2019
Time of COPA Notification:	6:01 pm

Mr. [REDACTED] was visiting family and consumed at least one beer. Once he consumed the beer, his friend ([REDACTED] and he entered his vehicle and drove towards a party. While enroute to the party, [REDACTED] was stopped by Officer [REDACTED] and [REDACTED] (collectively “the Officers”). Once [REDACTED] was stopped, he was administered the Standardized Field Sobriety Tests (SFSTs), admitted to consuming alcohol, and was arrested for DUI. Once [REDACTED] was arrested his vehicle was searched and impounded. [REDACTED] and his vehicle were transported to the [REDACTED] District Station. Once at the station, [REDACTED] declined to provide a breath test.

During his statement to COPA, [REDACTED] alleged that the Officers improperly stopped him and falsely arrested him. During our investigation COPA determined that the allegations are **exonerated**.

II. INVOLVED PARTIES

Involved Officer #1:	Officer [REDACTED] / Star # [REDACTED] / Employee ID# [REDACTED] / DOA: [REDACTED] 2018 / Unit: [REDACTED] / DOB: [REDACTED] [REDACTED] 1986 / Male / Black. ¹
Involved Officer #2:	Officer [REDACTED] / Star # [REDACTED] / Employee ID# [REDACTED] / DOA: [REDACTED] 2017 / Unit: [REDACTED] / DOB: [REDACTED] [REDACTED] 1983 / Male / Hispanic.
Involved Individual #1:	[REDACTED] / DOB: [REDACTED] 1981 / Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	1. Stopped Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.

¹ At the time of this incident Officer [REDACTED] was a Probationary Police Officer.

	2. Arrested Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.
Officer [REDACTED]	1. Stopped Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.
	2. Arrested Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Prohibits disobedience to any order or directive whether written or oral.

Special Orders

1. 04-13-09 – Investigatory Stop System – effective July 10, 2017 to current.

V. INVESTIGATION²

a. Interviews³

In a **statement to COPA⁴** on September 3, 2019, Mr. [REDACTED] stated he while visiting his cousin ([REDACTED]) he consumed a beer. After consuming the beer, [REDACTED] and he drove towards a party and were stopped by the police officers. Once [REDACTED] was stopped, Officer [REDACTED] approached his vehicle and informed him a headlight was out on his vehicle. [REDACTED] reached for his identification and Officer [REDACTED] requested [REDACTED] exit the driver’s seat. [REDACTED] complied. Once out of the vehicle, Officer [REDACTED] requested that [REDACTED] enter the alley.⁵ Once in the alley, Officer [REDACTED] administered Standardized Field Sobriety Tests (SFSTs), which [REDACTED] believes he successfully completed.⁶ At the conclusion of the tests, [REDACTED] admitted to Officer [REDACTED] that he had consumed one beer. [REDACTED] was arrested and placed in the rear of the CPD vehicle.

[REDACTED] admitted that he was aware that his vehicle had a faulty headlight but claimed he verified the headlight was functioning prior to driving but acknowledged it was possible the headlight could have stopped working while he was driving.⁷ Additionally, [REDACTED] admitted that the windshield on his vehicle had a crack across half the width and level with the steering wheel.⁸ [REDACTED]

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ COPA determined that the allegations were clearly exonerated, and therefore there was no need for the Officers to answer them.

⁴ Att. 8.

⁵ [REDACTED] estimated the alley was four feet from his vehicle.

⁶ COPA notes that the order in which [REDACTED] recounts the SFSTs were administered is incorrect from the order in which they were in fact administered.

⁷ Att. 8 from 07:50 to 08:13.

⁸ *Id.* from 09:17 to 09:45.

also admitted that he has a cover installed on his front bumper, but that he modified the cover to allow for the front license plate to be displayed.⁹

█████ alleged that the Officers stopped him for no reason,¹⁰ failed to request his driver's license and proof of insurance,¹¹ arrested him for no reason, and searched his vehicle without permission.¹²

b. Digital Evidence¹³

Body Worn Camera¹⁴ (BWC) footage details the Officers approaching █████ stopped vehicle. Once at the vehicle, Officer █████ asked █████ for his driver's license and proof of insurance, which █████ provided.¹⁵ Officer █████ requested █████ to exit the vehicle, and █████ complied.¹⁶ Once █████ is out of the vehicle, Officer █████ administered the Horizontal Gaze Nystagmus (HGN) SFST to █████. At the end of the HGN, █████ admitted to consuming at least one beer.¹⁷ The Officers escorted █████ to the alley next to his vehicle, and Officer █████ administered two additional SFSTs. During the Walk and Turn (WNT) █████ stepped out of the instruction stance during the instruction phase, began the exercise prior to being told, executed an improper turn, and appears to step off the line at least once and fail to touch heel to toe at three times.¹⁸ During the One Leg Stand (OLS) █████ elected to raise his right foot, placed his left hand in his pocket, raised his right arm approximately one inch, swayed slightly, and placed his foot down after 12-seconds, prior to being instructed to do so.¹⁹ At the conclusion of the OLS, the Officers arrested and searched █████ secure him in the rear of their vehicle,²⁰ and completed a name check on █████ and informed him he is free to leave.²¹ The Officers searched █████ vehicle and transported him and the vehicle to the █████ District Station.

⁹ *Id.* from 10:00 to 10:30.

¹⁰ Despite making this allegation, █████ admitted that his vehicle had an intermittently working head light and a windshield was cracked.

¹¹ A review of the related video footage, detailed below, clearly shows that Officer █████ did in fact ask █████ for his driver's license prior to █████ providing it to him; therefore, COPA determined there was no factual basis for █████ allegation.

¹² A review of the related video footage, detailed below, clearly shows that no Department member entered or searched █████ vehicle until after he was arrested; therefore, COPA determined there was no factual basis for █████ allegation.

¹³ COPA notes that Officer █████ BWC activated after he began the interaction with █████ however, COPA determined that this error had no impact on our investigation and error was incidental and unintentional. Therefore; COPA elected not to serve an allegation.

¹⁴ Atts. 12 to 17.

¹⁵ Att. 13 at 02:10.

¹⁶ Att. 13 at 02:26.

¹⁷ Att. 12 at 04:02.

¹⁸ COPA notes the camera angles during the SFSTs are head-on to █████ which reduces the ability to view his foot placement.

¹⁹ Att. 12 from 06:05 to 06:55.

²⁰ Att. 12 at 07:05.

²¹ Att. 12 at 08:30.

Once at the station, the Officers advised ██████ of his Miranda Right and ██████ declined to answer any questions.²² ██████ was read the required Warning to Motorists and the Officers requested a test of his breath which ██████ declined.²³

Police Observation Device²⁴ (POD) footage confirms that ██████ vehicle was not searched until after he was arrested.²⁵

c. Documentary Evidence²⁶

██████ **Arrest Report**²⁷ and **DUI Packet**²⁸ detail ██████ was seen driving a red Chevrolet Impala with only one working headlight, crack windshield, and improperly displayed license plate, when he pulled in to a gas station parking lot and almost struck another vehicle. The Officers stopped the vehicle and approached ██████. As the Officers were speaking with ██████ they detected the odor of an alcoholic beverage emitting from his person and observed that his eyes were watery-glassy-bloodshot. Officer ██████ requested ██████ driver's license and proof of insurance, which ██████ provided. The Officers requested ██████ exit the vehicle. ██████ complied and the Officers observed an evident odor of an alcoholic beverage on his breath. Officer ██████ administered SFSTs to ██████. During the HGN, ██████ displayed a lack of smooth pursuit, distinct nystagmus at maximum deviation, and the onset of nystagmus prior to 45 degrees in both eyes.²⁹ During the WNT ██████ could not remain in the instruction stance, stated the test prior to being instructed, used his arms to balance, completed an improper turn, failed to touch heel-to-toe, and stepped off the line.³⁰ During the OLS ██████ failed to follow the instructions provided, swayed and used his arms to balance.³¹ Based on the Officers' observations and ██████ performance during the SFSTs, he was arrested and transported to the ██████ District Station.

Upon arrival at the station ██████ was advised of his Miranda Warnings, read the required Warning to Motorists and refused to provide a breath sample. ██████ was processed and charged with driving under the influence, operating a vehicle with less than two headlights, having cracked/broken vehicle glass, and failing to display a license plate.³² Additionally, ██████ vehicle was seized and impounded.³³

²² Att. 16 at 01:29.

²³ Att. 17 at 02:05.

²⁴ Att. 18.

²⁵ Att. 18 from 00:48:09 to 00:57:05.

²⁶ COPA notes that an Investigatory Stop Report (ISR) was not completed for ██████. COPA also notes ██████ was never informed he was not free to leave, never attempted to leave but rather remained on scene during the DUI investigation and was told he was free to leave once ██████ was arrested. Therefore; it is reasonable consider ██████ detention, if any in fact occurred, as incidental. Therefore, COPA determined there was no need to serve an ISR related allegation.

²⁷ Att. 1.

²⁸ Att. 19.

²⁹ Att. 1, pg. 2; Att. 19, pg. 3 and 6.

³⁰ Att. 1, pg. 2; Att. 19, pg. 3 and 6.

³¹ Att. 1, pg. 2; Att. 19, pg. 3 and 6.

³² ██████ was issued traffic citations for each offense. Att. 19, pgs. 28 and 29.

³³ A Vehicle Impoundment / Seizure Report details that ██████ vehicle was impounded because the driver was operating it while intoxicated. Att. 10, pg 2.

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 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

COPA finds Allegation #1 against the Officers is **exonerated**. A lawful traffic stop requires "at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law."³⁴ "Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observed and the reasonable inferences that are drawn based on the sworn member's training and experience."³⁵ Here, it is undisputed that [REDACTED] after consuming alcohol, was operating a vehicle with a cracked windshield and faulty headlight. Further, during his statement, [REDACTED] was clear that the first comment Officer [REDACTED] made to him was informing [REDACTED] that he was stopped for having only one functioning headlight. Additionally, [REDACTED] admitted that there was readily visible crack in the front windshield of his vehicle. Despite, [REDACTED] insistence, COPA determined based on his own admissions and his recounting of Officer [REDACTED] conversation with him that the Officers possessed reasonable articulable suspicion that [REDACTED] was

³⁴ *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

³⁵ S04-13-09 II(C).

violating the law, specifically operating a vehicle with only one headlight and a cracked windshield.

COPA finds Allegation #2 against the Officers is **exonerated**. A Department member must have probable cause to arrest a subject.³⁶ “Probable cause to arrest exists where the police have knowledge of fact that would lead a reasonable person to believe that a crime has occurred and that the subject had committed it.”³⁷ The reasonable basis of any arrest “should be considered from the perspective of a reasonable officer at the time” of the arrest.³⁸ Here, upon stopping [REDACTED] Officer [REDACTED] detected an order of an alcoholic beverage and observed [REDACTED] to have watery-glassy-bloodshot eyes. Additionally, [REDACTED] admitted to consuming alcohol prior to driving. Finally, [REDACTED] exhibited several cues of impairment while completing the SFSTs. Based on all the Officers’ observations and [REDACTED] own admission, their decision to arrest [REDACTED] was reasonable and proper.

Since the allegations are clearly unfounded there was no need for the Officers to address them.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	1. Stopped Mr. [REDACTED] without justification, in violation of Rule 6. 2. Arrested Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated. Exonerated.
Officer [REDACTED]	1. Stopped Mr. [REDACTED] without justification, in violation of Rule 6. 2. Arrested Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated. Exonerated.

Approved:

[REDACTED]

January 31, 2020

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

³⁶ *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)).

³⁷ S04-13-09 II(D).

³⁸ S04-13-09 II(D).

Appendix A

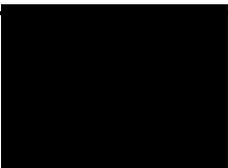
Assigned Investigative Staff

Squad#:

Investigator:

Supervising Investigator:

Deputy Chief Administrator:



Andrea Kersten