

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 10, 2019
Time of Incident:	4:45 PM
Location of Incident:	At or near [REDACTED]; OR [REDACTED]
Date of COPA Notification:	August 12, 2019
Time of COPA Notification:	4:43 PM
Involved Officer #1 <sup>1</sup>	[REDACTED] Star: # [REDACTED]; Employee #: [REDACTED], Unit of Assignment: [REDACTED] District, Date of Appointment: [REDACTED], 2017, Rank: Police Officer, DOB: [REDACTED], 1993, Gender: Female, Race: Caucasian
Involved Individual #1	[REDACTED] DOB: [REDACTED], 1986, Gender: Male, Race: African American

II. ALLEGATIONS

Officer	Allegation <sup>2</sup>	Finding/ Recommendation
Officer [REDACTED]	It is alleged by the complainant that on or about August 10, 2019, at approximately 4:45 p.m., at or near [REDACTED], Officer [REDACTED] Star # [REDACTED] committed misconduct through the following acts or omissions:	
	1. Arrested [REDACTED] for being a felon in possession of a firearm, when he was not a convicted felon and his weapon was properly in a locked box with the ammunition stored outside the gun in the same box;	Exonerated

<sup>1</sup> Other officers were on scene and assisting with the stop, but Officer [REDACTED] is the first arresting officer.

<sup>2</sup> [REDACTED] also states that after his release he went to the station to get the name of the arresting officer and was told that he needed a Lieutenant to get that information, and he states that an officer walked by with a paper covering his face. He provided an approximately 30 second videotape of him at the station making that statement regarding the necessity of a Lieutenant to get the name of the arresting officer and it shows no one answering him. However, it is unknown what occurred before or after that short video

### III. SUMMARY OF EVIDENCE

On August 10, 2019 at approximately 4:45 p.m., Officer ██████████ (██████████) pulled over the car in which ██████████ was a passenger for failure to have a front license plate. Officer ██████████ asked the driver, ██████████ for his license and he told her that his license had expired. Officer ██████████ smelled the odor of fresh cannabis emanating from the vehicle and asked if there was any cannabis in the car. The driver told her that there was cannabis in the car and told her where in the car she could find it.<sup>3</sup> Complainant ██████████ (██████████) told her that he had a gun inside of a box in the trunk of the car and that he had a FOID card for the gun. All occupants of the car were then asked to exit the vehicle, which they did. A search of the car revealed an unloaded gun in a box inside the trunk. ██████████ had a valid Illinois driver's license and FOID card.<sup>4</sup>

The arrest report indicates that a name check was conducted at the scene, and it indicated that ██████████ was a convicted felon, which would prohibit him from having a valid FOID card. Accordingly, he was placed in custody and transported to the station. At the station, officers checked into ██████████ statement that he was not a convicted felon by contacting an assistant state's attorney, who explained that ██████████ had been sentenced to a special probation that allowed his conviction to be stricken from his record upon successful completion of his probation. ██████████ had satisfactorily completed the conditions of his probation and thus was no longer a felon. ██████████ was then released without charges.

### III. 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.

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<sup>3</sup> The original case report shows that the driver ██████████ was charged with possession of cannabis, and ██████████ was charged with possession of synthetic drugs for pills found in an unmarked prescription bottle. On scene there was an argument as to whether those pills were codeine or amoxicillin.

<sup>4</sup> The Body Worn Camera Footage ("BWC") from this incident shows the steps taken by the police at the scene. During his interview, ██████████ states that one of the officers said lock the smart ass up, implying that that was the reason for locking him up. There is no evidence to support that claim from the BWC footage. ██████████ makes it clear that he believed that the officers were merely trying to put some charges on him. The BWC footage shows no evidence of this. Rather, it shows the process of how and why the officers decided to take ██████████ into the station for unlawful use of a weapon by a felon. ██████████ states that two officers at the station said they should charge ██████████ with the cannabis. However, there is no evidence that this occurred and no charges were ever filed against ██████████ for the cannabis.

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 been 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

Upon conclusion of this investigation, COPA finds that Officer ██████ is Exonerated with respect to the above listed allegation. We find there was no misconduct in the decision to bring ██████ to the station based on a possible charge of unlawful use of a weapon by a felon since the records available on scene showed that ██████ was a convicted felon.

In 2008, ██████ was sentenced based on a conviction for the manufacture and delivery of 10-30 grams of cannabis. He was sentenced to probation under a provision that permits the offender to have the conviction stricken from his record if he satisfactorily completes all conditions of his probation. 720 ILCS 570/410. In this case, ██████ successfully completed all conditions of his probation, but his criminal history still shows him to be a convicted felon. Accordingly, because ██████ successfully completed all conditions of his probation, he is no longer considered a convicted felon, and he was legitimately able to obtain a weapon and a valid FOID card.

However, the officers did not have information regarding ██████ status under 720 ILCS 570/410 available to them at the scene. At the scene, the officers conducted a name check which showed ██████ criminal background sheet, and that indicated at the very top of the page that ██████ was a convicted felon. Significantly, one of the officers noted that there was nothing to indicate that the felony had been expunged. The officers arrested ██████ based on information available to them at the time. Thus, there was no misconduct by the arresting officers.

Contrary to ██████ claims that the officers did not care, the officers recognized on scene that they had to figure out how a convicted felon was in possession of a valid FOID Card. Therefore, when they arrived at the station, they tried to figure out how ██████ a purported felon, could have received a valid FOID card. To that end, the officers contacted an assistant state's attorney, who eventually explained ██████ status under 720 ILCS 570/410. The Watch Commander's note on the arrest report states that they asked the assistant state's attorney if there was a way to remedy the situation for ██████. The assistant state's attorney did not know but said that it would help to have a certified copy of the disposition of the charges. Nevertheless, the criminal history sheet available on scene showed ██████ to be a convicted felon. Because it was not

misconduct for the officer to rely on the information available to her at the time, COPA finds that Officer [REDACTED] is Exonerated with respect to this allegation.

Approved:

[REDACTED]

March 16, 2020

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**Andrea Kersten**  
*Deputy Chief Administrator – Chief Investigator*

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Date

Appendix A

Assigned Investigative Staff

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