

SUMMARY REPORT OF INVESTIGATION¹**I. EXECUTIVE SUMMARY**

Date of Incident:	December 16, 2015
Time of Incident:	10:45am
Location of Incident:	[REDACTED] Street, Calumet Park, Illinois
Date of IPRA Notification:	December 16, 2015
Time of IPRA Notification:	10:27 pm

On December 16, 2015, at approximately 10:54 am, while on patrol [REDACTED] two police officers followed [REDACTED] ("Mr. [REDACTED] into a Citgo Gas Station store and arrested and searched him. COPA investigated allegations of excessive force and Fourth Amendment violations. Based upon its investigation, including video from the Citgo store, COPA finds that Officer [REDACTED] violated policy when he grabbed and pulled Mr. [REDACTED]. The remaining allegations are not sustained, unfounded and exonerated.

II. INVOLVED PARTIES

Involved Officer #1:	P.O. [REDACTED] Star # [REDACTED]; Employee # [REDACTED] Unit: [REDACTED] / [REDACTED] DOA: [REDACTED], 2008, DOB: [REDACTED] [REDACTED], 1982, Hispanic/Male
Involved Officer #2:	P.O. [REDACTED] Star # [REDACTED] Employee # [REDACTED] Unit: [REDACTED] DOA: [REDACTED], 2007, DOB: [REDACTED], 1977, White/Male
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1992, Black/Male

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
---------	------------	--------------------------

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.

Officer [REDACTED]	<p>It is alleged that on December 16, 2015, at approximately 10:45 am, in the vicinity of [REDACTED] Street, you:</p> <ol style="list-style-type: none"> 1. Grabbed and pulled [REDACTED] by the arm, in violation of Rules 6 and 8. 2. Pushed [REDACTED] inside a Department vehicle, in violation of Rules 6 and 8. 3. Punched [REDACTED] in the mouth, in violation of Rules 6 and 8. 4. “Planted” suspect narcotics on [REDACTED] in violation of Rule 6. 5. False arrested [REDACTED] in violation of Rule 6. 	Sustained / 5 day Suspension and Training
		Exonerated
		Not Sustained
		Not Sustained
		Exonerated
Officer [REDACTED]	<p>It is alleged that on December 16, 2015, at approximately 10:54 am, in the vicinity of [REDACTED] Street, you:</p> <ol style="list-style-type: none"> 1. Grabbed and pulled [REDACTED] by the arm, in violation of Rules 6 and 8. 2. Pushed [REDACTED] inside a Department vehicle, in violation of Rules 6 and 8. 3. “Planted” suspect narcotics on [REDACTED] in violation of Rule 6. 4. False arrested [REDACTED] in violation of Rule 6. 	Exonerated
		Unfounded
		Not Sustained
		Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6 – Disobedience of an order or directive, whether written or oral.
 2. Rule 8 – Disrespect to or maltreatment of any person, while on or off duty.
-

General Orders²

1. General Order G03-02 – Use of Force Guidelines (eff. 10/1/02 – 10/16/17).
 2. General Order G03-02-01 – Use of Force Model (eff. 5/16/12 – 10/16/17).
 3. General Order G03-02-02 –Force Options (eff. 3/11/15 – 1/1/16).
-

Federal Laws

1. Fourth Amendment – U.S. Constitution
-

V. INVESTIGATION**a. Interviews**

In his statement to IPRA on December 18, 2015, [REDACTED] reported the following. On December 16, 2015, at 10:45 am, he entered the Citgo gas station at [REDACTED] and [REDACTED] to buy cigarettes. Two male, white officers dressed in plain clothes followed behind him. One of the officers asked the other, "Is this him?" and grabbed him by the arm. One officer attempted to take Mr. [REDACTED] outside, but Mr. [REDACTED] was not letting him. Mr. [REDACTED] asked why the officer was grabbing him and pulled away from the officer.⁴ Mr. [REDACTED] stated that he "just can't let the police come grab me. cause it could be anything. It could be for a murder, it could be for a robbery."⁵ Once outside, Mr. [REDACTED] was handcuffed despite his admitted attempts to prevent handcuffing.⁶ Mr. [REDACTED] was then pushed into a Department vehicle (blue Ford Explorer), admitting that he resisted entering the vehicle and tried to stay out of it.⁷ Mr. [REDACTED] felt that there has "been too much goin' on in the City right now for me to just let a cop do whatever they want to do to me."⁸ It was at this time that Officer [REDACTED] punched Mr. [REDACTED] on the mouth. After he was punched on the mouth, Mr. [REDACTED] ceased his actions of resisting and got into the vehicle. At this time, [REDACTED] (phonetic), who is the mother of his one (1) year old child, exited their vehicle to find out why Mr. [REDACTED] was being arrested. The officers told Ms. [REDACTED] words to the effect of "get back in the car 'fore we do somethin' to you,"¹⁰ at which point, Ms. [REDACTED] returned to the vehicle. The officers called for assist units. When the assist units arrived, they searched his personal vehicle and "terrorized"

² Unless otherwise specified, all references to General Orders in this report are to the ones in effect at the time of this incident and additional references to the effective dates will not be included.

³ Atts. 17 (audio) and 26 (transcript).

⁴ Att. 26, page 4, lines 17-22; page 5, lines 7-24.

⁵ Att. 26, page 6.

⁶ Att. 26, page 6, line 24.

⁷ Att. 26, page 7.

⁸ *Id.*, page 12.

⁹ COPA attempted to interview Ms. [REDACTED] but those attempts were unsuccessful (see, *eg.*, Investigators' Case Log and Att. 43).

¹⁰ Att. 26, page 11, lines 1-2.

his infant daughter who was sleeping in the back seat. At some point during the searching of his personal vehicle, Mr. [REDACTED] was removed from the unmarked Department vehicle and placed into another Department vehicle and transported to the police station at 111th and Cottage Grove for processing. At the station, Mr. [REDACTED] was informed that two (2) bags of marijuana were found, which Mr. [REDACTED] denied belonged to him.

In a **written statement to IPRA** dated April 8, 2016, Officer [REDACTED] said that he and Officer [REDACTED] were working in civilian dress in an unmarked police vehicle on the date of the incident. Officers [REDACTED] and [REDACTED] were on patrol in a known narcotics area, when he observed Mr. [REDACTED] look in the officer's direction and quickly enter the gas station. Officer [REDACTED] observed Mr. [REDACTED] watching the officers through a window from inside of the gas station. Officer [REDACTED] described Mr. [REDACTED] demeanor during their contact as aggressive, agitated and verbally combative. Officer [REDACTED] had physical contact with Mr. [REDACTED] during a protective pat down. Officer [REDACTED] attempted to place Mr. [REDACTED] into custody when Mr. [REDACTED] became combative and resisted arrest. Officer [REDACTED] states that he did push Mr. [REDACTED] into the squad car because he was being combative and resisting arrest. Officer [REDACTED] gave Mr. [REDACTED] a closed hand strike to gain compliance as Mr. [REDACTED] hit Officer [REDACTED] chest with a head butt. Officer [REDACTED] did not observe Officer [REDACTED] engage in physical contact with Mr. [REDACTED] or push Mr. [REDACTED] inside the department vehicle. Officer [REDACTED] did not observe anyone grab, pull or physical contact with Mr. [REDACTED]. Officer [REDACTED] did not plant, or see anyone plant, suspect narcotics on Mr. [REDACTED] and did not observe anyone search Mr. [REDACTED] vehicle. Officer [REDACTED] did not falsely arrest Mr. [REDACTED] as he was in custody for suspect narcotics found on his person.

In an **audio recorded statement to COPA** on September 7, 2018,¹² Officer [REDACTED] stated that he observed Mr. [REDACTED] next to a vehicle, and that [REDACTED] looked in the direction of the police vehicle, did an about face and walked directly into the Citgo Gas Station store.¹³ [REDACTED] knew this location to be a "hot spot"¹⁴ for narcotics activity and believed Mr. [REDACTED] act of turning around after making eye contact with [REDACTED]

After [REDACTED] several videos from the Citgo Gas Station,¹⁵ Officer [REDACTED] recalled that he and [REDACTED] drove by the Citgo after Mr. [REDACTED] was already out of his car and was halfway to the store. He stated that he could not recall if they saw Mr. [REDACTED] before Mr. [REDACTED] pulled into the Citgo, but there was something more than the eye contact and they were going to stop Mr. [REDACTED]. After Mr. [REDACTED] entered the store, [REDACTED] and [REDACTED] pulled up and [REDACTED] walked quickly into the store, followed by [REDACTED]. Once inside, Mr. [REDACTED] pulled away from [REDACTED] was verbally combative and displayed a demeanor which prompted [REDACTED] to immediately grab Mr. [REDACTED] by the arm and jacket. Mr. [REDACTED] was handcuffed as part of the detention, then [REDACTED] conducted a pat-down of his outer garments. [REDACTED] felt a bulge on Mr. [REDACTED] inner left leg, which [REDACTED] believed to be narcotics. [REDACTED] pulled open Mr. [REDACTED] pants and observed a bag of suspect cannabis where he felt the bulge.

¹¹ Att. 32.

¹² Atts. 53-56, 58 (audio), and 66 (transcript).

¹³ Att. 66, page 10.

¹⁴ A "hot spot" is an area known for criminal activity (Att. 66, page 32).

¹⁵ Att. 25.

Mr. [REDACTED] was escorted outside to the police vehicle. When [REDACTED] attempted to place Mr. [REDACTED] into the vehicle, Mr. [REDACTED] became very combative and resistant, pushed himself off of the vehicle and pulled away from [REDACTED] had to push Mr. [REDACTED] into the vehicle.

In a **written statement to IPRA** dated April 9, 2016, Officer [REDACTED] statement indicates similar information as Officer [REDACTED]. Officer [REDACTED] states that he does not recall having any physical contact with Mr. [REDACTED] nor did recall observing any physical contact between Mr. [REDACTED] and Officer [REDACTED]. Officer [REDACTED] did not plant, or observe Officer [REDACTED] plant, suspect narcotics on Mr. [REDACTED]. Officer [REDACTED] did not observe any officers searching Mr. [REDACTED] vehicle.

In an **audio recorded statement to COPA** on October 19, 2018, Officer [REDACTED] was shown video from the Citgo gas station and stated the following. He first observed Mr. [REDACTED] who exited his vehicle looked toward the officers and entered the store. After again watching exterior video from Citgo,¹⁸ Officer [REDACTED] acknowledged that the video showed that when Mr. [REDACTED] exited his car, the police vehicle was not seen. He then said that he first observed Mr. [REDACTED] as he walked from his vehicle to the store.¹⁹ Officer [REDACTED] was suspicious because of this being a high narcotics area and Mr. [REDACTED] looked towards the officers, and continued to watch the officers after he entered the store. Officer [REDACTED] distinguished Mr. [REDACTED] from others who were present at the Citgo who also looked towards the officers, but did not move. Officer [REDACTED] did not witness the first encounter by Officer [REDACTED] with Mr. [REDACTED] as Officer [REDACTED] was checking store shelves for contraband, so he did not know if Mr. [REDACTED] was aggressive or combative when he was first approached. Officer [REDACTED] assisted in the handcuffing of [REDACTED] but did not recover or witness the recovery of the alleged cannabis from [REDACTED] person.

b. Digital Evidence²⁰

Citgo Gas Station security video files shows much of the activity from both interior and exterior footage. There is no audio on any of the video files. Exterior video shows Mr. [REDACTED] vehicle driving westbound on 123rd Street and pulling into the gas station.²¹ His car stops at the western most pump. He exits from the driver's seat and begins walking towards the door to the store. Mr. [REDACTED] is approximately one-third to halfway to the door when the police vehicle with Officers [REDACTED] and [REDACTED] is first seen driving eastbound on 123rd Street.²² Mr. [REDACTED] continues to walk to the door and at various points his head and face are obstructed by what appears to be

¹⁶ Att. 36.

¹⁷ Atts. 59-63 (audio), 67 (transcript).

¹⁸ Att. 25, video Event [REDACTED].

²⁰ Additionally, POD Camera # [REDACTED], located at [REDACTED] (Att. 23), captured some of the outside portions of the event. However, the camera was continuously panning the intersection and did not stop and zoom in until after Mr. [REDACTED] was inside the police vehicle.

²⁰ Additionally, POD Camera # [REDACTED], located at [REDACTED] (Att. 23), captured some of the outside portions of the event. However, the camera was continuously panning the intersection and did not stop and zoom in until after Mr. [REDACTED] was inside the police vehicle.

²¹ Att. 25, Event [REDACTED] at 3:15.

²² *Id.*, at 3:40.

another camera mounted on the Citgo building. He reaches to open the door at about the same time that the officers pull into the gas station on the eastside and out of view of the camera.²³ A few seconds after Mr. [REDACTED] enters the store, the police vehicle reappears now going westbound in the gas station and parking in front of the Citgo door. Officer [REDACTED] exits the passenger side and quickly walks into the store, followed several seconds later by Officer [REDACTED]. Interior video shows Mr. [REDACTED] opening the door from the outside.²⁴ Mr. [REDACTED] is looking northeast (in the general direction of the officers) as he opens the door and enters. He stands just inside the door and continues to look outside until the officers' vehicle is seen stopping outside the door.²⁵ Mr. [REDACTED] steps to the counter. He again looks towards the glass door as Officer [REDACTED] enters the store.²⁶ Officer [REDACTED] takes two steps inside and grabs Mr. [REDACTED] by the back of his jacket and right arm. Officer [REDACTED] points towards the door and has a grip on the jacket. When Officer [REDACTED] enters, he walks past Mr. [REDACTED] and Officer [REDACTED] and walks into the aisle closest to the door. He points towards Mr. [REDACTED] and continues further into the aisle.

While Officer [REDACTED] has his left hand grabbing the back of Mr. [REDACTED] jacket and his right hand holding Mr. [REDACTED] right wrist, Mr. [REDACTED] turns steps away from the door. Officer [REDACTED] approaches and grabs Mr. [REDACTED] by the left arm. The officers attempt to place handcuffs on Mr. [REDACTED] who twists and turns briefly until the officers are able to succeed in handcuffing him. Officer [REDACTED] places his hands into the pockets on the front of Mr. [REDACTED] jacket, grabs and shakes the pants front pocket and crotch areas, and pulls the front of Mr. [REDACTED] pants and looks inside.²⁷ During this time, Officer [REDACTED] goes back into the first aisle and looks around. Officer [REDACTED] escorts Mr. [REDACTED] outside and Officer [REDACTED] remains in the store looking around.²⁸

Officer [REDACTED] and Mr. [REDACTED] exit the store and walk around the front of the police vehicle to the passenger side.²⁹ Officer [REDACTED] opens the rear passenger door and seems to guide Mr. [REDACTED] to get in the vehicle. Mr. [REDACTED] turns and his shoulder moves to Officer [REDACTED] chest, causing Officer [REDACTED] to take a step backwards. Officer [REDACTED] forcefully pushes Mr. [REDACTED] in the chest and shoulder area multiple times and into the vehicle. Both men disappear into the open rear passenger door.³⁰ A woman approaches from Mr. [REDACTED] car and as she gets to the rear passenger door, Officer [REDACTED] comes back into view. Officer [REDACTED] and the woman appear to have brief conversation, during which Officer [REDACTED] points at the woman. She turns and starts to walk away, but stops and turns back to Officer [REDACTED].³¹ The woman appears to shout at Officer [REDACTED] and walking to the front driver's door of the police vehicle.³² Eventually, Officer [REDACTED] exits the store

²³ *Id.*, at 3:44.

²⁴ Att. 25, Event [REDACTED] at 2:44.

²⁵ *Id.*, at 2:51.

²⁶ *Id.*, at 2:56.

²⁷ *Id.*, at 3:35.

²⁸ *Id.*, at 4:05.

²⁹ Att. 25, Event [REDACTED], at 0:05.

³⁰ *Id.*, at 0:22 – 0:29.

³¹ *Id.*, at 0:31 – 0:49.

³² Att. 25, Event [REDACTED], at 0:00 – 0:14.

and quickly walks to the rear passenger side door.³³ He stands outside that door and the woman argues with him.

c. Documentary Evidence

The General Offense Case Report³⁴ (████████) and Arrest Report³⁵ (████) indicate that Officers █████ and █████ were on a routine patrol of a high narcotics area, when they observed Mr. █████ exit his vehicle, look in the officers' direction, and quickly walk into the gas station. The officers entered the gas station to conduct a field interview with █████ who became aggressive and verbally combative. Based on █████ actions, he was detained and protective pat down was performed for officer safety. During the protective pat down, a bulge in the area of Mr. █████ inner-leg was observed. Officer █████ checked this area and observed a Ziploc bag. The officers relocated to their vehicle at which time █████ became agitated and attempted to get out of the vehicle several times and "headbutted" Officer █████ on the chest. Officer █████ administered a closed-hand strike to subdue █████. Officer █████ then recovered the Ziploc bag containing marijuana. █████ was taken into custody and transported to the 5th District.

In his Tactical Response Report (TRR)³⁶ and Officer Battery Report (OBR)³⁷ Officer █████ identified Mr. █████ as a Passive Resister (did not follow verbal direction, stiffened) who became an Active Resister (pulled away) and escalated to an Assailant/Battery (attack without weapon i.e. head butt). Officer █████ utilized member presence, verbal commands, take down/emergency handcuffing and a closed hand strike/punch to effect the arrest of Mr. █████.

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.

³³ *Id.*, at 0:25.

³⁴ Att. 5.

³⁵ Att. 4.

³⁶ Att. 6.

³⁷ Att. 7.

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

A. Excessive Force

A law enforcement officer violates a person's Fourth Amendment constitutional rights when the officer uses force that is not objectively reasonable in effecting that person's arrest.³⁸ Whether an officer's use of force in effecting an arrest was objectively reasonable and therefore lawful and proper depends on a number of factors, including the severity of the crime that the arrest person was suspected of committing, whether that person posed an immediate threat to the officer's safety or to the safety of others, and whether he was actively resisting arrest or attempting to evade arrest by flight.³⁹

1. Officer █ Allegations #1 - #3

COPA finds that **Allegation #1** (grabbed and pulled) is **sustained**. An officer may use holding techniques (such as grabbing an arm, come-along holds and using a firm grip) when the person they are encountering is uncooperative at a level of at least a passive resister.⁴⁰ A passive resister is one who does not comply with verbal commands or directions.⁴¹ The interior video from Citgo⁴² shows that Mr. █ was standing at the counter, just inside the store at the Citgo gas station when Officer █ entered the same store. Officer █ took two small steps and immediately put his hands on Mr. █ and took hold of his right arm and jacket.⁴³ COPA finds that at that point, Mr. █ was not resisting. COPA notes that Mr. █ had not yet had an opportunity to do so and soon did engage in resisting behavior. Acknowledging that the interior video evidence is limited to one angle and without audio, it is still overwhelmingly clear that the time Officer █ first grabbed Mr. █ was at the onset of the encounter.

³⁸ *Graham v. Connor*, 490 U.S. 386, 388 (1989)

³⁹ *Id.*, at 396; G03-02(III)(C).

⁴⁰ G03-02-01(III), G03-02-02(III)(B)(1).

⁴¹ G03-02-02(III)(B)(1).

⁴² Att. 25, video Event █.

⁴³ *Id.*, at 2:57.

COPA finds that **Allegation #2** (pushed into the Department vehicle) is **exonerated**. When an officer encounters an active resister, in addition to holding techniques, an officer may use stunning techniques, such as diffused-pressure striking or slapping to increase control.⁴⁴ An active resister includes a person who attempts to create distance from an officer's reach with the intent to avoid physical control by his own actions.⁴⁵ Here, Officer [REDACTED] pushing of Mr. [REDACTED] was a stunning technique. At this point, both Mr. [REDACTED] and Officer [REDACTED] were standing outside the police vehicle. Mr. [REDACTED] admitted to resisting the officer's efforts to be placed into the police vehicle. Exterior video from Citgo⁴⁶ shows the driver's side of the police vehicle. Officer [REDACTED] and Mr. [REDACTED] walk through the door to the store and to the passenger side, where Officer [REDACTED] opens the rear door. The car obstructs a portion of the two men, so not all events are visible. However, it appears that Mr. [REDACTED] moves away from the open door towards Officer [REDACTED] possibly even pushing the officer with his right shoulder.⁴⁷ Officer [REDACTED] immediately responds by pushing Mr. [REDACTED] at least two times in the chest and / or shoulder area until they both disappear from view, perhaps into the open car door, for approximately 10 seconds. Because Mr. [REDACTED] was an active resister at the time Officer [REDACTED] pushed him into the vehicle, the officer's actions were an appropriate use of force.

COPA finds that **Allegation #3** (punched) is **not sustained**. Mr. [REDACTED] and Officer [REDACTED] both describe various acts of resistance and non-compliance by Mr. [REDACTED]. Citgo's security video also shows that to be the case. Mr. [REDACTED] even stated that he was resisting getting into the police vehicle and trying to keep his feet out of the vehicle, up until the time he was punched by Officer [REDACTED]. While Officer [REDACTED] stated that the reason he used a closed hand strike was because Mr. [REDACTED] head-butted him in the chest, there is nothing to corroborate that assertion. While it is not disputed that a punch (closed-hand strike) was used on Mr. [REDACTED] the evidence is insufficient for COPA to determine if Mr. [REDACTED] actions justified that force or if it was excessive.

2. Officer [REDACTED] Allegations #1 - #2

COPA finds that **Allegation #1** (grabbed and pulled) is **exonerated**. As set forth above, an officer may use holding techniques when faced with an individual who is at least a passive resister. Here, Officer [REDACTED] did not touch Mr. [REDACTED] until 15 seconds after Officer [REDACTED] first grabbed Mr. [REDACTED]. By this time, Mr. [REDACTED] (by his own admission) had tried pulling away from Officer [REDACTED]. Because Mr. [REDACTED] had become an active resister by the time Officer [REDACTED] grabbed him, the officer exercised an appropriate use of force.

⁴⁴ Id., and G03-02-01(III),

⁴⁵ G03-02-02(III)(B)(2).

⁴⁶ Att. 25, video Event [REDACTED].

⁴⁷ Id., at 0:26.

COPA finds that **Allegation #2** (pushed into the Department vehicle) is **unfounded**. The evidence obtained in this investigation is clear that Officer [REDACTED] neither pushed Mr. [REDACTED] into the police vehicle nor was outside when that occurred.

B. Fourth Amendment violations: Officer [REDACTED] Allegations #4 - #5 and Officer [REDACTED] Allegations #3 - #4

The Fourth Amendment of the United States Constitution and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Police-citizen encounters are categorized into three tiers: (1) an arrest of a citizen, which must be supported by probable cause; (2) a temporary investigative seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and 725 ILCS 5/107-14, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) a consensual encounter, which does not implicate any Fourth Amendment interests. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). 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.” (citing *People v. Wear*, 229 Ill. 2d 545, 563-64, 893 (2008)). The officer’s subjective belief is not determinative; rather probable cause is an objective standard. *Id.* (citing *People v. Chapman*, 194 Ill. 2d 186, 218-19, (2000)).

COPA finds that [REDACTED] **Allegation #4** and [REDACTED] **Allegation #3** (planting evidence) are **not sustained**. Mr. [REDACTED] denied possessing cannabis. Officer [REDACTED] claimed to feel, then see, and ultimately recover a bag of cannabis inside Mr. [REDACTED] pants leg. The videos from the interior and exterior of the Citgo store do not corroborate or refute either claim. There is insufficient evidence to determine if this allegation occurred.

COPA finds that [REDACTED] **Allegation #5** and [REDACTED] **Allegation #4** (false arrest) are **exonerated**. The facts are undisputed that Mr. [REDACTED] was placed under arrest. In Illinois, it is the crime of Resisting or Obstructing a Peace Officer (“Resisting”) to knowingly resist the performance by one he knows to be a peace officer of any authorized act within his or her official capacity.⁴⁸ At the time he was arrested, according to Mr. [REDACTED] and Officer [REDACTED] and visible on Citgo’s video of the interior of the store, Mr. [REDACTED] had been and was continuing to resist and pull away from the officers. At that point, probable cause existed that Mr. [REDACTED] had committed the offense of resisting and arresting him was proper.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

⁴⁸ 720 ILCS 5/31-1(a).

a. Officer [REDACTED]**i. Complimentary and Disciplinary History**

Officer [REDACTED] complimentary history consists of 2 Problem Solving Awards, 6 Department Commendations, 195 Honorable Mentions, 2 Complimentary Letters, 2 Honorable Mention Ribbon Awards, and 1 Unit Meritorious Performance Award. Officer [REDACTED] has no disciplinary history.

ii. Recommended Penalty, by Allegation

- 1. Allegation No. 1** – COPA recommends a 5 day suspension and de-escalation training for Officer [REDACTED]. It is clear from the video that Officer [REDACTED] decision to grab and pull Mr. [REDACTED] by the arm from the very first moment he began the investigatory stop, escalated the encounter unnecessarily. COPA considers Officer [REDACTED] complimentary history and lack of prior discipline in mitigation.

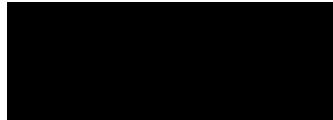
IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED] [REDACTED]	<p>It is alleged that on December 16, 2015, at approximately 10:45 am, in the vicinity of [REDACTED] Street, you:</p> <ol style="list-style-type: none">1. Grabbed and pulled [REDACTED] by the arm, in violation of Rules 6 and 8.2. Pushed [REDACTED] inside a Department vehicle, in violation of Rules 6 and 8.3. Punched [REDACTED] in the mouth, in violation of Rules and 8.4. “Planted” suspect narcotics on [REDACTED] in violation of Rule 6.5. False arrested [REDACTED] in violation of Rule 6.	<p>Sustained / 5 Day Suspension and Training</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Exonerated</p>

Officer [REDACTED] [REDACTED]	It is alleged that on December 16, 2015, at approximately 10:54 am, in the vicinity of [REDACTED] Street, you:	
	1. Grabbed and pulled [REDACTED] by the arm, in violation of Rules 6 and 8.	Exonerated
	2. Pushed [REDACTED] inside a Department vehicle, in violation of Rules 6 and 8.	Unfounded
	3. "Planted" suspect narcotics on [REDACTED] in violation of Rule 6.	Not Sustained
	4. Falsely arrested [REDACTED] in violation of Rule 6.	Exonerated

Approved:



December 30, 2019

Andrea Kersten
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

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