

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / Time of Incident:	April 20, 2019, approximately 3:26 p.m.
Location of Incident:	10142 S. Vernon Avenue, Chicago, Illinois
Date / Time of COPA Notification:	April 21, 2019, approximately 3:08 p.m.

Chicago Police Department (“CPD”) officers responded to a radio assignment to investigate a complaint about a man with a gun near 10142 S. Vernon Ave. The officers arrived and encountered a group of individuals standing in the street adjacent to the curb. The officers asked the group if any of them were armed. ██████████ (“██████”) responded by stating that he was armed with a gun that he was licensed to carry. ██████████ was holding a beer can at the time. The officers confirmed that ██████████ was carrying a firearm and disarmed him. After confirming that ██████████ was licensed to carry a firearm, the officers cited ██████████ for drinking alcohol on the public way and returned his firearm.

Following the encounter, ██████████ complained about his detention, alleging that the officers violated his right to carry a firearm, claiming that the officers would not have handcuffed or disarmed him but for his race, and contending that the officers should have returned his firearm directly to him instead of placing it in the trunk of his car. ██████████ further complained that one of the responding officers told an individual who was video recording the encounter that ██████████ would be arrested and that his vehicle would be impounded if they did not cease recording.

The Civilian Office of Police Accountability (“COPA”) has determined, after viewing video footage of the encounter captured by body-worn cameras, that the officers’ actions in detaining ██████████, restraining him, disarming him, and in returning his firearm to him did not constitute misconduct. COPA has further determined there was insufficient evidence to prove or disprove that the officers treated ██████████ differently based on his race. COPA has also determined that the footage does not demonstrate that any officer made an improper threat.

II. INVOLVED PARTIES

Involved Officer #1:	██████████, Star # ██████████, Employee # ██████████ Date of Appointment: ██████████, 2015, Rank: Police Officer; Unit of Assignment: ██████████; DOB: ██████████, 1992; M/WWH
Involved Officer #2	██████████, Star # ██████████, Employee # ██████████ Date of Appointment: ██████████, 2015, Rank: Police Officer; Unit of Assignment: ██████████; DOB: ██████████, 1991; M/W
Involved Officer #3:	██████████, Star # ██████████, Employee # ██████████, Date of Appointment: ██████████, 2011, Rank: Police Officer; Unit of Assignment: ██████████; DOB: ██████████, 1972; M/B
Involved Individual #1:	██████████, DOB: ██████████, 1970; M/B

III. ALLEGATIONS

Officer	Allegation	Finding
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	
	1. detaining [REDACTED], without justification; and/or	Exonerated
	2. restraining [REDACTED], without justification; and/or	Exonerated
	3. disarming [REDACTED], without justification; and/or	Exonerated
	4. failing to return [REDACTED] firearm directly to him; and/or	Exonerated
	5. making law enforcement decisions based on [REDACTED] race.	Not Sustained
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	
	1. detaining [REDACTED], without justification; and/or	Exonerated
	2. making law enforcement decisions based on [REDACTED] race.	Not Sustained
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	
	1 told an individual(s) who was video recording that [REDACTED] would be arrested, and that [REDACTED] vehicle would be impounded if the individual did not stop recording the incident	Not Sustained

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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1. Rule 1, CPD Rules of Conduct (prohibiting legal violations)
  2. Rule 6, CPD Rules of Conduct (prohibiting disobedience of CPD directives)
  3. Rule 8, CPD Rules of Conduct (prohibiting maltreatment)
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##### General Orders

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1. General Order G02-04 *Prohibition Regarding Racial Profiling and Other Bias Based Policing* (Effective Date: December 1, 2017)
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##### Special Orders

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1. Special Order S04-13-09 *Investigatory Stop System* (Effective Date: July 10, 2017)
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##### Federal Laws

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1. U.S. Constitution, Second Amendment
  2. U.S. Constitution, Fourth Amendment
  3. U.S. Constitution, Fourteenth Amendment
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##### State Laws

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1. The Firearm Concealed Carry Act, 430 ILCS 66/1 *et seq.*
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##### City Ordinances

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1. Municipal Code of Chicago, § 8-4-030(a)(1).

#### V. INVESTIGATION<sup>1</sup>

##### a. Interviews

██████████<sup>2</sup>

██████████ was interviewed by COPA investigators on April 26, 2019. During the interview, ██████████ described his April 20th encounter with CPD members that occurred at or near 10142 S. Vernon Avenue. In summary, ██████████ told investigators he was drinking beer with friends when CPD officers (now known to be Officers ██████████ and ██████████) drove up. Officers ██████████ and ██████████ stepped out of their vehicle and asked the group if any of them were armed. ██████████ replied that he was armed with a gun, which he was licensed to carry. The officers then handcuffed ██████████ and disarmed him.

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<sup>1</sup>COPA conducted an investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Attachment 7 is a video depicting that interview. Attachment 8 is an audio recording of that interview.

After determining that [REDACTED] was licensed to carry a firearm, the officers cited [REDACTED] for drinking on the public way. Meanwhile, an additional CPD officer arrived (now known to be Officer [REDACTED]). Officer [REDACTED] told the individuals who were video recording that [REDACTED] would be arrested for DUI, and that [REDACTED] vehicle would be impounded if they did not stop recording.

At the conclusion of the encounter, the officers returned [REDACTED] firearm to him indirectly: instead of handing the firearm to [REDACTED], the officers placed the firearm in the trunk of [REDACTED] car and then walked away.

In sum, [REDACTED] complained about his detention, alleging that the officers violated his right to carry a firearm, claiming that the officers would not have handcuffed or disarmed him but for his race, and contending that the officers should have returned his firearm directly to him instead of placing it in the trunk of his car.

## **b. Digital Evidence**

### **Body-Worn Camera (“BWC”) <sup>3</sup>**

BWC Captures Officers [REDACTED] and [REDACTED] arriving. The officers encounter four male individuals, including [REDACTED], standing near the curb between a couple parked cars. [REDACTED] has a beer can in one of his hands. The officers approach the group and Officer [REDACTED] says, “What’s going on, guys? You guys, do me a favor, just put your hands up, everybody. Nobody’s got nothing on them?” [REDACTED] then immediately informs the officers that he has something on him. Officer [REDACTED] handcuffs [REDACTED], stating, “We’re just going to cuff you for right now until we can figure out what’s going on.” [REDACTED] then tells the officers that he is licensed to carry a firearm. The footage shows that [REDACTED] has a handgun holstered near his waist, which Officer [REDACTED] removes with [REDACTED] permission. Officer [REDACTED] then returns to his vehicle with [REDACTED] firearm, which Officer [REDACTED] unloads and places in the vehicle’s glove compartment. As Officer [REDACTED] is unloading the firearm, Officer [REDACTED] asks [REDACTED] if he has his license with him, and [REDACTED] informs Officer [REDACTED] that his license is in his wallet. Officer [REDACTED] then removes [REDACTED] wallet from one of [REDACTED] back pockets and accesses [REDACTED] license and other pieces of identification from it. Officer [REDACTED] then returns to the vehicle, where he apparently enters data into a computer terminal. Officer [REDACTED] then returns to [REDACTED] and remains with [REDACTED] as Officer [REDACTED] works in the vehicle. Officer [REDACTED] then steps out of the vehicle, informs Officer [REDACTED] that [REDACTED] is clear, and approximately 3 minutes after he was first handcuffed, Officer [REDACTED] un-handcuffs [REDACTED]. Officer [REDACTED] then informs [REDACTED] that he is going to be cited for drinking in the public way. Officer [REDACTED] then returns to the vehicle, where he writes a citation. Two of [REDACTED] acquaintances have left the scene. [REDACTED] other acquaintance has been moving about freely during the encounter. As Officer [REDACTED] is writing [REDACTED] citation, onlookers can be heard apparently heckling the officers. One of [REDACTED] remaining acquaintance tells one of the hecklers to put a camera up. Officer [REDACTED], who arrived during the encounter, then engages verbally with the heckler, apparently to de-escalate and discourage the onlooker from making a disturbance. Meanwhile, Officer [REDACTED] presents and explains a citation to [REDACTED]. Soon thereafter, Officer [REDACTED] retrieves [REDACTED] firearm and returns it to [REDACTED] by placing the

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<sup>3</sup> Attachments 16 – 18

firearm in the trunk of the vehicle, which [REDACTED] opened for that purpose. Finally, the officers' tone of voice and [REDACTED] tone of voice are calm throughout the encounter.

### c. Documentary Evidence

#### *Event Query Report*<sup>4</sup>

An Office of Emergency Communications Management Event Query Report shows that a person made a 911 call<sup>5</sup> at approximately 3:21 p.m. on the date of the occurrence, reporting that a man had dropped a gun and picked it up at or near the incident. The report shows that CPD units were dispatched to investigate that call approximately three minutes later.<sup>6</sup>

## 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 a quantum of evidence indicating that it is more likely than not that the conduct reviewed did or did not comply with a CPD rule. *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 more likely that the conduct did or did not comply with a CPD rule than that it did not, 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 standard, but it requires less certainty than does the “beyond-a-reasonable doubt” standard applicable in criminal cases. *See People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (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.”)

## VII. ANALYSIS

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<sup>4</sup> Attachment 12 is an image of that report

<sup>5</sup> Attachment 19 is an audio recording of that 911 call.

<sup>6</sup> Attachment 20 contains an audio recording of the radio broadcast of that dispatch.

**A. CLEAR AND CONVINCING EVIDENCE SHOWS THAT THE OFFICERS' ACTIONS IN DETAINING ██████, IN HANDCUFFING HIM, IN DISARMING HIM, AND IN RETURNING HIS FIREARM TO HIM WERE LAWFUL AND PROPER.**

█████ was admittedly drinking alcohol on the public way in violation of provisions of the Chicago Municipal Code.<sup>7</sup> Therefore, the officers' detention of ██████ for purposes of citing him for that infraction did not run afoul of Fourth Amendment prohibitions against unreasonable seizures. The officers' actions in handcuffing ██████ during part of that detention was also legitimate, as Illinois courts have long and consistently held that police handcuffing of persons known or reasonably believed to be armed is permissible for officer safety reasons.<sup>8</sup> And though ██████ has complained that the officers disarmed him and returned his firearm only indirectly notwithstanding that he was licensed to carry a firearm, the officers' actions were authorized by provisions of under the Firearm Concealed Carry Act, which expressly permit law enforcement officers to secure a licensed person's lawfully-carried firearms for the duration of an investigative stop.<sup>9</sup>

For the above reasons, the officers' treatment of ██████ was not misconduct.<sup>10</sup> Accordingly, Officer ██████ is EXONERATED with respect to Allegations 1 – 4 against him, and Officer ██████ is EXONERATED with respect to Allegation 1 against him.

**B. BWC FOOTAGE DEPICTING THE INCIDENT REVEALS NO EVIDENCE OF RACIAL ANIMUS OR OTHER EVIDENCE SUGGESTING THAT OFFICERS TREATED ██████ DIFFERENTLY THAN THEY WOULD HAVE BUT FOR HIS RACE.**

Though ██████ has claimed that Officers ██████ and ██████ treated him differently than they would have but for his race,<sup>11</sup> he has pointed to no evidence suggesting that the officers considered ██████ race in making any of their decisions. Moreover, BWC footage belies ██████ claim, as it depicts no evidence of racial animus; instead, it shows that the officers treated ██████

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<sup>7</sup>MCC § 8-4-030(a)(1) (“It shall be unlawful for any person to drink any alcoholic liquor as defined by law on any public way ....”)

<sup>8</sup>See *People v. Colyar*, 2013 IL 111835, ¶46; *People v. Johnson*, 408 Ill.App.3d 107, 113, 945 N.E.2d 2 (2010); *People v. Starks*, 190 Ill.App.3d 503, 509, 546 N.E.2d 71 (1989). That the officers unhandcuffed ██████ during his detention after disarming him and after determining that he was licensed to carry a firearm supports the conclusion that the officers did not restrain ██████ longer than they believed was necessary for purposes of their safety.

<sup>9</sup>See 430 ILCS 66/10(h).

<sup>10</sup>The officers' treatment of ██████ acquaintances was likewise lawful and proper. The officers did not detain any of them, except momentarily. Though it appears that none of the officers ever informed ██████ acquaintances that they were free to leave after ██████ had been handcuffed, nothing in the BWC footage suggests that any of ██████ acquaintances could have reasonably believed that he was still being detained after ██████ had been handcuffed: the officers did not block the path of any of them, the officers asked none of them for identification, and the officers gave no direction suggesting that any of them was required to stay. Additionally, the officers' approach to the group was authorized by and consistent with the CPD's directive respecting investigatory stops, which informs CPD officers that they “may approach any person at any time for any reason on any basis[, provided that,] absent reasonable suspicion or probable cause, that person must be free to walk away at any time.” Special Order S04-13-09 *Investigatory Stop System* (Effective Date: July 10, 2017)

<sup>11</sup>Such conduct is expressly prohibited by a CPD directive. See General Order G02-04 *Prohibition Regarding Racial Profiling and Other Bias Based Policing* (Effective Date: December 1, 2017).

respectfully, civilly, and without any apparent hostility or ill-will. Therefore, Allegation 5 against Officer [REDACTED] and Allegation 2 against Officer [REDACTED] are NOT SUSTAINED.

**C. BWC FOOTAGE DEPICTING THE INCIDENT REVEALS NO EVIDENCE DEMONSTRATING THAT OFFICERS MADE IMPROPER THREATS.**

[REDACTED] claim that Officer [REDACTED] threatened to arrest him and to impound his car is likewise not supported by BWC footage depicting the incident. The footage shows that Officer [REDACTED] did engage verbally with a heckler, and it reveals that one of [REDACTED] acquaintances, not Officer [REDACTED], directed that onlooker to cease recording the encounter. Circumstances suggest that Officer [REDACTED] verbally engaged with the onlooker to defuse and to de-escalate, and not to discourage video recording. Therefore, Allegation 1 against Officer [REDACTED] is NOT SUSTAINED.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	
	1. detaining [REDACTED], without justification; and/or	Exonerated
	2. restraining [REDACTED], without justification; and/or	Exonerated
	3. disarming [REDACTED], without justification; and/or	Exonerated
	4. failing to return [REDACTED] firearm directly to him; and/or	Exonerated
	5. making law enforcement decisions based on [REDACTED] race.	Not Sustained
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	
	1. detaining [REDACTED], without justification; and/or	Exonerated
	2. making law enforcement decisions based on [REDACTED] race.	Not Sustained
Officer [REDACTED]	On April 20, 2019, at approximately 3:26 p.m., at or near 10142 S. Vernon Ave., Chicago, Illinois, Officer [REDACTED] committed misconduct through the following acts:	

I told an individual(s) who was video recording that [REDACTED] [REDACTED] would be arrested, and that [REDACTED] vehicle would be impounded if the individual did not stop recording the incident	Not Sustained
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Approved:



April 7, 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