

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 24, 2018
Time of Incident:	Approximately 3:34a.m.
Location of Incident:	At or near 100 S. Leamington Avenue Chicago, Illinois
Date of COPA Notification:	October 24, 2018
Time of COPA Notification:	7:44a.m.

On October 24, 2018, at approximately 3:34a.m., Officer ██████████ (“Officer ██████████ and his partner, Officer ██████████ (“Officer ██████████ approached ██████████ (██████████ and ██████████ (██████████ seated in a parked vehicle. ██████████ and ██████████ were suspected of having a gun inside the vehicle hidden under a seat. Officer ██████████ approached the passenger side of the vehicle with his firearm in a raised and ready position. ██████████ exited the vehicle and fled, repeatedly placing his hands near his waistband, leading Officer ██████████ to believe that ██████████ had a gun. Officer ██████████ deployed his taser in ██████████ direction as ██████████ fled, but it was ineffective. ██████████ was subsequently taken into custody and charged. Following the incident, Lieutenant ██████████ (“Lt. ██████████ alleged that Officer ██████████ violated General Order 03-02-04 by deploying his taser at ██████████ while ██████████ was running. Following an investigation, COPA determined that the Officer ██████████ did not violate Chicago Police Department (“CPD”) by deploying his taser at ██████████ while ██████████ was running.

II. INVOLVED PARTIES

Involved Officer #1:	Police Officer ██████████ Star # ██████████, Employee ID# ██████████, DOA: ██████████, 2015, DOB: ██████████, 1988, Male, White Hispanic
Involved Individual #1:	██████████ DOB: ██████████, 1987, Male, Black

III. ALLEGATIONS¹

Officer	Allegation	Finding
Officer ██████████	<p>On or about October 24, 2018, at approximately 3:34a.m., at or near 100 S. Leamington Avenue, Chicago, Illinois Officer ██████████ ██████████ committed misconduct through the following acts or omissions:</p> <p>1. Deployed his taser against ██████████ as ██████████ ██████████ was running.</p>	Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6, Prohibits disobedience of an order or directive, whether written or oral.

General Orders

1.G03-02-04, Taser Use Incidents

V. INVESTIGATION

a. Interviews

Officer ██████████

Officer ██████████ stated that he and Officer ██████████ were working the midnight shift together in the ██████████ District when they were informed by Officer ██████████ that he observed ██████████ enter the driver’s seat of a white sedan with a handgun and appear to place an unknown item under the driver’s seat.² ██████████ entered the passenger seat of the vehicle. With knowledge of what occurred, and a description of the vehicle and the subjects, Officer ██████████ and Officer ██████████ conducted an investigatory stop of the vehicle. Officer ██████████ approached the driver’s side and requested that ██████████ exit the vehicle. Officer ██████████ approached the passenger side and observed ██████████ reaching toward the floorboard. ██████████ exited the vehicle and placed his hands in the air. Officer ██████████ attempted to grab ██████████ to detain him. ██████████ moved away. Officer ██████████ instructed ██████████ to stop moving. ██████████ fled on foot. Officer ██████████ chased ██████████ on foot.

¹ Formal allegations were not served.

² Officer ██████████ was working Beat ██████████ inside a room at the ██████████ District Station called the “Shot Spotter” room. Officer ██████████ was responsible for viewing the POD cameras in the ██████████ District and for relaying information regarding possible illegal activity to officers working the street. Officer ██████████ was monitoring the POD cameras inside a “Shot Spotter” room inside the ██████████ District Station and observed ██████████ enter the driver’s seat of the vehicle with a gun and appeared to place the gun under his seat. Courvoisier ██████████ entered the passenger seat of the same vehicle. Officer ██████████ radioed Officers ██████████ and ██████████ and informed them of the situation.

During the chase, ██████ placed his hands near his waistband. Officer ██████ had his taser in a “low ready” position. Believing that ██████ had a gun, Officer ██████ told ██████ to show his hands. ██████ momentarily raised his hands, then placed them near his waistband again, and he continued to run in a zig-zag manner. Believing that ██████ had a gun and for public safety, Officer ██████ stated that it was practicable for him to deploy his taser.³ The taser deployment was ineffective because the probe struck ██████ coat and ██████ kept running. Officer ██████ stated that ██████ and ██████ were subsequently taken into custody and a firearm was recovered from the driver’s side of the suspect vehicle. Officer ██████ stated that he was familiar with the provisions of Department General Order 03-02-04.⁴

b. Digital Evidence

Body Worn Cameras (“BWC”)

BWC footage depicts Officer ██████ Officer ██████ approach the passenger side of the vehicle occupied by ██████ and ██████ exits the vehicle with his arms in the air. Officer ██████ simultaneously tells ██████ to show his hands and turn around. ██████ turns to face the suspect vehicle and then flees on foot, with his hands near his waistband. Officer ██████ gives chase and instructs ██████ to show his hands. ██████ momentarily places his arms in the air and then places his hands near his waistband again. Officer ██████ deploys his taser in ██████ direction. The taser deployment is ineffective and ██████ continues to run in a diagonal direction. Officer ██████ continues to chase ██████ and radios the foot pursuit. A marked Department Chevy Tahoe pulls up near the corner. ██████ was running toward the same corner. ██████ stops running. Officer ██████ orders ██████ to show his hands. ██████ places his arms in the air and is taken into custody by Officer ██████ Officer ██████ conducts a custodial search of ██████⁵ ██████ is placed in the Tahoe. Officer ██████ backtracks his steps.⁶ Officer ██████ informs a Sergeant at the scene that he deployed his taser because he thought ██████ had a gun. Officer ██████ recovers a firearm from underneath the driver’s seat of the suspect vehicle. The Sergeant tells Officer ██████ how to inventory the gun.⁷

c. Documentary Evidence

Tactical Response Report (“TRR”)

A TRR documents that ██████ did not follow verbal direction, pulled away, and fled. Officer ██████ responded with his presence, verbal direction/control techniques, and tactical positioning. Officer ██████ observed ██████ make motions toward his waistband as he fled. Fearing that ██████ was in possession of a firearm, Officer ██████ deployed his taser. ██████ was not injured as a result of the taser deployment.⁸

³ Officer ██████ deployed his taser at an approximate distance of 15-20 feet away from ██████

⁴ Att. #22.

⁵ No firearm was discovered during the search of ██████ person.

⁶ Officer ██████ does this to locate anything that ██████ may have dropped during the foot chase.

⁷ Att. #15.

⁸ Att. #8.

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 reviewed complied with 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 conduct complied with Department policy 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 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 recommends a finding of Exonerated for the allegation that Officer █████ violated General Order 03-02-04 by deploying his taser at █████ while █████ was running. CPD policy does not strictly prohibit an officer from deploying his/her taser at an individual who is running. Specifically, General Order 03-02-04 states, "When *practicable*, Department members should avoid the use of a Taser on subjects who: are running, or are otherwise in motion."

In this case, when considering CPD's limitation on Officer █████ taser use, COPA finds merit in Officer █████ argument that it was not practicable to avoid the use of his taser against █████ First, at the time of Officer █████ taser discharge, Officer █████ was aware that █████ had just been a passenger in a suspect vehicle where a gun had possibly been hidden under a front passenger seat. Second, Officer █████ also witnessed █████ exit the vehicle, flee, and repeatedly place his hands near his waistband. Third, Officer █████ told COPA investigators he employed his taser while █████ was running because he believed that █████ was possibly in possession of a firearm, could pose a danger to the public, and was fleeing police action. Therefore, when considering █████ possibly armed flight and the absence of other viable force options for taking █████ in to custody, COPA reached a finding of exonerated for allegation 1 against Officer █████

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer [REDACTED]	<p>On or about October 24, 2018, at approximately 3:34a.m., at or near 100 S. Leamington Avenue, Chicago, Illinois Officer [REDACTED] [REDACTED] committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Deployed his taser against [REDACTED] as [REDACTED] [REDACTED] was running. 	Exonerated

Approved:



November 23, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

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