CIVILIAN OFFICE OF POLICE ACCOUNTABILITY   **LOG#2019-0587**

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	April 14, 2017 / 3:55 pm / 5405 W. Irving Park Road, Chicago, IL 60641.
Date/Time of COPA Notification:	March 29, 2019 / 4:05 pm.
Involved Officer #1:	Officer Nicholas Johnson / Star#15653 / Employee ID#▮▮▮▮▮ / DOA: November 14, 2014 / Unit: 019 / Male / White.
Involved Officer #2:	Officer Jordan Silva / Star#17314 / Employee ID#▮▮▮▮▮ / DAO: October 27, 2014 / Unit: 019 / Male / Hispanic.
Involved Individual #1:	▮▮▮▮▮▮ / DOB: ▮▮▮▮ 1968 / Male / White.
Case Type:	03D - Improper Arrest.

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Nicholas Johnson	1. Stopping Mr. ▮▮▮▮▮▮ without justification, in violation of Rule 6.	Exonerated.
and	2. Arresting Mr. ▮▮▮▮▮▮ without justification, in violation of Rule 6.	Exonerated.
Officer Jordan Silva	3. Searching Mr. ▮▮▮▮▮▮ without justification, in violation of Rule 6.	Exonerated.

II. SUMMARY OF EVIDENCE[1]

Members of the Area North Detective Mission Team ("the Team") were surveilling Mr. ▮▮▮▮▮[2] and observed him approaching the porches and doors of numerous residences. Additionally, ▮▮▮ was observed entering a multi-unit residential building[3] (5523 W. Irving Park). Once ▮▮▮ entered the building the Team established external surveillance. After approximately 30-minutes, ▮▮▮ exited the building carrying a black bag and counting currency. After exiting the building ▮▮▮ proceeded to a nearby CTA bus stop, waited for and eventually boarded a CTA bus.

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[1]COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation.

[2] ▮▮▮ is a known burglar and was a person of interest in burglaries because he had recently pawned jewelry that was stolen during an unrelated burglary. Att.17, pg. 4; Att. 18, pg. 7; Att. 19 (between June of 1994 and the date of this incident ▮▮▮ had been convicted eight times of residential burglary or attempted burglary.)

[3] ▮▮▮ admitted that when he entered the building he was not carrying any bags with him. Att. 21, pg. 30.

Simultaneously, the Team maintained surveillance of ▮▮▮▮ while other members of the Team, to include Officer Kevin Mullane, entered 5523 W. Irving Park. Once inside the building Officer Mullane located an apartment with forced entry with signs it had been burglarized.[4] Officer Mullane relayed his observations to the rest of the Team. Officer Nicholas Johnson and Jordan Silva then stopped and boarded the bus ▮▮▮▮ was riding. Once on the bus, Officers Johnson and Silva ordered ▮▮▮▮ to stand, handcuffed him, and removed him from the bus. Once off the bus Officers Johnson and Silva searched ▮▮▮▮ and recovered numerous items to include a screwdriver, and an envelope containing a credit card bearing the name of an occupant of the apartment Officer Mullane identified. ▮▮▮▮ was transported to the Area North station, where he was processed for burglary.

During his statement to COPA ▮▮▮▮ made the allegations detailed above.[5] COPA determined that all the allegations are clearly **exonerated**; therefore, the accused did not need to address them.

III.   LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. <u>Sustained</u> - where it is determined the allegation is supported by a preponderance of the evidence;

2. <u>Not Sustained</u> - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

3. <u>Unfounded</u> - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

4. <u>Exonerated</u> - 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.

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[4] Officer Mullane explained there was fresh splintering of the wood on the door jab and floor, which are indicative of forced entry, and that the apartment was unoccupied but appeared to be in disarray. Att. 1, pgs. 41 to 43.

[5] Additionally, ▮▮▮▮ alleged that Team members provided "false testimony" during a suppression hearing; however, when explaining why the testimony was false, ▮▮▮▮ explained that he did not believe the officers were correctly estimating the time it took for certain events to unfold. (Att. 21, pgs. 33 to 36). Based on ▮▮▮▮ own description of the "false testimony" and a review of the hearing transcripts (Att. 1), COPA determined that the times provided by the Team were reasonable estimations and there were no indications the estimations were false. Therefore, COPA elected to not serve any allegations related to the testimony.

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 AND CONCLUSION

COPA finds that the allegations are **exonerated**. Department members are permitted to detain a person when there is reasonable articulable suspicion that person is about to commit, is committing, or has committed a criminal offense.[3] This detention is an Investigatory Stop. Additionally, an officer must have probable cause to arrest a subject.[10] "Probable cause to arrest exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject had committed it."[11] The reasonable basis of any arrest "should be considered from the perspective of a reasonable officer at the time" of the arrest.[12] Further, Department members are required to complete a "custodial search" of any subject who is under arrest.[6] "A custodial search is a warrantless search of a person under arrest" that is intended to "keep contraband and weapons out of jail, to preserve any possible evidence, and to protect the officer[s]."[7]

Here, prior to being stopped, detained, and arrested, ▮▮▮ was known burglar and a person of interest in recent burglaries who he was observed approaching numerous residences, entering 5523 W. Irving Park holding no objects, exiting 5523 W. Irving Park with a black bag and counting currency. Further, it was not until after Officer Mullane located a burglarized apartment in 5523 W. Irving Park, that ▮▮▮ was stopped and arrested. Based on the facts above, any officer would reasonably believe that ▮▮▮ had committed the burglary of the apartment located by Officer Mullane; therefore, the decision to stop and arrest ▮▮▮ was reasonable and proper. Since ▮▮▮ was under arrest the accused were required to complete a custodial search; therefore, the custodial search, that revealed the proceeds of ▮▮▮ burglary, was proper.

Since the allegations are clearly **exonerated** there was no need for the accused to address the allegations.

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James Murphy-Aguilu   Date
Deputy Chief Investigator

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Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	████████████
Supervising Investigator:	████████████
Deputy Chief Administrator:	James Murphy-Aguilu