

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	March 6, 2019
Time of Incident:	7:58 AM
Location of Incident:	7900 S. Lafayette Avenue
Date of COPA Notification:	March 6, 2019
Time of COPA Notification:	11:44 AM

The Complainant alleges that he was pulled over by the Accused members on the basis of his race. The Complainant also alleges that one of the Accused—Officer Opacian—refused to provide his badge number when requested by the Complainant.

**II. INVOLVED PARTIES**

Involved Officer #1:	Piotr Opacian #8729, Emp# [REDACTED], DOA 8/29/16, PO assigned to 6 <sup>th</sup> District, DOB [REDACTED] 90 M/W
Involved Officer #2:	Robert Guerra #11109, Emp# [REDACTED], DOA 10/16/17, PO assigned to 6 <sup>th</sup> District, DOB [REDACTED] 86 M/H
Involved Individual #1:	[REDACTED] DOB [REDACTED] 92 M/B

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Opacian	1. Unlawfully curbed the Complainant’s vehicle solely on the basis of race in violation of Rule(s) 2, 3, 6 and 8.	Unfounded
	2. Refused to provide his badge number upon request from the Complainant in violation of Rule(s) 2, 3, 6 and 8	Unfounded
Officer Guerra	1. Unlawfully curbed the Complainant’s vehicle, solely based on race, in violation of Rule(s) 2, 3, 6 and 8.	Unfounded

	<p>2. Attempted to force the Complainant’s passenger to roll down his window, without lawful justification in violation of Rule(s) 2, 3, 6 and 8.</p>	<p>Unfounded</p>
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**IV. APPLICABLE RULES AND LAWS**

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Rules

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1. Rule 2—Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department
  2. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals
  3. Rule 6: Disobedience of an order or directive, whether written or oral.

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General Orders

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1. G02-04 – Prohibition Regarding Racial profiling and Other Bias Based Policing
  2. G02-01 – Human Rights

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Federal Laws

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1. Fourth Amendment, United States Constitution

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State Laws

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1. 625 ILCS 5/12-503 (c)

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Municipal Laws

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1. 9-36-010
  2. 9-36-020
  3. 9-36-030

## V. INVESTIGATION

### a. Interviews

#### Interview of ██████████

██████████ the Complainant, was interviewed on March 11, 2019. During his interview, he described driving with his younger brother, ██████████ eastbound on 79<sup>th</sup> street approaching a red light at Vincennes Avenue. He stated when the light changed, he overtook a car on the right as 79<sup>th</sup> street briefly became three lanes—a left protected turning lane, a center ongoing traffic lane, and a right protected turning lane—and then merged on the other side of the intersection still traveling east. He stated that he did not speed through the intersection and was driving normally when a marked police vehicle containing the Accused Officers and his partner pulled up parallel to his vehicle and began to look in his direction. ██████████ stated the police vehicle then positioned itself behind his SUV, for a brief distance, before activating their lights to pull them over.

██████████ stated that the Officer Opacian refused to stand in an area where ██████████ could capture the officer on his cellphone camera. ██████████ further stated that Officer Opacian refused to give his badge number to ██████████ upon ██████████ request, and that the Accused did not initially tell him what he had been stopped for. ██████████ stated that another police officer, not connected to the traffic stop, arrived at the gas station. ██████████ requested that officer to intervene in the traffic stop, but this officer did not do anything to help ██████████. When Officer Opacian returned to ██████████ car, he informed ██████████ what he was stopped for.

██████████ stated he believed the reason he and his brother were stopped was due to racial profiling and because of the vehicle he was driving a 2014 Jeep SRT. He stated that he believed that the Accused officers first pulled up parallel to his vehicle to ascertain that he and his brother were black and, only then, made the decision to stop them for a non-existent offense. He believes this theory is supported by the fact the officers didn't curb his vehicle as soon as the offense allegedly took place and ██████████ suspicion that the hanging air freshener is not a valid traffic offense. ██████████ stated he believed he was unreasonably detained for 25 minutes.

### b. Digital Evidence

#### Dashcam footage from Beat #611<sup>2</sup>

Dashcam footage taken from the Accused's vehicle shows the Complainant's vehicle traveling eastbound on 79<sup>th</sup> Street utilizing the left turning lane to overtake traffic on the right at the intersection of 79<sup>th</sup> Street and Vincennes. The Complainant's vehicle cuts across two lanes of traffic, which then merges into a single lane after the intersection, in violation of the Municipal

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<sup>1</sup> Attachment #8

<sup>2</sup> Attachment #5

Code of Chicago (MCC). The Complainant's vehicle is seen cutting into the intersection at a high rate of speed, after which the Accused's vehicle maneuvers to get behind the Complainant's vehicle, which is now a considerable distance away from their squad car. The Accused's vehicle has yet to activate its lights and closes the distance with the Complainant's vehicle just after the intersection of 79<sup>th</sup> Street and Perry Avenue. The Accused's vehicle briefly occupies the right lane and continues nearly side by side with the Complainant's vehicle as they approach the intersection of 79<sup>th</sup> Street and Lafayette. The Accused's vehicle then drops back behind the Complainant's vehicle and the officers activate their emergency lights. One of the accused officers is heard on the vehicle's loudspeaker instructing the Complainant to pull over into the gas station on the right, to which the Complainant complies. The dashcam footage stays fixed and continues to record the Accused's movements, but the audio becomes unintelligible.

The video shows a different Department member arrive in a squad car and have a brief discussion with the Complainant. This officer approaches the Accused's vehicle and they have a conversation captured on the Accused's BWC.

### **BWC footage from Accused Officer Opacian's camera<sup>3</sup>**

The BWC shows the Complainant attempting to instruct Officer Opacian where to stand during the commencement of the traffic stop. Officer Opacian informs the Complainant that he can see the Complainant, and that is enough for conducting the stop. A small, evergreen tree-shaped air freshener is visible hanging from the Complainant's rearview mirror. After this dialog ends, the Complainant complies with Officer Opacian's request for his driver's license. Officer Opacian takes the Complainant's license back to his vehicle and is heard discussing the Complainant's attempts to dictate Opacian's conduct. Officer Guerra is heard relaying to Officer Opacian that the Complainant's passenger refused to comply with his request to lower the passenger side window.

In this conversation, Officer Opacian tells the newly arrived Officer Jones about the offense that led to the stop and how the Complainant was trying to dictate the administration of the stop. Officer Jones concurs with Officer Opacian's point but tells him to make sure he tells the Complainant why he was stopped which Officer Opacian initially failed to do.

The BWC shows Officer Opacian return to the Complainant's car to look at the Complainant's insurance, which is on the Complainant's phone. At this point, Officer Opacian informs the Complainant that the reason he stopped the Complainant was for overtaking on the left and as a secondary offense, obstructed view of the windshield. The Complainant briefly debates with Officer Opacian. The Complainant takes down his air freshener from the mirror and tells Officer Opacian he didn't know that placing it there was a traffic offense. The tickets are

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<sup>3</sup> Attachment #7

written, then taken to the Complainant by Officer Opacian who explains the citations and the Complainant's options for addressing them. This last exchange is cordial, and the Complainant says, "thank you so much." after the Officer Opacian returns his license.

#### **BWC footage from Accused Officer Guerra's camera<sup>4</sup>**

Officer Guerra's camera begins as the Accused's vehicle turns into a gas station parking lot and Officer Guerra opens his passenger side door. He approaches the passenger side of [REDACTED] vehicle. Some overlap of audio from Officer Opacian's camera is heard. Officer Guerra approaches [REDACTED] SUV and knocks on the passenger side window. The occupant ([REDACTED] brother) briefly looks at Officer Guerra but does not lower the window, staring straight ahead. After a few seconds, Officer Guerra walks back to their Department vehicle with Officer Opacian. At this point, Officer Guerra's video and audio mirrors Officer Opacian's described above.

#### **OEMC Event Query #1906502866<sup>5</sup>**

Event Query #1906502866 documents the traffic stop occurring at 7900 S. Lafayette at 7:58 AM on March 6, 2019. The Event query shows that a vehicle belonging to [REDACTED] the Complainant, was checked in LEADS by a Department member logged into terminal PMDT2636 with a PC0BF52.

## **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 occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile*

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<sup>4</sup> Attachment #6

<sup>5</sup> Attachment #2

*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

The core of the Complainant's allegations is that the Accused officers pulled the Complainant over without justification, and only ascertain the Complainant's race. The Complainant also alleges that the Accused was asked for and refused to tender his badge number. While the intent of the Accused officers is not known, the dashcam footage shows a clear traffic violation that provides a legal justification for the traffic stop<sup>6</sup>. There is no evidence to support the Complainant's claim that the stop was racially motivated, and in their discussions of the traffic incident the Accused members consistently speak of the overtaking on the left that the Complainant committed as the basis for the stop.

### Legal Justification for the traffic stop

MCC 9-36-20 describes the offense of overtaking or passing on the right. The dashcam clearly captures the Complainant's vehicle committing the traffic offense of overtaking on the right. [REDACTED] vehicle is seen approaching from the far left turning lane, accelerating to beat the oncoming west-bound traffic whose lane he is briefly occupying in order to overtake the cars to his right.

[REDACTED] maneuver was particularly reckless and drew the immediate attention of the Accused officers who had to accelerate their Department vehicle to catch up with [REDACTED] SUV. In his interview, he doesn't deny "overtaking" the vehicles to the right of his vehicle, but he downplays the extremeness of the maneuver and neglects to mention it began in the far-left protected turning lane. Motorists traveling both eastbound and westbound were at risk of colliding with [REDACTED] vehicle as it temporarily occupied the oncoming west bound lanes before cutting across the two east bound lanes.

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<sup>6</sup> *Dashcam video shows a clear traffic violation at 00:12*

██████████ concludes that because the Accused didn't immediately turn on their lights to curb his vehicle, the offense must have been trivial or non-existent. This belief is buttressed by the Officer Opacian's decision to cite him for the obstructed windshield due to the air freshener hanging on his mirror. However, ignorance of the law is no excuse for committing an offense, and ██████████ personal unfamiliarity doesn't make it any less valid.

### **Allegations of racial profiling**

While the intent of the Accused officers is not known, the dashcam footage shows a clear traffic violation that provides a legal justification for the traffic stop. There is no evidence to support the Complainant ██████████ claim that the stop was racially motivated. In their discussions of the traffic incident, the Accused Officers consistently speak of the overtaking on the left that the ██████████ committed as the basis for the stop<sup>7</sup>.

██████████ alleges that because he is black and driving a fast, expensive SUV, the Accused Officers actions in pulling him over was racially motivated. However, there is no evidence supporting that allegation. To the contrary, ██████████ was clearly in violation of MCC 9-36-20 and, as a result, the Accused Officers were justified in conducting a traffic stop. The Supreme Court has held in *People v. Hackett* that a driver who deviated from his lane for no obvious reason provided a "reasonable, articulable suspicion" of a traffic violation justifying an investigatory stop—probable cause not required.

██████████ asserts that the fact that the Accused didn't immediately curb his vehicle by activating their lights and signaling for him to stop as evidence that the Accused were not sincere in their decision to stop him. He argues that the Accused delayed in curbing his vehicle purposefully because they wanted to make sure he was black before taking police action. ██████████ seems to be implying that if it were a white person driving his fancy, expensive SUV, the "minor" traffic infraction would've been overlooked or ignored. To say it another way, ██████████ believes the Accused engaged in selective enforcement of the law and only stopped him after ascertaining he was black. This assertion is disproved by the dashcam video which shows ██████████ vehicle's windows are heavily tinted and the Accused's vehicle never achieving a vantage point to determine who was inside.

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<sup>7</sup> BWC of Officer Opacian at 7:58:39, 7:59:37 – 7:59:57 provides audio of Officers consistently speaking of the violation committed by ██████████

**Officer Opacian refusing to provide his badge number**

The Complainant’s assertion that Officer Opacian refused to provide his badge number when requested is refuted by the BWC footage which shows ██████ trying to dictate the terms of the traffic stop from the very beginning<sup>8</sup>.

At no point did Complainant ask for Officer Opacian’s badge number and Officer Opacian refuse his request. Officer Opacian refused to comply with ██████ instruction to stand where ██████ wanted him to stand, an instruction Officer Opacian is under no obligation to follow<sup>9</sup>. The Accused appears to have taken up a position consistent with his training and officer safety protocols while conducting the stop, and even from this location, the video evidence shows he is able to clearly communicate and interact with the Complainant. ██████ conflates Officer Opacian’s refusal to stand where ██████ wanted him to stand, with a refusal for the Accused to provide a badge number, an action that would violate Department Rule #38. The BWC footage proves this did not occur and the allegation is baseless.

The Complainant’s interview characterizes the traffic stop as more hostile than the BWC and dashcam footage reveal. ██████ stated that the stop took 25 minutes, but the BWC worn by both officers show a recording lasting just under 15 minutes. Based upon the available evidence in this matter, 15 minutes was not an unreasonable amount of time.

Lastly, the Complainant appears to have been unaware of the existence of either traffic infractions he was cited for. As such, the Complainant’s limited understanding of the law likely led him to believe that traffic stop was unjustified and that the reason for his detention was fabricated. But the video evidence, the MCC and the laws of the State of Illinois all establish a lawful basis for his detainment and the issuance of citations for his traffic infractions. Given that the stop was lawful and the conduct the Complainant alleges to have occurred having been contradicted by the BWC and dashcam evidence, COPA finds this complaint to be unfounded.

**VIII. CONCLUSION**

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

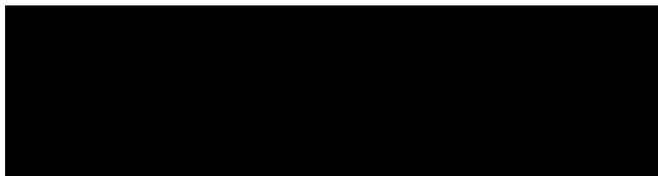
<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Opacian	1. Unlawfully curbed the Complainant’s vehicle solely based on race in violation of Rule(s) 2, 3, 6 and 8.	Unfounded

<sup>8</sup> BWC of Officer Opacian at 00:00:41 provides video and audio of ██████ trying to dictate the terms of the traffic stop.

<sup>9</sup> MCC 9-40-035 Traffic Stop Code of Conduct

	2. Refused to provide his badge number upon request from the Complainant in violation of Rule(s) 2, 3, 6 and 8	Unfounded
Officer Guerra	1. Unlawfully curbed the Complainant’s vehicle, solely on the basis of race, in violation of Rule(s) 2, 3, 6 and 8.  2. Attempted to force the Complainant’s passenger to roll down his window, without lawful justification in violation of Rule(s) 2, 3, 6 and 8.	Unfounded  Unfounded

Approved:



10-15-2020

\_\_\_\_\_  
 Angela Hearts-Glass  
 Deputy Chief Investigator

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 Date

**Appendix A**

Assigned Investigative Staff

<b>Squad#:</b>  <b>Investigator:</b>  <b>Supervising Investigator:</b>	12  
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**Deputy Chief Administrator:**

Angela Hearts-Glass