

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

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|----------------------------|---------------------------------|
| Date of Incident: | June 10, 2015 |
| Time of Incident: | 3:25 pm |
| Location of Incident: | 851 W. 115 th Street |
| Date of COPA Notification: | November 28, 2017 |
| Time of COPA Notification: | 6:36 pm |

██████████ said on June 10, 2015, he was working as a security guard at the Wine & Spirits Liquor store located at the plaza on 851 W. 115th Street when he observed ██████████ outside the liquor store asking for money. ██████████ ordered ██████████ to leave the premises, when ██████████ refused, ██████████ pushed him causing him to fall onto the ground, called him names and directed profanities. ██████████ threw a brick or bottle at ██████████, but it did not hit him. ██████████ chased ██████████ through the parking lot of the plaza and threatened to shoot him. ██████████ ran toward his uncle, ██████████, who worked as a security guard at the Aldi store located at the end of the plaza. ██████████ attempted to talk to ██████████, who was still holding his gun. ██████████ threatened to shoot ██████████ as well.

The police arrived on location and observed injuries to ██████████. Complaints were signed against ██████████ and he was arrested. ██████████ accused the officers of falsely arresting him, searching, and seizing his vehicle without justification and removing personal items from his vehicle. COPA investigated and learned that the named officers were justified in arresting, searching and seizing ██████████'s vehicle.

II. INVOLVED PARTIES

| | |
|----------------------|---|
| Involved Officer #1: | Police Officer Jason M. Toliver, Star #8597, Employee ID# ██████████, Date of Appointment: April 10, 2010, Unit of Assignment: 189/606, DOB: ██████████ 1984, Male, Black |
| Involved Officer #2: | Police Officer Scott R. Carter, Star #7429, Employee ID# ██████████, Date of Appointment: August 29, 2005, PO, Unit of Assignment: 005, DOB: ██████████ 1975, Male, Black |
| Involved Officer #3: | Police Officer Anthony Munizzi, Star #15447, Employee ID# ██████████, Date of Appointment: May 19, 2008, Unit of Assignment: 606, DOB: ██████████ 1981, Male, White |

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.

Involved Individual #1: [REDACTED], DOB: [REDACTED] 1969, Male, Black

III. ALLEGATIONS

| Officer | Allegation | Finding / Recommendation |
|--------------------------|--|---|
| Officer Jason M. Toliver | <p>It is alleged by [REDACTED] that on or about June 10, 2015, at approximately 3:25 pm, at or near 851 W. 115th Street, Officer Toliver:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED], without justification, a violation of Rule 6. 2. Searched [REDACTED]'s vehicle, without justification, a violation of Rule 6. 3. Seized [REDACTED]'s vehicle, without justification, a violation of Rule 6. 4. Removed [REDACTED]'s personal items from his vehicle, without justification, violation of Rule 6. 5. Failed to return or inventory [REDACTED]'s personal items and merchandise taken from the vehicle, without justification, a violation of Rule 6. | <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> |
| Officer Scott R. Carter | <p>It is alleged by [REDACTED] that on or about June 10, 2015, at approximately 3:25 pm, at or near 851 W. 115th Street, Officer Carter:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED], without justification, a violation of Rule 6. 2. Searched [REDACTED]'s vehicle, without justification, a violation of Rule 6. 3. Seized [REDACTED]'s vehicle, without justification, a violation of Rule 6. | <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> |

| | | |
|-------------------------|---|---------------|
| | 4. Removed ██████████'s personal items from his vehicle, without justification, violation of Rule 6. | Not Sustained |
| | 5. Failed to return or inventory ██████████'s personal items and merchandise taken from the vehicle, without justification, a violation of Rule 6. | Not Sustained |
| Officer Anthony Munizzi | It is alleged by ██████████ that on or about June 30, 2015, at approximately 9:55 am, at or near 727 E. 111 th Street, Officer Munizzi: 1. Arrested ██████████, without justification, a violation of Rule 6. | Exonerated |

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral.

Federal Laws

1. United States Constitution – Amendment IV

V. INVESTIGATION²

a. Interviews

In his **statement to COPA³** on August 18, 2018, ██████████, said he was working as a security guard at Wine & Spirits Liquor store at 851 W. 115th Street, when he observed ██████████ loitering outside the store. He observed ██████████ begging for money and harassing customers. ██████████ asked ██████████ to leave, but ██████████ refused to comply. ██████████ said he grabbed ██████████ by the arm, and ██████████ reacted irate. ██████████ grabbed a brick and threw it but, it did not strike him. ██████████ said the brick struck two other individuals that were standing near him. ██████████ said he called the police and a sergeant responded but failed to act against ██████████ because of his mental disability. Shortly before the sergeant left the scene, additional units responded. Officers Carter and Toliver were among the officers and they spoke with him, ██████████, and the security guard at Aldi.

██████████ said ██████████ made allegations against him and he made allegations against ██████████, however, because ██████████ was carrying a gun⁴, the officers placed him under arrest and did not arrest ██████████. ██████████ stated that he did not ask the officers to relocate his vehicle, but he believes that an officer identified as Jennifer Harrison⁵ asked the officers to search and seized the vehicle.

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Att. 50.

⁴ ██████████ indicated that the gun was fake, and described it as a movie prop gun.

⁵ A search via Department Records for an officer by the name of Jennifer Harrison were met with negative results.

█████ assumes this action due to a telephone call received by the officers via cell phone. However, █████ said he did not hear the conversation between the officers and the other person on the phone. When the officers requested █████'s car keys he initially refused, but complied, as he did not want the officers to mess up his car, a BMW. The officers searched the vehicle without justification and found some weed. The officers seized █████'s vehicle and drove it to the station.

█████ stated that he had various personal items in his vehicle such as Gucci bags, liquor, cigarettes, merchandise for sale etc. He related the officers failed to inventory or return all the items in his vehicle and believes that they may have taken the items. █████ indicated that there was no reason for his vehicle to have been searched or seized by the officers. As a result of their actions, █████'s vehicle was impounded. █████ was unable to retrieve the vehicle as he was incarcerated at Cook County Jail for an extended time.

After █████ recovered the vehicle, he noticed that there was damage. The windows were partially closed and most of his merchandise was missing. █████ said he was arrested without justification, and that his vehicle was seized and searched without justification.

In a **conversation** with COPA⁶ on February 16, 2018, █████⁷, stated that he has a mental and partially physical disability. However, he provided the following account. █████ said he was begging for money in front of a liquor store in the plaza at 851 W. 115th Street, when the security guard of the liquor store, █████, came outside. █████ told him to leave the premises, to which he refused. █████ said █████ pushed him and directed profanities at him and called him names. █████ said he grabbed a bottle and threw it at █████. █████ became upset and chased him through the parking lot of the plaza while pointing a gun at him. █████ said he ran to the end of the plaza, where his uncle, █████ is a security guard at Aldi Supermarket. █████ said he fell to the ground and sustained injuries to his arm and knee. █████ interfered with the chase in defense of █████. █████ said █████ threatened to shoot him and █████. When the police arrived at the scene, they talked to him and █████, and then arrested █████. █████ stated that at no time did the officers mistreat █████. He said he had a seizure while at the scene and was taken to the hospital. █████ could not provide any further details.

In a **conversation** with COPA⁸ on February 23, 2018, █████⁹, stated that he was the security guard at Aldi located in the plaza at 851 W. 115th Street, where the incident occurred. While working, a peddler¹⁰ told him that █████ was chasing his nephew, █████. █████ said when he was approached by █████ and █████, he was told by █████ that █████ was loitering in front of the liquor store and refused to leave. He said █████ accused █████ of throwing rocks at his vehicle but there was no damage. █████ said he explained to █████ about █████'s mental disabilities, but █████ was upset and did not want █████

⁶ Att. 13.

⁷ A formal statement was not conducted with █████ due to his mental disabilities and refusal from his mother, █████, who is his legal power of attorney. Ms. █████ stated that █████, has █████ and other medical conditions. However, she allowed COPA to talk with █████ about the incident and conduct an informal interview with him.

⁸ Att. 16.

⁹ Several attempts were made to conduct a formal interview with █████. However, █████ failed to keep the appointments or contact COPA to reschedule.

¹⁰ █████ did not know the peddler's name or contact information.

soliciting in front of the store. ██████ said ██████ had a gun in his hand while talking to him and ██████. ██████ said ██████ threatened to physically harm and shoot him and ██████. One of the peddlers¹¹ from the plaza called the police. ██████ said two white male officers responded and spoke with him and ██████, then placed ██████ under arrest for having a pellet gun and not being certified for the weapon. ██████ said he did not see or hear the officers verbally or physically mistreat ██████ during this incident. ██████ said he did not witness the officers search or take possessions from ██████'s vehicle.

In his statement to COPA¹² on February 20, 2020, **Officer Scott Carter**, stated he heard over the police radio a security guard chasing a man with a gun. He and PO Toliver responded to the scene. Upon arrival, another police unit¹³ was at the scene talking to ██████, ██████ and his mother. PO Carter immediately observed the holster ██████ was wearing and the weapon inside. PO Carter recovered the weapon and learned that ██████ did not have a FOID card or a conceal and carry permit. PO Carter learned from ██████ and his mother that ██████ chased ██████ around the parking lot with a gun and then struck him on the head with it. PO Carter saw scratches on ██████'s neck, but could not recall if ██████ sustained an injury to the head. PO Carter spoke with ██████, who identified himself as the security guard of the liquor store in the plaza, however PO Carter spoke with the owner of the liquor store who denied ██████'s position there. ██████ accused ██████ of loitering and refusing to leave upon request. ██████ told PO Carter that he did what he needed to do referring to ██████.

PO Carter spoke with a few individuals in the area, who confirmed that ██████ chased ██████ around the parking lot with a gun. PO Carter did not obtain the individuals' names or contact information. While at the scene, neither ██████ nor citizens in the area made complaints against ██████ loitering at the plaza. PO Carter did not recall ██████ complaining about ██████ battering him with any bottles or rocks. PO Carter states that ██████ requested for his vehicle to be relocated and provided them with the keys. PO Carter and PO Toliver entered the vehicle and immediately saw weed on top of the vehicle console. PO Toliver conducted a custodial search of the vehicle and located more narcotics. PO Carter denied the allegations against him and stated that ██████ was arrested because ██████ signed a complaint against him for battery, and he possessed a weapon without a FOID Card. Narcotics was then located in the vehicle incident to arrest after he gave the officers permission to move it. PO Carter could not recall any items in the trunk but said that everything recovered from ██████ or his vehicle was inventoried.

In his **statement to COPA**¹⁴ on February 20, 2020, **Officer Jason Toliver** stated a similar account as PO Carter. PO Toliver recalled a citizen¹⁵ in the plaza confirming ██████'s story that he was chased around the parking lot by ██████ with a gun. PO Toliver confirmed that a gun was recovered from ██████. PO Toliver did not recall anyone at the scene making a complaint against ██████, but ██████ accused ██████ of throwing a bottle. PO Toliver saw scratches to ██████'s neck but could not recall any other injuries. After ██████ was placed under arrest for battery against ██████, ██████ requested for the vehicle to be relocated. ██████ provided PO Toliver with

¹¹ ██████ did not know the name or contact information of the peddler.

¹² Att. 50.

¹³ PO Carter could not recall the officers that were at the scene.

¹⁴ Att. 50.

¹⁵ PO Toliver did not know the citizen's name or contact information.

the vehicle key. PO Toliver said he went in the car to drive it to the station and immediately observed cannabis¹⁶ on the center console. Upon seeing this, PO Toliver conducted a systematic search of the vehicle and located additional narcotics in the trunk. PO Toliver did not recall any other items in the trunk. PO Toliver denied the allegations against him and PO Carter, and indicated that everything recovered was inventoried and that ██████ was arrested on signed complaints, the weapon he was in possession of and the narcotics located in his vehicle.

In his **statement to COPA**¹⁷ on February 20, 2020, **Officer Anthony Munizzi** said he is assigned to the Fugitive Apprehension Task Force.¹⁸ Officer Munizzi was not on location when this incident occurred, however, ██████ alleged he was harassed by officers because he was arrested twice. Officer Munizzi was given the task to locate ██████ after it was learned that he was wanted for Criminal Sexual Assault under case RD# ██████, in which there was an investigative alert issued prior to an unrelated court date. When PO Munizzi checked the county clerk database and saw that ██████ had court on June 30, 2015, he waited until after ██████ finished with court, and placed him under arrest. In addition, PO Munizzi took ██████ to Area Central where he turned ██████ over to the Detective Division.

Documentary Evidence

The **Arrest report**¹⁹ of ██████ (June 10, 2015) documented his arrest for Aggravated Assault-Use of a Deadly Weapon, Cannabis and Battery. Officers Toliver and Carter responded to a call of a security guard chasing a man with a gun, and upon arrival spoke with ██████. ██████ told the officers that ██████ (security guard for liquor store) struck him on the back of his head with a closed fist and grabbed him by the neck. Officers observed scratches to the back of ██████'s neck, but he refused EMS. ██████ told the officers that ██████ refused to leave the premises upon request. Officers recovered a 9 mm handgun from ██████'s holster. ██████ was placed under arrest. ██████ requested for his vehicle (a BMW) to be relocated to the 005th District Station. After attempting to relocate the vehicle, PO Toliver observed a clear plastic baggy containing suspect cannabis in the vehicle's console in plain view. A custodial search was conducted of the vehicle, and additional narcotics were located. The vehicle was taken to the station and impounded for investigation.

The **Original Case Incident Report**²⁰ (RD ██████) documented the same information as the arrest report for ██████ for June 10, 2015, and the charges of Battery, Assault-Aggravated and Narcotics.

The **Arrest report**²¹ of ██████ (June 30, 2015) documented that he was arrested for Criminal Sexual Assault – Aggravated. The arrest was conducted by the Fugitive Apprehension section U.S. Marshals Great Lakes Regional Task Force. The officers were aware of a probable cause to arrest from an investigative alert issued on June 23, 2015. ██████ was positively identified

¹⁶ Att. 50, recording at 17:00 minutes.

¹⁷ Att. 44.

¹⁸ The Fugitive Apprehension Task Force monitors and apprehends individuals who have been identified as offenders in police cases where their arrest is warrant for further investigation by the Detective Division.

¹⁹ Att. 5.

²⁰ Att. 6.

²¹ Att. 7.

in a photo array and by DNA evidence as the person who sexually assaulted the victim on June 8, 2013, under RD# [REDACTED]. On June 30, 2015, [REDACTED] was located attending a separate court case and placed into custody afterward without incident.

The **Original Case Incident Report**²² (RD # [REDACTED]) documented that victim, [REDACTED] was assaulted by an offender she met on social network. After being at a party together and drinking, the offender struck [REDACTED] on the head with a closed fist while driving her home. The offender pulled in front of the victim's house, requested sex and victim said no. Offender struck the victim on the head again, and ordered her to take her clothes off. Offender penetrated the victim, then stopped the act and dropped her off at her residence.

The **Supplementary Report**²³ documented that lab report came back from the Illinois State Police Forensic lab with DNA results from the rape kit, linking evidence from detailing a CODIS association and linking the evidence recovered from [REDACTED]. The Detective assigned to the case reopened it due to the lab reports, but requested it to be closed due to complainant refused to prosecute.

Property Inventory Receipts²⁴ document many of [REDACTED]'s personal items: wallet, money (\$364.00 U.S.C.), jewelry, the firearm recovered from [REDACTED] (Zoraki Mod 9mm semi-automatic defaced caliber), a black magazine, cell phone, security badge holder, and narcotics that were recovered (cannabis).

The **Civil Suit 17-CV-4503**²⁵ filed by [REDACTED] on October 16, 2017, was against Officers Carter, Toliver and Munizzi for false arrest and unreasonable search and seizure. However, there are no dispositions for this civil suit since [REDACTED] passed away October 10, 2018.

b. Additional Evidence

A **canvass** of the location of incident was conducted in searched of witnesses, videos or any other evidence. All results were negative. The Wine & Spirits Liquor store was closed.

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

²² Att. 8.

²³ Att. 9.

²⁴ Att. 10.

²⁵ Att. 4.

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

An officer must have probable cause to arrest a subject.²⁶ "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."²⁷

In this case, Officers Toliver and Carter had probable cause to arrest ██████ as they responded to a call of a man with a gun chasing another man. Upon arrival, they learned that ██████ was in possession of a gun, which they recovered and inventoried. They also learned that ██████ chased and threatened ██████ with the gun, battered ██████ when ██████ grabbed ██████ by the back of his neck and struck ██████ on the head. Further, during the investigation of the battery against ██████, led to ██████'s arrest on signed complaints from ██████ and his mother. In addition, after ██████ was arrested, ██████ requested his vehicle to be relocated. PO Carter and PO Toliver observed in plain view cannabis on the vehicle console which led to a custodial search of the vehicle and additional narcotics to be located. Therefore, COPA finds that Allegation #1 against Officers Toliver and Carter, that they arrested ██████, without justification, with a finding of **Exonerated**.

COPA finds Allegation #2 against Officer Toliver that he searched ██████'s vehicle, without justification, a finding of **Exonerated**. After ██████ was arrested, he requested for his vehicle to be relocated. ██████ provided the vehicle key to PO Toliver. Upon entering the vehicle, PO Toliver observed cannabis on the console in plain view. PO Toliver conducted a thorough search of the vehicle, and additional narcotics were located. PO Toliver had justification and the right to conduct a systematic search of the vehicle.

²⁶ *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)).

²⁷ *People v. D.W. (In re D.W.)*, 341 Ill. App. 3d 517, 526 (1st Dist. 2003).

COPA finds Allegation #3 against Officer Toliver that he seized ██████████’s vehicle, without justification, a finding of **Exonerated**. After locating narcotics in the vehicle, PO Toliver had the legal right to seized and impound the vehicle.

COPA finds Allegations #2 and #3 against Officer Carter that he searched and seized ██████████’s vehicle, without justification, a finding of **Unfounded**. Officer Carter stated that it was PO Toliver who conducted a systematic search of ██████████’s vehicle and then had the vehicle seized because of the narcotics located. PO Toliver supported PO Carter’s account. Therefore, COPA finds allegations #2 and #3 against PO Carter, Unfounded.

COPA finds Allegation #4 and #5 against Officers Toliver and Carter that they removed ██████████’s personal items from his vehicle, without justification and failed to return or inventory ██████████’s said items, a finding of **Not Sustained**. There is insufficient evidence, witnesses or facts to prove or refute the allegations. ██████████ alleged that he had numerous personal items and merchandise on his person and in his vehicle, however the officers stated that everything recovered from ██████████ or his vehicle was inventoried and provided several property inventories receipts for the said items. Additional Department Reports documented the items recovered and inventoried from ██████████. ██████████ failed to provide COPA with names of possible witnesses to these actions or proof of the alleged items. There are no dispositions for this civil suit since ██████████ passed away October 10, 2018.

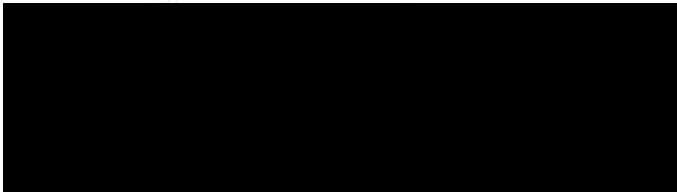
VIII. CONCLUSION

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

| Officer | Allegation | Finding / Recommendation |
|--|--|--------------------------|
| Officer Jason M. Toliver | It is alleged by ██████████ that on or about June 10, 2015, at approximately 3:25 pm, at or near 851 W. 115 th Street, Officer Toliver: | |
| | 1. Arrested ██████████, without justification, a violation of Rule 6. | Exonerated |
| | 2. Searched ██████████’s vehicle, without justification, a violation of Rule 6. | Exonerated |
| | 3. Seized ██████████’s vehicle, without justification, a violation of Rule 6. | Exonerated |
| | 4. Removed ██████████’s personal items from his vehicle, without justification, violation of Rule 6. | Not Sustained |
| 5. Failed to return or inventory ██████████’s personal items and merchandise taken from the vehicle, without justification, a violation of Rule 6. | Not Sustained | |

| | | |
|-------------------------|--|---------------|
| Officer Scott R. Carter | It is alleged by [REDACTED] that on or about June 10, 2015, at approximately 3:25 pm, at or near 851 W. 115 th Street, Officer Carter: | |
| | 1. Arrested [REDACTED], without justification, a violation of Rule 6. | Exonerated |
| | 2. Searched [REDACTED]'s vehicle, without justification, a violation of Rule 6. | Unfounded |
| | 3. Seized [REDACTED]'s vehicle, without justification, a violation of Rule 6. | Unfounded |
| | 4. Removed [REDACTED]'s personal items from his vehicle, without justification, violation of Rule 6. | Not Sustained |
| | 5. Failed to return or inventory [REDACTED]'s personal items and merchandise taken from the vehicle, without justification, a violation of Rule 6. | Not Sustained |

Approved:



3-25-2021

Angela Hearts-Glass
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|---------------------|
| Squad#: | 11 |
| Investigator: | Maira Webb |
| Supervising Investigator: | Valiza Nash |
| Deputy Chief Administrator: | Angela Hearts-Glass |
| *Attorney: | |

