

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 10, 2019
Time of Incident:	11:55 pm
Location of Incident:	3042 W. 24 th Street, Chicago, IL 60623
Date of COPA Notification:	September 19, 2019
Time of COPA Notification:	2:01 pm

Complainant [REDACTED] alleged that Police Officers David McCray (Officer McCray) and Keith Kalafut (Officer Kalafut) arrested him for drinking alcohol in the public way without justification. [REDACTED] also alleged that Officer McCray handcuffed him too tightly, causing injury to [REDACTED] right ring finger. Based on [REDACTED] own statement to COPA, interviews of both accused officers, and GPS records, COPA determined it was highly probable that [REDACTED] was, in fact, drinking alcohol in the public way when the officers encountered him, and the officers removed [REDACTED] handcuffs shortly after he complained they were too tight. For the reasons explained in this report, the allegations of false arrest against both officers are exonerated, and the handcuffing allegation against Officer McCray is unfounded.

II. INVOLVED PARTIES

Involved Officer #1:	David McCray: Star #18508; Employee ID # [REDACTED]; Date of Appointment: May 31, 1994; Police Officer, Unit of Assignment: 018; ¹ DOB: [REDACTED], 1967; Male; Black
Involved Officer #2:	Keith Kalafut: Star #16348; Employee ID # [REDACTED]; Date of Appointment: September 5, 1995; Police Officer, Unit of Assignment: 018; ² DOB: [REDACTED], 1971; Male; White
Involved Individual #1:	[REDACTED]; DOB: [REDACTED] 1993; Male, Hispanic

¹ On the date of the incident under investigation, Officer McCray was assigned to Unit 311, Gang Section – Area Central. As of February 8, 2021, Officer McCray was assigned to Unit 018, the 18th District, but detailed to Unit 715, the Critical Incident Response Team.

² On the date of the incident under investigation, Officer Kalafut was assigned to Unit 311, Gang Section – Area Central. As of February 8, 2021, Officer McCray was assigned to Unit 018, the 18th District, but detailed to Unit 715, the Critical Incident Response Team.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer David McCray	<p>It is alleged by [REDACTED] that on August 10, 2019, at approximately 11:55 pm, at or near 3042 W. 24th Street, that Police Officer David McCray #18508 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] without justification; and 2. Handcuffed [REDACTED] too tightly, causing injury to [REDACTED] right ring finger. 	<p>Exonerated</p> <p>Unfounded</p>
Officer Keith Kalafut	<p>It is alleged by [REDACTED] that on August 10, 2019, at approximately 11:55 pm, at or near 3042 W. 24th Street, that Police Officer Keith Kalafut #16348 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> 1. Arrested [REDACTED] without justification. 	<p>Exonerated</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
2. Rule 6: Disobedience of an order or directive, whether written or oral.
3. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
4. Rule 14: Making a false report, written or oral.

General Orders

1. G06-01-02 Restraining Arrestees (effective December 8, 2017)³

Federal Laws

1. United States Constitution, Amendment IV: Prohibits search and seizure without probable cause.⁴

³ Attachment 21.

⁴ The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon

V. INVESTIGATION⁵

a. Interviews

Complainant ██████████ was interviewed by COPA investigators on September 19, 2019.⁶ ██████████ told investigators that on August 10, 2019, at about 11:55 pm, he was sitting at the top of the stoop of 3042 W. 24th Street when two officers in an unmarked police vehicle stopped and approached him. Both officers were male, one was white, and one was Black, and both were wearing civilian clothing. ██████████ had been drinking earlier and may have smelled of alcohol, but he was not drinking or in possession of alcohol when the officers stopped him. ██████████ estimated that he had consumed 5 or 6 bottles of Corona beer earlier in the evening. ██████████ argued with the officers about why they had stopped him and directed profanity at the officers, and the Black officer handcuffed him. The handcuffs were very tight but were only on until the officers brought ██████████ to the 10th District police station, which was a few blocks away. While he was still in the police vehicle, ██████████ complained that the handcuffs were too tight, but the officers did not stop to loosen them. However, the handcuffs were removed as soon as ██████████ was brought into the station and led to the processing area. ██████████ told investigators that his right ring finger was now numb, over one month after the incident, because of the handcuffs being too tight. ██████████ did not tell any officers about the injury and never sought medical attention. ██████████ was charged with possession of alcohol in the public way and given a bond a court date. ██████████ told investigators that his brother, ██████████ was just inside the apartment at ██████████ on the other side of the door at the top of the stoop, at the time of his arrest. ██████████ approached the police vehicle and asked why the officers were arresting ██████████, and one of the officers told him the arrest was for alcohol.

Officer McCray was interviewed by COPA investigators on March 3, 2021.⁷ Officer McCray recounted working with his partner, Officer Kalafut, on the evening of August 10, 2019. While on patrol in the 10th District, driving eastbound on 24th Street, Officer McCray observed a subject later identified as ██████████ standing on the north sidewalk, drinking from a can of Corona beer. Officer McCray advised ██████████ that he could not drink there, and he told ██████████ to go inside. ██████████ replied, "Fuck you," and he refused to go inside. Officer McCray said that he would have written ██████████ a ticket if ██████████ had identification, but instead arrested ██████████ when he was unable to produce identification. Officer McCray remembered that another Hispanic male subject was with ██████████ but the other subject did not appear to be drinking. Officer McCray could not remember if he or his partner handcuffed Gomez, but he remembered that Gomez did not resist. Officer McCray said that when he was trained in handcuffing at the CPD academy, he was taught to double lock the handcuffs and to check for the arrestee's comfort by placing his small finger beneath the handcuff to assure that it was not too tight, and he would have followed this procedure if he handcuffed ██████████. The officers placed ██████████ in their patrol vehicle and drove him to the 10th District police station – about a 3-minute drive.

probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

⁵ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁶ Attachment 1.

⁷ Attachment 20.

Officer McCray did not recall what happened when they arrived at the station but stated his normal procedure would be to remove one of the arrestee's handcuffs before using the free handcuff to secure the arrestee to the wall in lockup. Per Officer McCray, [REDACTED] never complained that his handcuffs were too tight and never complained of any injury to his hand or finger. Likewise, Officer McCray did not observe any injury. Officer McCray denied both allegations.

Office Kalafut was interviewed by COPA investigators on March 3, 2021.⁸ Officer Kalafut's account of [REDACTED] arrest was consistent with Officer McCray's account and consistent with the associated arrest report. Officer Kalafut could not remember who handcuffed Gomez, and he denied arresting [REDACTED] without justification.

b. Documentary Evidence⁹

An **Arrest Report**,¹⁰ attested to by Officer McCray, documents that Officers McCray and Kalafut observed [REDACTED] drinking from a can of Corona beer on the sidewalk near 3042 W. 24th Street at 11:54 pm on August 10, 2019. The officers first instructed [REDACTED] to go inside to drink, but he uttered a profanity and refused to move. [REDACTED] was unable to produce identification, and the officers placed him under arrest and transported him to the 10th District police station for processing. The lockup keeper, Detention Aide Jason Rowe, documented no signs of obvious pain or injury to [REDACTED] and that [REDACTED] said he was "Ok" and did not report any serious medical problems.¹¹

Global Positioning System records¹² document that CPD vehicle 4894¹³ stopped near 3042 W. 24th Street at 11:50 pm on August 10, 2019. The vehicle began moving again two minutes later, at 11:52 pm, heading north on S. Whipple Street. The vehicle arrived at the 10th District police station at 11:57 pm.¹⁴

Records from the Cook County Clerk of Court¹⁵ document that [REDACTED] was charged with drinking alcohol in the public way. The charges were non-suited on September 20, 2019, at [REDACTED] first court appearance.

⁸ Attachment 21.

⁹ In addition to the documentary evidence cataloged below, COPA also searched for audio or video recordings of the incident under investigation. However, neither Officer McCray nor Officer Kalafut were equipped with body-worn cameras as of the date of this incident, and there were no Police Observation Device (POD) cameras in the immediate vicinity of the arrest. Attachments 12, 25, 26.

¹⁰ Attachment 2.

¹¹ *Id.* p. 4. [REDACTED] was released on a recognizance bond at 3:11 am on August 11, 2019. Attachment 10.

¹² Attachments 8, 9.

¹³ **CPD Attendance and Assignment records** document that vehicle 4894 was assigned to Officers McCray and Kalafut beginning on August 10, 2019, at 5:00 pm. Attachment 15.

¹⁴ Attachments 23, 24.

¹⁵ Attachment 11.

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 did not comply with CPD policy.¹⁶ If the evidence gathered in an investigation establishes that it is more likely that the conduct violated CPD 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.¹⁷ 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."¹⁸

VI. ANALYSIS

█████ admits that he was drinking alcohol on the night of this incident and admits that he swore at the police officers who stopped him, consistent with the officers' reported observations. █████ denies any alcoholic beverages were present when the officers stopped him, claiming that he was falsely arrested for drinking on the public way. But █████ admits he was drinking Corona-brand beer earlier, and the arrest report written by Officer McCray specifically notes that the officers saw █████ drinking Corona beer.¹⁹ It is unlikely the officers would know what type of beer █████ was drinking if he was not in possession of the beer when they encountered him. COPA has not found any evidence of prior contacts between these officers and █████ and has no reason to believe the officers targeted █████ for a fabricated criminal complaint. COPA has also examined both officers' training and disciplinary history,²⁰ including complaints in which allegations were not sustained, but has not identified any apparent pattern of dishonesty or excessive force. Based on all these factors, COPA finds it probable that █████ was drinking

¹⁶ See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.")

¹⁷ See, e.g., *People v. Coan*, 2016 IL App (2d) 151036.

¹⁸ *Id.* ¶ 28.

¹⁹ █████ said that he was drinking Corona from a bottle, while the officers reported seeing him with Corona in a can.

²⁰ Attachments 27-32.

alcohol in the public way when Officers McCray and Kalafut encountered him. Therefore, COPA finds that **Allegation No. 1 against each officer is EXONERATED.**

CPD directives require police officers to restrain arrestees in a manner that is safe for the person in custody and to double-lock the handcuffs when feasible.²¹ By [REDACTED] own account, he complained that his handcuffs were too tight while he was in the police vehicle, en-route to the police station. [REDACTED] also remembered that his handcuffs were removed immediately after he arrived at the police station. Both officers remembered the trip from the arrest location to the station taking only a few minutes, and this was confirmed by GPS records for their assigned patrol vehicle. [REDACTED] also admitted he did not complain about any injury to his hand or finger to police personnel, and this is confirmed by Detention Aide Rowe’s notations on [REDACTED] arrest report, as well as by both arresting officers. [REDACTED] also admits he never sought medical attention for the numbness in his finger, even after he was released from custody. Based on all this evidence, it is probable that either: (1) [REDACTED] handcuffs were not too tight, and/or (2) the officers appropriately removed or adjusted the handcuffs within a few minutes of [REDACTED] complaint that the handcuffs were too tight, when they arrived at the police station. In either case, COPA finds that **Allegation No. 2 against Officer McCray is UNFOUNDED.**

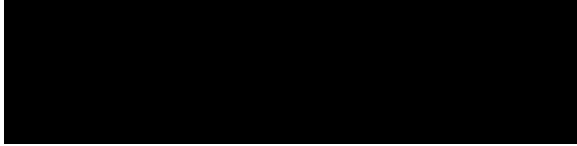
VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer David McCray	It is alleged by [REDACTED] that on August 10, 2019, at approximately 11:55 pm, at or near 3042 W. 24 th Street, that Police Officer David McCray #18508 committed misconduct through the following acts or omissions; by: 1. Arrested [REDACTED] without justification; and 2. Handcuffed [REDACTED] too tightly, causing injury to [REDACTED] right ring finger.	Exonerated Unfounded
Officer Keith Kalafut	It is alleged by [REDACTED] that on August 10, 2019, at approximately 11:55 pm, at or near 3042 W. 24 th Street, that Police Officer Keith Kalafut #16348 committed misconduct through the following acts or omissions, by: 1. Arrested [REDACTED] without justification.	Exonerated

²¹ General Order G06-01-02, §§ II, V.A.1. Attachment 22.

Approved:



5/28/2021

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Major Case Specialist:	Greg Masters
Supervising Investigator:	Robert Coleman
Deputy Chief Administrator:	Matthew Haynam