

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 3, 2019
Time of Incident:	10:00 AM
Location of Incident:	██
Date of COPA Notification:	May 16, 2019
Time of COPA Notification:	11:46 AM

Mr. ██████████ a law student, reported that on the date in question two police officers entered the rear gated yard of the building he lived in, and one of them yelled out, “Hey you” as he approached the back door of his unit. The same officer, now known as Officer Reginald Foster, asked him for identification to prove that he lived at that address. Mr. ██████████ refused to give the officer his identification and, according to Mr. ██████████ Officer Foster made unprofessional comments in response. Mr. ██████████ alleged that the officers stopped and asked him for his identification without reasonable suspicion and spoke to him in an unprofessional manner.

The involved officers, however, claimed that they had the required reasonable suspicion required to initiate an investigatory stop, because Mr. ██████████ exhibited behaviors that led them to believe he may be about to attempt a burglary. Furthermore, Officer Foster denied speaking to Mr. ██████████ in an unprofessional manner.

II. INVOLVED PARTIES

Involved Officer #1:	Reginald Foster, star # 5943, employee ID# ██████████, Date of Appointment November 18, 1991, PO, Unit of Assignment 19 th District, DOB ██████████, 1969, Male, Black.
Involved Officer #2:	Michael Palikij, star # 15643, employee ID# ██████████, Date of Appointment October 29, 2001, PO, Unit of Assignment 19 th District, DOB ██████████ 1977, Male, White.
Involved Officer #3:	Rolando Gonzalez, star # 10008, employee ID# ██████████, Date of Appointment December 2, 2002, PO, Unit of Assignment 19 th District, DOB ██████████ 1971, Male, Hispanic.
Witness Officer #1:	Jason Slater, star # 939, employee ID# ██████████, Date of Appointment December 18, 2006, Sergeant, Unit of Assignment 19 th District, DOB ██████████ 1982, Male, White.
Involved Individual #1:	██████████ DOB ██████████ 1991, Male, Black.
Witness Individual #1:	██████████ DOB ██████████ 1991, Female, White.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Reginald Foster	<p>1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED]</p> <p>Officer Reginald Foster racially profiled Mr. [REDACTED] when without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter in violation of Rule 2 and S04-13-09 (II-C and C-1).</p>	NOT SUSTAINED
	<p>2. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED]</p> <p>Officer Reginald Foster behaved in an unprofessional manner when he called out, "Hey you" to get Mr. [REDACTED] attention in violation of Rule 2.</p>	NOT SUSTAINED
	<p>3. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED]</p> <p>Officer Reginald Foster improperly detained [REDACTED] when without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter in violation of Rule 2 and S04-13-09 (II-C and C-1).</p>	UNFOUNDED
	<p>4. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED]</p> <p>Officer Reginald Foster treated him in a retaliatory manner when he said, "I'll remember that when they try and break into your place" in response to Mr. [REDACTED] refusal to show the officer his identification in violation of Rule 2.</p>	NOT SUSTAINED

	<p>5. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster treated him in a retaliatory manner when he said, "When you're a victim of it then don't come crying" in response to Mr. [REDACTED] refusal to show the officer his identification in violation of Rule 2.</p> <p>6. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he called Mr. [REDACTED] a "little prick" in violation of Rule 2.</p> <p>7. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he said something to the effect that he better hope that nothing happens to him because maybe next time they won't be around, after he refused to show his identification in violation of Rule 2.</p> <p>8. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway in violation of S03-14 (A-2-b).</p>	<p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>SUSTAINED/</p> <p>SUSTAINED/</p>
<p>Officer Michael Palikij</p>	<p>1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij racially profiled Mr. [REDACTED] when he claimed he saw Mr. [REDACTED] looking around as if he was preparing to commit a</p>	<p>NOT SUSTAINED</p>

	<p>burglary, which caused Mr. [REDACTED] to be subjected to an investigatory stop without the required reasonable suspicion in violation of Rule 2 and S04-13-09 (II-C and C-1).</p> <p>2. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij claimed he saw Mr. [REDACTED] behave as if he was preparing to commit a burglary, which caused Mr. [REDACTED] to be subjected to an investigatory stop without the required reasonable suspicion in violation of Rule 2 and S04-13-09 (II-C and C-1).</p> <p>3. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway in violation of S03-14 (A-2-b).</p>	<p>UNFOUNDED</p> <p>SUSTAINED/</p>
<p>Officer Rolando Gonzalez</p>	<p>1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Rolando Gonzalez failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] in violation of S03-14 (A-2-b).</p>	<p>SUSTAINED/</p>

IV. APPLICABLE RULES AND LAWS

Rules

- Rule 2:** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Special Orders

1. Special Order S03-14 (A-2-b): Body Worn Cameras
 2. Special Order S04-13-09 (II-C) : Investigatory Stop System
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General Orders

1. General Order G02-04 (III-A): Prohibition Regarding Racial Profiling and Other Bias Based Policy

V. INVESTIGATION¹**a. Interviews**

██████████ provided a recorded interview at COPA on May 23, 2019. Mr. ██████████ stated that on May 3, 2019, at about 10:15 AM, he entered the alley in back of his residence and heard a faint “hey.”³ He entered the gate that led to the back yard of his residence and walked up the stairs toward his apartment. When he rounded the staircase to the second floor, he heard someone yell, “hey” or “hey you.”⁴ Mr. ██████████ turned around and saw two police officers, one white, now known as Officer Rolando Gonzalez, and one African American, now known as Officer Reginald Foster, in the backyard of the apartment complex. In an agitated voice, Officer Foster said there had been a lot of crime in the area and they received a report of “someone walking around suspiciously.” Mr. ██████████ eventually asked the officers if they were talking about him. The officers replied yes, and asked Mr. ██████████ what he was doing back there. Mr. ██████████ replied that he lived there.

The officers asked Mr. ██████████ for identification, which he refused to provide. The officer, now known as Reginald Foster, again, in an agitated manner, accused him of being uncooperative and threatened something to the effect that he better hope that nothing happened to him because maybe next time they would not be around, which Mr. ██████████ took as a threat. Mr. ██████████ replied “fuck you”⁵ and one of the officers called him a “little prick.” The officers then proceeded to walk away as Mr. ██████████ entered his apartment.⁶

Mr. ██████████ reported the incident to his wife, and she went outside to talk to the officers who were standing at the corner of Fremont and Addison. Sergeant Slater and another white officer, now known as Officer Michael Palikij, were also present. The African American officer told Mrs. ██████████ that the officers saw Mr. ██████████ perform “grooming” mannerisms which led them

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Attachment 22.

³ Attachment 22 at 02:47.

⁴ Attachment 22 at 03:04.

⁵ Attachment 22 at 05:11.

⁶ Attachment 22 at 05:17.

to believe he was about to commit a burglary.⁷ Officer Palikij saw Mr. █████ look both ways before he entered the alleyway, which he claimed gave the officers reasonable suspicion and cause to stop him. Mr. █████ denied that he looked both ways. Mr. █████ told the officers he felt the stop was racially motivated, because they saw an African American with a hoodie go into a back alleyway, in a well-off neighborhood, at 10:00 AM. Mr. █████ was uncertain, but believed his hood was up at the time. Mr. █████ expressed that had he been dressed in more professional clothing, the officers would not have felt threatened by him.⁸

█████ █████ provided a recorded interview at COPA on May 23, 2019. Mrs. █████ said she heard people yelling as she took a shower. When she got out her husband, █████ entered their unit and told her officers stopped him as he walked up the back stairs. The officers demanded his ID and communicated they believed he was attempting to burglarize the building. Mr. █████ explained that he lived there and did not need to provide them with his identification. He also told her the officers asked why he had been so uncooperative and then threatened Mr. █████ when they stated that if he were ever burglarized, they would not help him.

Very upset, Mrs. █████ got dressed and went outside and spoke with the officers involved in the incident. She told them she was confused and wanted an explanation. Officer Michael Palikij told her that he saw Mr. █████ go through the side gate in a suspicious manner which needed to be investigated.¹⁰ The officers started yelling and Sergeant Slater told the officers to stop. Sergeant Slater explained these were seasoned officers and that Mr. █████ was exhibiting “grooming behaviors” which gave the officers reasonable suspicion to stop Mr. █████¹¹ Officer Palikij interjected that this meant Mr. █████ looked both ways before entering the gate. Sergeant Slater defined “grooming behaviors” as behaviors that seasoned officers believe point to someone who is about to burglarize an apartment, and said that Mr. █████ act of looking both ways constituted reasonable suspicion. Mr. █████ denied looking both ways.

Soon after, Officer Gonzalez yelled at Mrs. █████ and told her that since she was not a witness she could not comment on the matter. He then turned to Mr. █████ and accused him of having a serious attitude problem and claimed he was unprofessional with the officers. Earlier, according to Mrs. █████ Mr. █████ told her that after the officers threatened not to help the █████ if they were burglarized, Mr. █████ told the officer to go fuck himself, and the officer, in turn, called Mr. █████ a “little prick.”¹² Mrs. █████ also asked why they could not have been more professional at the outset of the interaction and possibly said “excuse me” instead of “hey you.”

⁷ Attachment 22 at 06:38.

⁸ Mr. █████ mentioned that the officers and Sergeant Slater stated that they made these determinations based on their experience.

⁹ Attachment 20.

¹⁰ Mrs. █████ referred to him as Officer Pulaski.

¹¹ Attachment 20 at 5:57.

¹² Attachment 20 at 22:09.

Mrs. ██████ expressed that because Mr. ██████ was dressed in normal clothes and a pea coat, she felt the only other reason they could have found her husband suspicious was because he was black. She believed Mr. ██████ stuck-out to the officers because he was an African American in a neighborhood that is predominantly white. Furthermore, there was no report a suspicious person in the area, it was a sunny day at about 10:30 in the morning, and the incident occurred directly across the street from the District 19 police station.

Sergeant Jason Slater¹³

Sergeant Slater provided a recorded interview at COPA on December 5, 2019. According to Sergeant Slater, he became involved with this incident after he received a phone call from Officer Palikij, who asked him to come to the scene.

According to what he was told, the officers were traveling West on Addison and came to a stop at Fremont. This is the intersection where Officer Palikij was when he initially saw Mr. ██████ near the gate on Fremont, behind the building that led to a gangway. Sergeant Slater believed Officer Palikij told him he observed Mr. ██████ look both ways, pull on the gate, look again and then enter the gate. Sergeant Slater described this type of action as “grooming”, which is a behavior that indicates an individual is readying himself to perform an action, in this case a burglary, and is looking to see if anyone is around. Mr. ██████ “jiggled” the gate, looked both ways and then disappeared. Sergeant Slater believed this grooming behavior is what gave the officers reasonable suspicion to perform an Investigatory Stop on Mr. ██████. Sergeant Slater stated that generally, upon first sight, you would not immediately go after a subject taking these actions, but instead, would take some time to observe the individual. However, the threat of a burglary, in this case, was imminent.

Mr. ██████ told the group the incident was not about anything more than the lack of professionalism by the officers. Investigators asked Sergeant Slater whether either Officer Foster or Officer Palikij ever displayed a temper or impatience with people, and he responded that they had not, but described both officers as very direct. Other than on the date in question, Sergeant Slater did not remember ever having to speak to the officers about their demeanor.

When asked about the comments Officer Foster made to Mr. ██████ that suggested the officers may not come if Mr. ██████ had a problem, Sergeant Slater said he interpreted the comments as, “if you need us, you’re gonna to call us, then you’re gonna want us here.”¹⁴ He did not take it as a threat. However, he went on to say that if he had interpreted it as a threat, disciplinary action would have been taken.

Sergeant Slater stated that the racial demographic in the 19th District was very diverse. There was a church that served as a homeless shelter nearby that housed many African American men, and there is a gay, lesbian, transgender community within a block. Wrigley field was within a couple of blocks of the police station and there are crimes of many types that occur, even when there are no games going on. Sergeant Slater did not believe the police station served as a deterrent.

¹³ Attachment 30.

¹⁴ Attachment 30 at 24:10.

Officer Reginald Foster-Interview 1¹⁵

Officer Reginald Foster provided a recorded interview at COPA on December 5, 2019. He was assigned to the Burglary Team at that time of this incident. On the day in question Officer Foster was in the rear seat of the police vehicle, along with Officer Palikij, the driver, and Officer Gonzalez. Initially the vehicle traveled West on Addison. Officer Palikij stated he saw someone go through a gangway as they passed Fremont Street. Officer Palikij made a U-turn and turned right onto Fremont, which took about thirty seconds. The officers asked him what the person, now known as Mr. ██████ looked like and where he went. Officer Palikij pointed toward the gangway at the rear of the building as they traveled South on Fremont. When they got there, they did not see anyone, so Officer Foster, and then Officer Gonzalez, got out of the vehicle to try to see where Mr. ██████ went. Officer Palikij drove around the block to see if he could flank the person near the alley.

Officer Foster and Officer Gonzalez went through the gate and arrived at a privacy fence. Officer Foster peered through an opening in the door that opened into a courtyard. Officer Foster saw legs climbing the rear stairs to the building and watched the slow-moving person climb one or two floors to a landing. This was the first time he saw Mr. ██████ and he did not recall whether Mr. ██████ was carrying anything. Officer Foster entered the gate and called up from ground level to Mr. ██████ saying “hey”, using a direct tone of voice. He asked Mr. ██████ if he lived there. Mr. ██████ asked him “why”, and Officer Foster explained that there were a lot of burglaries in the area and he was trying to find out if he lived in the building. Mr. ██████ then asked how he got into the gate and became upset that the officers were in his yard. Officer Foster asked for his identification to which Mr. ██████ replied he did not have to give it to him. Officer Foster said, “Well, yeah you do.”¹⁶ Officer Foster asked for identification again. Mr. ██████ replied he did not have to give the officer identification and told the officer he could go fuck himself as he entered the building. During this interaction, Officer Foster saw Mr. ██████ take out a key, at which point he assumed Mr. ██████ did, in fact, live there.

At the time of the encounter, the officers did not have a description of anyone currently in the area that was suspicious, but Officer Foster believed they had the requisite reasonable suspicion to perform an investigatory stop. In this case, Officer Foster did not actually see the person Officer Palikij was referring to, but stated that as in the past, they relied on the word of other involved officers when they handled this type of situation. He also said that Officer Palikij told him Mr. ██████ moved at a slow pace and looked around before he went into the gate. Officer Palikij did not stop as he went by Fremont and Officer Foster did not witness the actions that amounted to reasonable suspicion. He also mentioned there was a church nearby that housed homeless people who routinely used the gangways in the neighborhood, one of which he arrested in the past. This experience added to his belief that something was afoot.

Officers Foster and Gonzalez then went to the front of the building, met up with Officer Palikij and told him what had transpired. At that time Officer Palikij told Officers Foster and Gonzalez that he saw Mr. ██████ looking around and then go inside the gate. Officer Palikij also

¹⁵ Attachment 31.

¹⁶ Attachment 31 at 07:13.

said he could hear someone yelling on the phone in the courtyard when he finally arrived on the scene. Officer Foster suggested they call Sergeant Slater even though he did not hear the yelling.

When asked about the alleged comments he made to Mr. ██████ Officer Foster said he did not remember saying, "I'll remember that when they try to break into your place," but he did say, "I hope that you're not a victim" or something to that effect.¹⁷ Officer Foster also said he did not say, "When you're a victim don't come crying to me," and he denied calling Mr. ██████ a "little prick." Officer Foster, however, admitted he forgot to activate his Body Worn Camera during the initial interaction with Mr. ██████¹⁸

Officer Reginald Foster-Interview 2¹⁹

Officer Reginald Foster provided a second recorded interview at COPA on January 21, 2020. The officer was asked about allegations 4 and 5. Sergeant Slater's BWC captured Officer Foster tell Sergeant Slater that he made the two statements in question directly to Mr. ██████ During the interview, Officer Foster was afforded the opportunity to view Sergeant Slater's BWC. When asked about the statements, Officer Foster said he did not recall making the complete statements, "I'll remember that when they try and break into your place" and/or "When you're a victim of it, then don't come crying", directly to Mr. ██████²⁰ He only made the two statements to Sergeant Slater. What he did say to Mr. ██████ was something to the effect he hoped Mr. ██████ was not the victim of a burglary, and he hoped no one tries to break into his house. When asked why he would make such statements to his sergeant, he responded he probably made them out of frustration.

Officer Michael Palikij²¹

Officer Michael Palikij provided a recorded interview at COPA on December 5, 2019. Officer Palikij, who at that time was assigned to the Burglary Team, stated that as he drove West on Addison, he momentarily stopped at Fremont Street due to traffic. He said he looked to his left, and saw a person approximately 75 to 100 feet away, acting in a suspicious manner. He observed this person for 15-20 seconds. Officer Palikij observed the person, now known as Mr. ██████ walk up to the gate that led to a gangway. He then passed Fremont, and as he made a U-turn, he told the other two officers in the vehicle that he saw a male in dark clothes fidget with the gate and walk into the gangway. Officer Palikij then turned South onto Fremont. When they arrived at the gate on Fremont where Officer Palikij saw Mr. ██████ he was no longer in view. Officer Palikij's partners got out of the vehicle and Officer Palikij drove around to the alley.

Officer Palikij explained that he had nineteen years on the job and had quite a bit of experience with burglaries and determining reasonable articulable suspicion. He went on to say that there was reasonable suspicion whenever you had anyone who acted like they should not be there or do not live there, e.g., anyone who looked around or moved slowly and made sure nobody was watching them, anyone who then went into a property from the rear, or anyone who carried

¹⁷ Attachment 31 at 21:30.

¹⁸ Attachment 31 at 29:30.

¹⁹ Attachment 35.

²⁰ Attachment 35 at 05:16.

²¹ Attachment 32.

work tools but did not do any work. Officer Palikij mentioned that almost all burglaries are through a rear entrance.

When asked what he believed Mr. ██████ did that seemed suspicious, Officer Palikij answered, "I watched him walk over to the gate, stop at the gate, reach out to check if it was open or whatever he was doing at that point, he did not know at that point, then look both ways, stop again, and then walk in slowly."²² He could not see whether Mr. ██████ was carrying anything at the time.²³ Early in the interview, Officer Palikij informed the investigators that the three officers did not discuss the reasonable suspicion while in the car, because there was no time to. However, Officer Palikij later said he gave this information to the officers during the U-Turn, which was before they got out of the vehicle.

Officer Palikij told investigators that he did not activate his body worn camera because by the time he got back to the gangway, the event was over, and he forgot. When he got to the gangway, he saw and heard Mr. ██████ who sounded angry, yell over the phone. He told the other officers Mr. ██████ is already complaining and suggested they contact a sergeant. He did not know if his partners heard Mr. ██████ yelling.

Officer Rolando Gonzalez²⁴

Officer Rolando Gonzalez provided a recorded interview at COPA on December 6, 2019. Officer Gonzalez, who at that time was assigned to the Burglary Team, stated that on the date in question he was in a police vehicle traveling West on Addison with two other officers when Officer Palikij, the driver, looked South down Fremont and saw a male subject who acted in a suspicious manner. This person looked into a backyard and then looked both ways.

Officer Palikij turned left and drove down Fremont, but Officer Gonzalez did not recall making a U-turn. Officer Palikij then briefly stopped and pointed out Mr. ██████ who had dark skin, wore dark clothing, and who stood at a gate. Officer Gonzalez told investigators that he saw Mr. ██████ take a step back from the gate, take a look around in a confused and suspicious manner, and then entered the gate. Officers Gonzalez and Foster exited the vehicle as Mr. ██████ went into the gate and walked down the gangway. The officers lost sight of Mr. ██████ after he walked into a backyard through a wooden gate. By the time the officer's caught up with Mr. ██████ he had already begun to walk up to the second floor of the building, and all they could see were his legs. Officer Foster attempted to get Mr. ██████ attention in a calm and direct manner and then asked Mr. ██████ if he lived there. Mr. ██████ said he did. Officer Foster asked for identification and Mr. ██████ said he did not have to show him shit, in a hostile and bothered manner. Mr. ██████ then went into his apartment. Officer Gonzalez could not recall any additional comments.

Officer Gonzalez explained that Mr. ██████ actions were suspicious because, based on his experience, when people get to a gate, they just enter. You get the key out, you open the gate, and you go inside. Mr. ██████ did not do that.

²² Attachment 32 at 16:20.

²³ Attachment 32 at 09:25.

²⁴ Attachment 33.

Officer Gonzalez said that he forgot to activate his BWC.

b. Digital Evidence

Body Worn Camera-Sergeant Slater²⁵

This video is of a conversation between Mr. [REDACTED] Mrs. [REDACTED] Sergeant Slater and the three accused officers. At the beginning of the video, Officer Palikij explained to Sergeant Slater that as they traveled West down Addison, they saw somebody looking around in a suspicious manner. Allegedly the person looked around, tried the gate, opened the gate and then went in. They turned around, went to the location in question and Officers Foster and Gonzalez got out of the police vehicle to investigate. Officer Palicki drove around to the alley, which runs parallel to Fremont, as the other two officers had the interaction with Mr. [REDACTED]

Later, Mrs. [REDACTED] visibly upset, approached the officers and questioned them about their interaction with her husband. She said the officers tried to ID him while he was at his own home, and then yelled at him. It made no sense to her, so she and asked for an explanation, to which Officer Foster replied they did not know he lived there. The officers saw a man enter the gate and then disappear. The officers followed and saw Mr. [REDACTED] as he walked up the stairs. They asked Mr. [REDACTED] for an ID, which he declined to produce, and then explained to him there had been a lot of burglaries in the area.

As Mr. [REDACTED] came onto the scene, Officer Foster mentioned to Mrs. [REDACTED] that Mr. [REDACTED] had an attitude. Mr. [REDACTED] seemed to walk away when Officer Foster called out, “instead of you walking away why don’t you tell your side.”²⁶ Mr. [REDACTED] came back and told the group that the least safe he had felt in that community was during the recent interaction with those police officers. He explained that when they came into his back yard and yelled, “Hey you,” he did not know who was addressing him, and he felt unsafe because they were behind him. He also said the interaction felt threatening and unsettling.

Officer Foster reiterated, in more detail, that he opened the gate and saw a guy going up the stairs. When Mr. [REDACTED] looked down, Officer Foster asked if he lived there, to which he answered affirmatively. Officer Foster explained there were a lot of burglaries in the area and Officer Palikij believed Mr. [REDACTED] was acting suspiciously and asked for his identification. Mr. [REDACTED] who didn’t know who the officer was referring to, asked if he meant him. Officer Foster answered affirmatively, and explained that, “he was the one they saw coming through the gate and they were just trying to make sure everything was ok.”²⁷ Officer Foster asked for an ID a second time and Mr. [REDACTED] said that he did not have to give it to him. Officer Foster stated on BWC that he said, “Ok, I’ll remember that when they break into your place.” He said he asked those questions because there had been burglaries and thefts the area. Officer Foster also said, “When you’re a victim of it then don’t come crying.”²⁸ He said Mr. [REDACTED] replied, “fuck you” or

²⁵ Attachment 12.

²⁶ Attachment 12 at 02:56.

²⁷ Attachment 12 at 01:20.

²⁸ Attachment 12 at 01:30.

something to that effect, and Officer Foster said that he, in turn, told Mr. ██████ to, “come down here and say that.”²⁹ Mr. ██████ then went into his apartment without further comment.

Sergeant Slater explained that people often perform grooming mannerisms before they commit a crime and that Officer Palikij saw Mr. ██████ peek around the pillar, look at the fence, pull the fence, and then go in. Sergeant Slater said that this amounted to reasonable suspicion. Mr. ██████ called the officer a liar, because he did not enter the gate as described, and explained that the encounter amounted to a lack of professionalism. He also disagreed with their claim of reasonable suspicion, because all he did was walk into his own back yard.

Officer Slater explained to the ██████ that according to the courts, the officers had reasonable suspicion because they were able to articulate the reason they thought Mr. ██████ had committed, or would commit a crime. According to him, Mr. ██████ walked over to the pillar, looked both ways, pulled on the gate, and then entered. Because it was not a continuous motion, it led the officers to believe that maybe he did not live there. Officer Slater also tried to reason that these officers had been doing this for over 20 years. He explained that you cannot teach someone about grooming mannerisms, and that one learns to spot these behaviors over time. Because the officers were able to articulate what they saw, they felt they had reasonable suspicion. As a result, the officers approached Mr. ██████ to investigate, keeping in mind the increase in burglaries in the area. Mr. ██████ expressed that he thought it was very poor spotting of reasonable suspicion, to which Officer Slater replied, “to you.”

Body Worn Camera-Officer Palikij³⁰

This video is consistent with that of Sergeant Slater. However, there are certain things that were more clearly seen/heard in this video. For instance, Officer Palikij said, “You weren’t out there” to Mrs. ██████ who was trying to discuss the incident.³¹ Officer Foster said, “oh, you don’t know who we are?” in response to Mr. ██████ comment that he did not know who was yelling “hey you.”³² When Officer Palikij returned to the group after going to check out the gate, Officer Foster told Officer Palikij that Mr. ██████ said he lied about having reasonable suspicion. Officer Palikij later protested and said that he was the one who saw him at the gate, that it looked suspicious, and that it had nothing to do with race.³³ Officer Foster asked Mr. ██████ “what were your words to me before you shut your door?” He then said something to the effect that “you were not cooperating and you told me to go fuck myself.” He then continued to argue, “The bottom line is that the majority of these burglaries are through the rear door. You went through there and disappeared, that’s why we went through.” Officer Palikij began to say, “I hope to god you never need us...”, but was stopped mid-sentence by Sergeant Slater.³⁴

²⁹ Attachment 12 at 01:38.

³⁰ Attachment 13.

³¹ Attachment 13 at 10:22.

³² Attachment 13 at 10:24.

³³ Attachment 13 at 10:25.

³⁴ Attachment 13 at 10:28.

OEMC Dispatch³⁵

At the beginning of the recording there is a communication about [REDACTED] that is not completely intelligible.³⁶ The female dispatcher asked what it was about and the male officer said it was a suspicious person. “1968” (Slater) called in and asked for the full event number for this incident. Dispatch gave him 912305547. “1968” announced he was going to be clear.³⁷

a. Documentary Evidence**Investigatory Stop Report (ISR)³⁸**

According to the ISR, the responding officers, assigned to the Burglary Mission Team, were on routine patrol when an unknown male was observed standing near the rear gangway at the location in question. The unknown male looked around in both directions, opened the gate before entering, and disappeared out of the responding officers’ view. The officer’s saw the same individual walking up the rear stairs of the and called out to him to determine if he was a resident of the apartment complex. The responding officer explained that the area experienced a high volume of burglaries and that he was previously seen at the gate. It was reported that the individual became sarcastic and abusive and refused to divulge any information. The unknown male then told the officer to “go fuck himself” just before he entered an apartment and closed the door behind him.

The responding officers contacted their supervisor who met them in front of the address in question. Shortly thereafter, the unknown male and his wife came out and expressed that the officers acted in an unprofessional manner, starting when one of them yelled out “Hey you” in an attempt to get his attention. The unknown male and his wife also expressed that they felt it was a race issue.

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.

³⁵ Attachment 24.

³⁶ Attachment 24 at 00:01.

³⁷ Attachment 24 at 16:11.

³⁸ Attachment 6.

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.

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

Officer Reginald Foster

COPA finds **Allegation #1**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] that Officer Reginald Foster racially profiled Mr. [REDACTED] when, without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter, in violation of Rule 2 and G02-04 (III A), is not supported by enough evidence to sufficiently prove or disprove Mr. [REDACTED] account of the event and is **NOT SUSTAINED**.

During his interview, Officer Foster stated that the first time he saw Mr. [REDACTED] was after he and Officer Gonzalez got into the rear yard of the location in question, and the only thing he saw, at first, were Mr. [REDACTED] legs. Officer Palikij stated the only description he gave Officers Foster and Gonzalez was that he saw a male in dark cloths enter the gangway. Officer Gonzalez stated in his interview that Officer Palikij briefly stopped and pointed out Mr. [REDACTED] who had dark skin, wore dark clothing and stood at the gate.

Although it is reasonable to believe Officers Palikij and Gonzalez saw Mr. [REDACTED] prior to the investigatory stop, based on their statements, there is not enough evidence to effectively dispute Officer Foster's account, and it is possible he was unaware of Mr. [REDACTED] race before the initial contact. And, even though it would not be surprising to find that this encounter involved, at the very least, some level of implicit bias, without more dispositive evidence this allegation is **NOT SUSTAINED**.

COPA finds **Allegation #2**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] Officer Reginald Foster behaved in an unprofessional manner when he called out, "Hey you" to get Mr. [REDACTED] attention in violation of Rule 2, is not supported by enough evidence to sufficiently prove or disprove Mr. [REDACTED] account of the event and is **NOT SUSTAINED**.

Although Mr. ██████ was emphatic Officer Foster called out “Hey you” in an unprofessional manner as evidenced in Sergeant Slater and Officer Palikij’s BWC footage, his statement to COPA suggested he was not as certain about whether Officer Foster actually said, “Hey you” or just “Hey” when he attempted to get Mr. ██████ attention.

Officer Foster stated he simply said “Hey” and described his tone as “direct.” Officer Gonzalez described Officer Foster as calm and direct. However, Officer Foster came across as combative, and at the very least, agitated on the available BWC. Because there is no BWC footage of the actual incident, it is impossible to determine exactly how Officer Foster came across when he first addressed Mr. ██████ and whether his demeanor, at the moment in question, rose to the level of unprofessional conduct. Without more dispositive evidence, this allegation is Not Sustained.

COPA finds **Allegation #3**, that on May 3, 2019, at approximately 10:00 am, at ██████ ██████ Officer Reginald Foster improperly detained ██████ when without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter, in violation of Rule 2 and Special Order S04-13-09 (II-C), is not supported by the evidence and is **UNFOUNDED**.

There is no dispute the accused officers *intended* to conduct an investigatory stop with Mr. ██████ on the day in question. In fact, the officers believed they indeed performed an investigatory stop as evidenced by their statements and by the creation of a sworn Investigatory Stop Report. However, based on the statements given by both Mr. ██████ and both Officers Foster and Gonzalez, and based on the conversation captured on BWC, the interaction between these parties did not amount to an investigatory stop. Instead, based on Mr. ██████ actions, it turned out to be a mere consensual encounter.

According to Special Order s04-13-19, “an Investigatory Stop is not a voluntary contact. A voluntary contact is a consensual encounter between an officer and a person during which the person must feel free to leave the officer's presence.”³⁹ Mr. ██████ refusal to give Officer Foster his ID, and the fact that Mr. ██████ left the conversation of his own accord, was sufficient evidence that Mr. ██████ felt free to leave the officers’ presence.

Because this was a consensual encounter, the matter of reasonable suspicion need not be addressed. Since there was no actual violation of policy, in this case, this allegation is Unfounded.

COPA finds **Allegation #4**, that on May 3, 2019, at approximately 10:00 am, at ██████ ██████ Officer Reginald Foster treated him in a retaliatory manner when he said, “I’ll remember that when they try and break into your place” in response to Mr. ██████ refusal to show the officer his identification, in violation of Rule 2, is not supported by enough evidence to sufficiently prove or disprove Mr. ██████ account of the event and is **NOT SUSTAINED**.

This allegation was derived from statements made by Officer Foster that were captured in the BWC footage of Sergeant Slater. When asked about the statement, “I’ll remember that when

³⁹ Special Order S04-13-19(II)(A).

they try and break into your place," Officer Foster explained that he never said those exact words directly to Mr. [REDACTED] but admitted he did make the statement to Sergeant Slater only, probably out of frustration. Officer Foster went on to say that his statement to Mr. [REDACTED] was something more along the lines of he hoped Mr. [REDACTED] was not a victim of burglary and hoped nobody tried to break into his house.

Although Mr. [REDACTED] alleged that Officer Foster said something to the effect that he better hope nothing happens to him because maybe next time they will not be around, there is not enough evidence to support he made the exact statement as alleged. The statement to Mr. [REDACTED] was not captured on BWC. Therefore, this allegation is Not Sustained.

COPA finds **Allegation #5**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster treated him in a retaliatory manner when he said, "When you're a victim of it then don't come crying" in response to Mr. [REDACTED] refusal to show the officer his identification, in violation of Rule 2, is not supported by enough evidence to sufficiently prove or disprove Mr. [REDACTED] account of the event and is **NOT SUSTAINED**.

The analysis for this allegation is consistent with the analysis for Allegation #4.

COPA finds **Allegation #6**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he called Mr. [REDACTED] a "little prick", In violation of Rule 2, is not supported by enough evidence to sufficiently prove or disprove Mr. [REDACTED] account of the event and is **NOT SUSTAINED**.

Although Mr. [REDACTED] alleged Officer Foster called him a "little prick" after he refused to provide identification, Officer Foster denied making the statement and Officer Gonzalez did not recall if the statement was made. The statement was not captured on BWC. Without more, the allegation is **NOT SUSTAINED**.

COPA finds **Allegation #7**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he said something to the effect that he better hope that nothing happens to him because maybe next time they will not be around after he refused to show his identification, in violation of Rule 2, is supported by a preponderance of the evidence and is **SUSTAINED**.

Officer Foster's statements, "I'll remember that when they try and break into your place" and "When you're a victim of it then don't come crying", which he admitted were possibly made out of frustration, and which were captured on Sergeant Slater's BWC shortly after the incident, coupled with his brash and agitated demeanor, also captured on BWC, supported Mr. [REDACTED] allegation that Officer Foster made an unprofessional comment. Furthermore, Mrs. [REDACTED] reported in her interview that Mr. [REDACTED] told her about the perceived threat moments after it happened. Even though there was not enough evidence to sustain Allegations #4 and #5, based on the totality of the circumstances and the evidence, it is reasonable to conclude that it is more likely than not Officer Foster made a comment to Mr. [REDACTED] as alleged. Therefore, this allegation is **SUSTAINED**.

COPA finds **Allegation #8**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway, in violation of Rule 2 and S03-14 (A-2-b), is supported by a preponderance of the evidence and is **SUSTAINED**.

Officer Foster admitted he forgot to activate his Body Worn Camera during his interview with COPA. Therefore, this allegation is Sustained.

Officer Michael Palikij

COPA finds **Allegation #1**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] that Officer Michael Palikij racially profiled Mr. [REDACTED] when without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter, in violation of Rule 2 and G02-04 (III A), is not supported by enough evidence to sufficiently prove or disprove Mr. [REDACTED] account of the event and is **NOT SUSTAINED**.

The analysis for this allegation is consistent with that of Allegation #1 for Officer Foster. Even though, in this case, Officer Palikij was likely able to determine Mr. [REDACTED] race.

COPA finds **Allegation #2**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij claimed he saw Mr. [REDACTED] behave as if he was preparing to commit a burglary, which caused Mr. [REDACTED] to be subjected to an investigatory stop without the required reasonable suspicion, in violation of Rule 2 and Special Order S04-13-09 (II-C), is not supported by the evidence and is **UNFOUNDED**.

The analysis for this allegation is consistent with that of Allegation # 3 for Officer Foster.

COPA finds **Allegation #3**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway, in violation of Rule 2 and S03-14 (A-2-b), is supported by a preponderance of the evidence and is **SUSTAINED**.

Officer Palikij admitted he forgot to activate his Body Worn Camera during his interview with COPA. Therefore, this allegation is Sustained.

Officer Gonzalez

COPA finds **Allegation #1**, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Rolando Gonzalez failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] in violation of Rule 2 and S03-14 (A-2-b), is supported by a preponderance of the evidence and is **SUSTAINED**.

Officer Gonzalez admitted he forgot to activate his Body Worn Camera during his interview with COPA. Therefore, this allegation is Sustained.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Reginald Foster

i. Complimentary and Disciplinary History

COMPLIMENTARY

2004 Crime Reduction Ribbon, 2009 Crime Reduction Award, 2019 Crime Reduction Award, Complimentary Letter (3), Democratic National Convention Award, Department Commendation (3), Honorable Mention (44), NATO Summit Service Award, Presidential Election Deployment Award 2008, Unit Meritorious Performance Award (1)

DISCIPLINARY

Officer Foster has no record of Sustained allegations in the last 7 years

ii. Recommended Penalty, by Allegation

1. Allegation No. 7 Reprimand

Allegation No. 8 1 Day Suspension

Although the officer has significant complimentary histories, and the lack of any disciplinary history in the last 7 years for the accused officer, a Reprimand is recommended for the allegation of unprofessional verbiage. A 1-day Suspension is chosen instead of Violation Noted based on the length of service of the officer and the expectation that if he actually felt he was approaching a burglary suspect he should have been even more cognizant about activating his Body Worn Camera.

b. Officer Michael Palikij

i. Complimentary and Disciplinary History

COMPLIMENTARY

2004 Crime Reduction Ribbon, 2009 Crime Reduction Award, 2019 Crime Reduction Award, Attendance Recognition Award (2), Complimentary Letters (6), Department Commendations (3), Honorable Mentions (88), Honorable Mention Ribbon Award (1), NATO Summit Service Award (1), Presidential Election Deployment Award 2008, Problem Solving Award (1)

DISCIPLINARY

Officer Palikij has no record of Sustained allegations in the last 7 years

ii. Recommended Penalty, by Allegation

1. Allegation No. 3 1 Day Suspension

This officer also has significant complimentary history and the lack of any disciplinary history in the last 7 years for the accused officer. However, a 1-day Suspension is chosen instead of Violation Noted based on the length of service of the officer the expectation that if he actually felt he was approaching a burglary suspect he would have been even more cognizant about activating his Body Worn Camera.

c. Officer Roland Gonzalez

i. Complimentary and Disciplinary History

COMPLIMENTARY

2004 Crime Reduction Ribbon, 2009 Crime Reduction Award, 2019 Crime Reduction Award, Attendance Recognition Award (4), Complimentary Letter (7), Department Commendation (3), Emblem of Recognition-Physical Fitness (5), Honorable Mention (69), Honorable Mention Ribbon Award (1), NATO Summit Service Award, Presidential Election Deployment Award 2008, Problem Solving Award (1)

DISCIPLINARY

Officer Gonzalez has no record of Sustained allegations in the last 7 years

ii. Recommended Penalty, by Allegation

1. Allegation No. 1 Day Suspension

This officer also has significant complimentary history and the lack of any disciplinary history in the last 7 years for the accused officer. However, a 1-day Suspension is chosen instead of Violation Noted based on the length of service of the officer the expectation that if he actually felt he was approaching a burglary suspect he would have been even more cognizant about activating his Body Worn Camera.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Reginald Foster	1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster racially profiled Mr. [REDACTED] when without	NOT SUSTAINED

	<p>reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter in violation of Rule 2 and S04-13-09 (II-C and C-1).</p> <p>2. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster behaved in an unprofessional manner when he called out, "Hey you" to get Mr. [REDACTED] attention in violation of Rule 2.</p> <p>3. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster improperly detained [REDACTED] when without reasonable suspicion he asked him for his identification to prove he lived in the building he was about to enter in violation of Rule 2 and S04-13-09 (II-C and C-1).</p> <p>4. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster treated him in a retaliatory manner when he said, "I'll remember that when they try and break into your place" in response to Mr. [REDACTED] refusal to show the officer his identification in violation of Rule 2.</p> <p>5. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster treated him in a retaliatory manner when he said, "When you're a victim of it then don't come crying" in response to Mr. [REDACTED] refusal to show the</p>	<p>NOT SUSTAINED</p> <p>UNFOUNDED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>
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	<p>officer his identification in violation of Rule 2.</p> <p>6. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he called Mr. [REDACTED] a "little prick" in violation of Rule 2.</p> <p>7. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster was unprofessional when he said something to the effect that he better hope that nothing happens to him because maybe next time they won't be around after he refused to show his identification in violation of Rule 2.</p> <p>8. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Reginald Foster failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway in violation of Rule 2 and S03-14 (A-2-b).</p>	<p>NOT SUSTAINED</p> <p>SUSTAINED/Reprimand</p> <p>SUSTAINED/1 Day Suspension</p>
<p>Officer Michael Palikij</p>	<p>1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij racially profiled Mr. [REDACTED] when he claimed he saw Mr. [REDACTED] looking around as if he was preparing to commit a burglary, which caused Mr. [REDACTED] to be subjected to an investigatory stop without the required reasonable suspicion in violation of Rule 2 and S04-13-09 (II-C and C-1).</p>	<p>NOT SUSTAINED</p>

	<p>2. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij claimed he saw Mr. [REDACTED] behave as if he was preparing to commit a burglary, which caused Mr. [REDACTED] to be subjected to an investigatory stop without the required reasonable suspicion in violation of Rule 2 and S04-13-09 (II-C and C-1).</p> <p>3. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Michael Palikij failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] near the rear stairway in violation of Rule 2 and S03-14 (A-2-b).</p>	<p>UNFOUNDED</p> <p>SUSTAINED/1 Day Suspension</p>
<p>Officer Rolando Gonzalez</p>	<p>1. It is alleged, that on May 3, 2019, at approximately 10:00 am, at [REDACTED] [REDACTED] Officer Rolando Gonzalez failed to activate his Body Worn Camera during the initial incident with Mr. [REDACTED] in violation of Rule 2 and S03-14 (A-2-b).</p>	<p>SUSTAINED/1 Day Suspension</p>

Approved:

[REDACTED]

9-29-2020

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	██████████
Supervising Investigator:	██████████████████
Deputy Chief Administrator:	Angela Hearts-Glass
Attorney:	██████████