

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 21, 2018
Time of Incident:	7:00 pm
Location of Incident:	██████████
Date of COPA Notification:	October 4, 2018
Time of COPA Notification:	11:01 am

On September 21, 2018, at approximately 7:00 pm, at or near ██████████, ██████████ was pulled over by Officer Arnulfo Yanez and Officer Victor Perez for parking in a tow zone. During the investigation, it was discovered he was not wearing a seat belt, and that there was a warrant attached to ██████████' driver's license. ██████████ explained that the person named in the warrant was not him, and that he had been arrested and released in relation to said warrant before.

When the officers failed to obtain enough evidence to address their concerns regarding the warrant, ██████████ was arrested and taken into the 8th District police station for further investigation. It was finally determined that ██████████ was not, in fact, the person involve with this warrant. ██████████ was cited for not wearing a seat belt and was released.

On October 4, 2018, ██████████ filed a complaint with COPA, and alleged that officers searched his vehicle and arrested him without justification.

II. INVOLVED PARTIES

Involved Officer #1:	Arnulfo Yanez, star # 17142, employee ID# ██████████, Date of Appointment June 3, 2013, rank PO, Unit of Assignment 008, DOB ██████████, 1979, Male, White.
Involved Officer #2:	Victor Perez, star # 14826, employee ID# ██████████, Date of Appointment December 12, 2016, rank PO, Unit of Assignment 008, DOB ██████████, 1981, Male, White.
Involved Individual #1:	██████████, DOB ██████████/1996, Male, Hispanic.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Arnulfo Yanez	1. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near ██████████,	EXONERATED

	Officer Arnulfo Yanez arrested [REDACTED] without justification.	
Officer Victor Perez	<p>1. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez arrested [REDACTED] without justification.</p> <p>2. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez searched [REDACTED] vehicle during a traffic stop without justification.</p>	EXONERATED

IV. APPLICABLE RULES AND LAWS

Rules

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

Special Orders

1. S06-01-04 *Arrestee Identification Process*

State Laws

1. *People v. Stout*, 106 Ill.2d 77, 88 (1985)
2. *United States v. Richards*, 719 F.3d 746 (7th Cir. 2013)
3. 725 ILCS 5/107-2, *Arrest by peace officer*.

INVESTIGATION¹

a. Interviews

[REDACTED]²
 COPA interviewed [REDACTED] on October 4, 2018 at approximately 11:22 am. He explained that on September 21, 2018 at approximately 7:00 pm, he drove down 63rd St., and parked in what he called a “no-tow” zone. Police watched him exit his vehicle, waited for him to return from visiting a store, and pulled him over after he drove away and turned the corner.³ The officer, now known as Officer Yanez, asked him if he knew he was illegally parked, and he responded in the affirmative, and explained that he quickly ran into the store.⁴ [REDACTED] provided the officers with his driver’s license and insurance and stepped out of the vehicle. Officer Yanez then performed a search of the vehicle and a pat-down on [REDACTED]. He did not obtain

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 Att. 11.

³ Att. 11 at 02:40.

⁴ Att. 11 at 03:20.

██████████' permission to search the vehicle, and he asked ██████████ where the drugs and guns were.⁵

When Officer Yanez was ready to perform a check of his driver's license, ██████████ informed him that a warrant may show up for a person who allegedly stole his identity. This person had the same first name, last name, middle initial and date of birth.⁶ ██████████ provided a piece of paper with information that was meant to help the officers recognize he was not the person described in the warrant.⁷ He was provided this piece of paper by other officers because he had already been wrongfully arrested, more than once, in regard to the same warrant. Officer Yanez asked questions about the situation then called a sergeant for advice. The sergeant instructed the officer to do what he wanted to do. ██████████ was handcuffed, and after a transport unit arrived, the officers proceeded to take him into the police station.

Once in the station, officers began to process him and check his FBI, SID, and other numbers. The officer performing the check called the FBI for verification and then stated that ██████████ was not the person described in the warrant.⁸ ██████████ was issued citations and then let go.

b. Digital Evidence

Body Worn Camera⁹

Dash cam video captured the police vehicle, driven by Officer Yanez, pull out of an alley, turn right and stop behind two vehicles waiting at a stop sign.¹⁰ Once those two vehicles proceeded, a third vehicle, that was parked at the curb near the stop sign, pulled away from the curb and turned right. Officer Yanez followed the vehicle, which pulled over to the curb about a block away.¹¹

The officers exited the police vehicle, and Officer Yanez approached the driver's side of the vehicle, and Officer Perez approached the passenger side.¹² Officer Yanez asked ██████████ to put out his cigarette as ██████████ handed him his driver's license. ██████████ was not wearing a seatbelt.¹³ He told ██████████ that the reason he was stopped was because he was parked in the tow zone near stop sign and was in the crosswalk. Officer Yanez asked ██████████ for his insurance and then asked ██████████ why his vehicle "smelled like weed", to which ██████████ responded that he smoked yesterday at work.¹⁴ Officer Yanez then asked ██████████ if he had any guns or drugs in the vehicle to which ██████████ answered no. When ██████████ handed Officer Yanez his insurance card, he was informed the insurance expired in May.¹⁵

⁵ Att. 11 at 15:20.

⁶ Att. 11 at 03:48.

⁷ Att. 11 at 08:20

⁸ Att. 11 at 04:55.

⁹ Att. 17.

¹⁰ Att. 17-Dash Cam 1 at 00:01.

¹¹ Att. 17-Dash Cam at 01:04.

¹² Att. 17-BWC Yanez at 00:40.

¹³ Att. 17-BWC Yanez at 00:53.

¹⁴ Att. 17-BWC Yanez at 01:10. At 01:25 Officer Yanez mentioned that the odor of marijuana was strong.

¹⁵ Att. 17-BWC Yanez at 01:50.

██████████ exited the vehicle upon command and was asked again if there was anything in the vehicle, like guns or drugs, to which he gave a negative response. ██████████ relocated to the rear of his vehicle and was handcuffed while Officer Perez searched his vehicle, including the center console and glove compartment.¹⁶ No firearms or contraband were found.

Officer Yanez went back to his police vehicle to run ██████████' driver's license and was informed there may be a warrant that comes up for someone other than him.¹⁷ ██████████ explained there was a warrant for a person, with the same name and date of birth but lived in Champaign. ██████████ was arrested for the warrant, multiple times, and was already released.¹⁸ The right person was never arrested and there was no photo to use for comparison. ██████████ gave Officer Yanez a piece of paper on which different FBI numbers were written to help show he was not the person named in the warrant.¹⁹

Officers Yanez and Perez discussed the matter, and stated that the warrant, which was for failure to appear on a domestic battery, was still connected to ██████████' driver's license. The person named in the warrant was 6 feet tall and 180 pounds, which did not describe ██████████ who was 5 feet nine inches tall and 130 pounds. Officer Perez called a sergeant to the scene and explained the circumstances of the warrant; that the person likely stole ██████████ identity, and had the same first name, middle initial, last name and date of birth. Officer Perez and the Sergeant went back to the police vehicle and found that the warrant still showed ██████████' photo.²⁰ The Sergeant said it is on ██████████ to fix the situation, which was ongoing for some five years, and the officers decided to take ██████████ into the station so they could conduct further investigation.

OEMC Recording

It was reported that ██████████ had a valid driver's license and a warrant out of South Champaign County for Domestic Battery.²¹ The information came from the Hot Desk.

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Photos

¹⁶ Att. 17-BWC Perez 1 at 01:46-05:00.

¹⁷ Att. 17-BWC Yanez at 03:09.

¹⁸ Att. 17-BWC Perez 1 at 08:00.

¹⁹ Att. 17-BWC Perez 1 at 08:29-09:48 and at 13:15.

²⁰ Att. 17-BWC Perez 1 at 16:45.

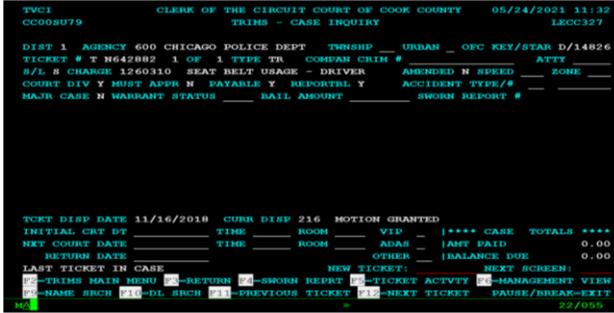
²¹ Att. 4 at 12:02.

Photo of where [REDACTED] was parked prior to being curbed by Police.

Google Earth photo of same corner.



Screen Shot of Ticket Information



Screen Shot of [REDACTED] not wearing seatbelt



c. Documentary Evidence

According to the **Arrest Report**, CB# [REDACTED], on September 21, 2018, at approximately 7:13 pm [REDACTED] was arrested at or near [REDACTED] and cited under 725 ILCS 5.0/110-3 Issuance of Warrant and 625 ILCS 5.0/12-603.1 Driver/Seatbelt/Child 6<16. The original arrest warrant, [REDACTED], dated March 31, 2016, was reported as good in Cook County per Officer Osbourn #19675. In the narrative section it was reported that the officers observed the subject commit a minor traffic violation for failure to wear a seat belt. The officers curbed the vehicle and a name check through LEADS uncovered an active warrant for failure to appear. The

subject was taken in to the 008th District for further processing. The Watch Commander stated that [REDACTED] was released without charging because further investigation determined that he was not the person identified in the afore mentioned warrant.²²

V. 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 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.

VI. ANALYSIS

Officer Arnulfo Yanez

COPA finds **Allegation #1**, that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Arnulfo Yanez arrested [REDACTED] without justification, is not supported by the evidence and is **Exonerated**.

A peace officer may arrest a person when he has a warrant commanding that such a person be arrested, and a peace officer who executes a warrant of arrest in good faith beyond the geographical limitation of the warrant shall not be liable for false arrest. 725 ILCS 5/107-2. Furthermore, "whenever a name check or fingerprint check reveals that an arrestee is wanted on a warrant, the station supervisor will telephone the Central Warrant Unit and verify that the arrestee

²² Att. 19.

and person wanted on the warrant are the same person.” And, “the station supervisor will ensure that any IR number and physical description listed on the warrant matches the IR number on the Criminal History Sheet and the arrestee’s physical description.” S06-01-04 *Arrestee Identification Process*.

Secretary of State records reported that [REDACTED], the complainant in this case, had an active warrant for failure to appear in relation to a domestic incident. Although [REDACTED] explained to the officers that his identity was stolen and he was not the person named in the warrant, the officers, using an abundance of caution and in good faith, decided to exercise their discretion and take [REDACTED] to the police station for further investigation. Furthermore, CPD policy suggested that this was a permissible route to take in that S06-01-04 *Arrestee Identification Process* established that a station supervisor should be involved in the investigation. Therefore, this allegation is Exonerated.

Officer Victor Perez

COPA finds **Allegation #1**, that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez arrested [REDACTED] without justification is not supported by the evidence and is **Exonerated**.

The analysis for this allegation is consistent with that of Officer Yanez’s Allegation #1 and is Exonerated.

COPA finds **Allegation #2**, that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez searched [REDACTED]’ vehicle during a traffic stop without justification is not supported by the evidence and is **Exonerated**.

Because automobiles may readily be driven away, it is often impossible for law-enforcement officers to obtain warrants for their search, and the courts have taken this factor into consideration in determining the reasonableness of the searches of automobiles. The detection of the odor of cannabis was not based on an unfounded assumption, but on the officers’ training and experience, and a police officer’s detection of controlled substances by their smell has been held to be a permissible method of establishing probable cause. This method of detection does not constitute an unconstitutional search. *People v. Stout*, 106 Ill.2d 77, 88 (1985). Furthermore, “When officers have such probable cause, the search may extend to ‘all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks.’” *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)).

In this case, both officers commented that they smelled a strong odor of cannabis emanating from the vehicle, and [REDACTED] admitted that he had smoked cannabis in his vehicle but claimed he did so the day before while at work. Although [REDACTED] later alleged the search was performed without his permission or other justification, Officer Perez acted within policy and the law when he searched the entire passenger compartment, center console, and glove compartment. Therefore, the search was not unreasonable, and this allegation is Exonerated.

VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Arnulfo Yanez	1. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Arnulfo Yanez arrested [REDACTED] without justification.	EXONERATED
Officer Victor Perez	1. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez arrested [REDACTED] without justification. 2. It is alleged that on September 21, 2018, at or about 7:00 pm, at or near [REDACTED], Officer Victor Perez searched [REDACTED] vehicle during a traffic stop without justification.	EXONERATED EXONERATED

Approved:

[REDACTED]

5-27-2021

Angela Hearts-Glass
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	
Investigator:	Frances Lee
Supervising Investigator:	Deborah Talbert
Deputy Chief Administrator:	Angela Hearts-Glass