

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	August 15, 2017
Time of Incident:	8:46 pm
Location of Incident:	██████████, Chicago, IL 60609
Date of COPA Notification:	March 7, 2018
Time of COPA Notification:	6:20 pm

On August 15, 2017, members of the Summer Team Mobile were patrolling the area when they observed ██████████. As the officers approached ██████████, he fled on foot while holding his waistband. Believing ██████████ was armed, Lt. James Cascone and other officers pursued ██████████. ██████████ fled up a flight of stairs of an apartment building he was standing in front of and attempted to conceal himself on a porch of the second floor. Lt. Cascone ordered ██████████ to exit and ██████████ complied. ██████████ was patted down and directed to other officers. Lt. Cascone searched the area where ██████████ was attempting to conceal himself and located a loaded firearm that was warm to the touch. ██████████ was arrested and transported to the 009<sup>th</sup> District Station. Once at the station, ██████████ was advised of his Miranda Warnings and questioned. During questioning, ██████████ admitted he had no connection to the building he was attempting to hide at and that he was in possession of the firearm.

During his statement to COPA, ██████████ denied all of the facts listed in his arrest report and alleged that he was arrested without probable cause. COPA’s investigation revealed that ██████████’s allegation are Exonerated.

**II. INVOLVED PARTIES**

Involved Lieutenant #1:	Lieutenant James Cascone / Star #560 / Employee ID# ██████████ / DOA: May 31, 1994 / Unit: 004/312 / DOB: ██████████, 1967 / Male / White
Involved Individual #1:	██████████ / DOB: ██████████, 1968 / Male / Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Lt. James Cascone	1. Arrested ██████████, without probable cause.	Exonerated
Officer Cesar Astorga	1. Arrested ██████████, without justification.	Exonerated

Officer Gerardo Garcia	1. Arrested [REDACTED], without justification.	Exonerated
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#### IV. APPLICABLE RULES AND LAWS

##### Rules

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

##### Special Order

1. S04-13-09 – Investigatory Stop System – effective July 10, 2017 to current.

#### V. INVESTIGATION<sup>1</sup>

##### a. Interviews

In a **statement to COPA**<sup>2</sup> on March 22, 2018, **Mr. [REDACTED]** stated that he was standing near the location of a prior shooting ministering to members of the community, when several Chicago Police Officers approached the area. The officers ordered [REDACTED] to place his hands on a vehicle, patted him down, placed him in a patrol vehicle and began to search the surrounding area. During this search, the officers located a firearm. [REDACTED] was transported to the 009th District Station, questioned without being informed of his rights or provided counsel when requested, and charged with possession of a firearm. [REDACTED] further related that because he would not tell the police who the gun belonged to and because he would not be an informant for the police officers, he was charged with possession of a firearm. [REDACTED] explained that at no time was he ever in possession of a firearm and never attempted to flee from any Department members.

[REDACTED] was insistent that the entire Arrest Report and Original Case Report were fabricated. In his attempts to challenge the contents of his Arrest Report, [REDACTED] pointed to grammatical and typographical errors, differences in opinion on how to describe times of day and locations,<sup>3</sup> and inconsistencies.<sup>4</sup> One of many examples, [REDACTED] used to illustrate his point, is the fact the Arrest Report lists the time of arrest as 20:46 hrs., but that he was arrested at 8:46 pm.<sup>5</sup> Further, [REDACTED] asserted that if the Arrest Report was accurate, he would have been shot as he exited the building because it states he was reaching for his waistband.

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

<sup>2</sup> Att. 14.

<sup>3</sup> For example, [REDACTED] was insistent that 1900 hrs. is not in the day than 8:46 pm. 1900 hrs. is 7:00 pm which is 106 minutes earlier than 8:46 pm or 2046 hrs.

<sup>4</sup> For example, [REDACTED] believed the Original Case Report demonstrates the incident occurred while officers were off duty; however, the only reference to a duty status on the Original Case Report is in the Firearm recovery section and in no way indicates this incident occurred while officers were off duty. Att. 5, pg. 2.

<sup>5</sup> 20:46 hrs. and 8:46 pm are the same time of day expressed in different formats.

In a **statement to COPA**<sup>6</sup> on July 19, 2018, **Lt. James Cascone** stated he was working as part of the Summer Team Mobile<sup>7</sup> and was patrolling the area after reports of several shootings in the vicinity. While on patrol, he observed ██████ sitting at the bottom of the stairs in the rear of a residence. As the CPD vehicle approached, ██████ fled up the stairs of said building. Lt. Cascone followed ██████ and observed ██████ holding his waistband.<sup>8</sup> As ██████ fled, he laid down on a second-floor porch landing in an apparent attempt to conceal himself. Lt. Cascone issued commands for ██████ to exit and come down with his hands up. ██████ complied and Lt. Cascone patted ██████ down, then directed him to officers on location. Lt. Cascone searched the area where ██████ was hiding and located a loaded firearm that was still warm to the touch. Once the firearm was recovered, ██████ was arrested. While on scene, ██████ denied possession of the firearm, but admitted he had no connection to the residence. ██████ was transported to the 009th District Station, advised of his Miranda Warnings, and admitted that he had taken the firearm from his nephew and was in possession of it at the time he fled from the officers.

Lt. Cascone confirmed that his team was in an unmarked vehicle, but in uniform. Additionally, Lt. Cascone explained that he and his team were not equipped with body worn cameras. Lt. Cascone was clear that ██████ was advised of his Miranda Warnings prior to questioning and at no time did ██████ ever request counsel. Lt. Cascone explained that if ██████ had in fact requested counsel questioning would have stopped.

In a **statement to COPA**<sup>9</sup> on February 20, 2020, **PO Cesar Astorga** stated he was working as part of the Summer Team Mobile and was patrolling the area after reports of several shootings in the vicinity. PO Astorga related a similar account of events as Lt. Cascone. PO Astorga confirmed that his team was in an unmarked vehicle, but in uniform, and that his unit was not equipped with body worn cameras.

While on patrol, PO Astorga observed ██████ with two other individuals near the rear of a building by the alley. PO Astorga and his team (Lt. Cascone, PO Garcia and PO Rice) approached the area, and ██████ looked in their direction then rapidly fled on foot. The other two individuals that were with ██████ also fled the scene. ██████ went up the stairs of a porch belonging to the corner building. The officers ordered ██████ to come down to which he complied. PO Astorga observed that ██████ was sweating excessively and fidgeting with his waistband, which made him believe that ██████ was nervous. PO Astorga and PO Garcia patted ██████ down and conducted a brief field interview. Lt. Cascone went up the stairs of said building where ██████ was attempting to hide and searched the immediate area. Lt. Cascone located a weapon, provided PO Astorga and PO Garcia a code for weapon violation at which time they placed ██████ in handcuffs. When Lt. Cascone approached them, the weapon was still warmed to the touch. ██████ was transported to the station.

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<sup>6</sup> Att. 29.

<sup>7</sup> Lt. Cascone explained that the deployment of the Summer Team Mobile is based on the level of violent crime in a given area and changed on a regular basis.

<sup>8</sup> Lt. Cascone added that merely running was not in of itself reason to stop a subject; however, in this instance ██████ ran and was holding his waistband, which Lt. Cascone explained is indicative of a person attempting to conceal a firearm.

<sup>9</sup> Att. 53.

PO Astorga related that he was not a witness to ██████'s interview at the station. However, PO Astorga was informed that PO Garcia and PO Rice read ██████'s Miranda Rights prior to questioning him about the located gun. PO Astorga denied the allegation against him and PO Garcia.

In a **statement to COPA**<sup>10</sup> on March 4, 2020, **PO Gerardo Garcia** stated he was working as part of the Summer Team Mobile and was patrolling the area after reports of several shootings in the vicinity. PO Garcia stated essentially the same information as PO Astorga.

#### **b. Documentary Evidence**<sup>10</sup>

██████'s **Arrest Report**<sup>11</sup> and **Investigatory Stop Report**<sup>12</sup> detail that in response to reports of a shooting earlier in the day, officers were patrolling the area when they observed ██████, who fled on foot while holding his waistband. This action caused officers to believe the ██████ was armed. ██████ fled up a flight of stairs of ██████. Officers observed, ██████ attempting to hide on the second-floor porch. Officers issued ██████ verbal commands to come down the stairs, and he complied. ██████ was observed sweating excessively and placing his hands near his waist. Officers detained ██████ and searched that area where he was hiding. During the search Lt. Cascone located and recovered a loaded firearm that was still warm to the touch. ██████ was transported to the 009th District Station where, post Miranda, he revealed that he had no connection to ██████. The officers also discovered the recovered firearm had been reported stolen in Indiana. Officers contacted the Felony Review Unit of the Cook County State Attorney's Office and received approval to charge ██████ with unlawful use of a weapon by a felon.

**Criminal Court Transcripts**<sup>13</sup> detail that during a hearing for a Motion to Dismiss related to ██████'s criminal case, Officer Cesar Astorga testified. The testimony provided by Officer Astorga was substantially like Lt. Cascone's statement, and the information contained in ██████'s Arrest Report and Investigatory Stop Report. In issuing the ruling on the motion the court specifically stated that "officer [Astorga] credibly testified and didn't fabricate anything...."<sup>14</sup>

#### **c. Physical Evidence**

An **OEMC Event Query**<sup>15</sup> shows Beats 4499 and 935 reported their location as west 55th St. and south Wolcott Ave. at approximately 8:46 pm on August 15, 2017. At 8:48pm, Beat 4499 reports recovering a weapon. At 8:49 pm, Beat 935 reports they are transporting one person to the 00th District.

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<sup>10</sup> During COPA's investigation, it was learned that the related criminal case against ██████ was dismissed. A review of hearing transcripts did not reveal any indications of additional misconduct by any Department members. Att. 38.

<sup>11</sup> Att. 6.

<sup>12</sup> Att. 8.

<sup>13</sup> Att. 38.

<sup>14</sup> Att. 38, pg. 19.

<sup>15</sup> Att. 9.

A **Body-Worn Camera Request**<sup>16</sup> submitted on March 8, 2018, did not return any video of the incident. Documents received from the Department indicate the incident was not recorded on BWC. A subpoena for BWC issued by ██████████'s public defender on September 15, 2017, also did not return any video of the incident.<sup>17</sup>

## VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile 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

COPA finds that the allegation against Lt. James Cascone is Exonerated. An officer must have probable cause to arrest a subject.<sup>18</sup> "Probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it."<sup>19</sup> The reasonable basis for an arrest "should be considered from the perspective of a reasonable officer at the time" of the arrest.<sup>20</sup>

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<sup>16</sup> Att. 11.

<sup>17</sup> Att. 11, pp. 4-6.

<sup>18</sup> *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964).

<sup>19</sup> S04-13-09 II(D).

<sup>20</sup> S04-13-09 II(D).

Here, Lt. Cascone and his team observed [REDACTED] at the location of a prior shooting and upon [REDACTED] seeing the officers, he fled quickly up the stairs of said building holding his waistband. Lt. Cascone explained that this action by [REDACTED] is indicative of a person attempting to conceal a firearm. Believing [REDACTED] was armed, Lt. James Cascone and other officers pursued [REDACTED] and ordered him to come down from the second-floor porch where he attempted to conceal himself. After conducting a search in the immediate area where [REDACTED] was trying to conceal himself, a weapon was recovered, and it was warm to the touch. Lt. Cascone further stated that [REDACTED] admitted that he took the weapon from a cousin or nephew to prevent him from further using it. [REDACTED] did admit that he was in possession of the weapon.

Additionally, under the same finding COPA finds that the allegation against **PO Cesar Astorga** and **PO Gerardo Garcia** is **Exonerated**.

**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Lt. James Cascone	1. Arrested [REDACTED], without probable cause.	Exonerated
Officer Cesar Astorga	1. Arrested [REDACTED], without justification.	Exonerated
Officer Gerardo Garcia	1. Arrested [REDACTED], without justification.	Exonerated

Approved:

[REDACTED]

10-7-2021

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

\_\_\_\_\_  
 Date

**Appendix A**

Assigned Investigative Staff

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<b>Squad#:</b>	11
<b>Investigator:</b>	Maira Webb
<b>Supervising Investigator:</b>	Valiza Nash
<b>Deputy Chief Investigator:</b>	Angela Hearts-Glass