

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

| | |
|----------------------------|-----------------------|
| Date of Incident: | December 20, 2018 |
| Time of Incident: | 8:49 a.m. |
| Location of Incident: | 1827 S. Kedzie Avenue |
| Date of COPA Notification: | December 20, 2018 |
| Time of COPA Notification: | 10:05 a.m. |

On December 20, 2018, [REDACTED] ([REDACTED]) was pulled over by Officer Eibar Fuentes (“Officer Fuentes”) for a traffic violation. [REDACTED] disputed that he committed any traffic violation. After obtaining identification from [REDACTED] and performing a name check on him, Officer Fuentes let [REDACTED] go without issuing a citation. [REDACTED] brought a complaint to COPA regarding the incident on the day the incident occurred.

II. INVOLVED PARTIES

| | |
|-------------------------|--|
| Involved Officer #1: | Eibar Fuentes, Star No. 11862, Employee ID No. [REDACTED], Date of Appointment: August 25, 2003, PO, Unit of Assignment 193, DOB: [REDACTED], 1979, male, Hispanic |
| Involved Individual #1: | [REDACTED] DOB: [REDACTED], 1975, male, Black |

III. ALLEGATIONS

| Officer | Allegation | Finding / Recommendation |
|-----------------------|--|---------------------------------|
| Officer Eibar Fuentes | 1. Detaining [REDACTED] without justification. | Exonerated |
| | 2. Failing to complete a Traffic Stop Statistical Study, after stopping [REDACTED] | Sustained |
| | 3. Failing to complete an Investigative Stop Report, after detaining [REDACTED] | Sustained |
| | 4. Failing to provide an Investigative Stop Receipt, after detaining [REDACTED] | Exonerated |

IV. APPLICABLE RULES AND LAWS

Rules

-
1. Rule 1: Violation of any law or ordinance.
 2. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
 3. Rule 6: Disobedience of an order or directive, whether written or oral.

General Orders

-
1. GO-01-01 Mission Statement and Core Values (effective March 1, 2011, through May 20, 2019)

Special Orders

-
1. S0-4-13-09 Investigatory Stop System (effective July 10, 2017)
 2. S0-14-09 Illinois Traffic and Pedestrian Stop Statistical Study (effective March 23, 2018)

Federal Laws

-
1. U.S. Constitution, Amendment IV

State Laws

-
1. Illinois Constitution, Article 1, Section 6. Searches Seizures.

V. INVESTIGATION¹

a. Interviews

Complainant ██████████ (██████████) provided a statement to COPA on December 20, 2018.² ██████████ an Uber Driver, told COPA that he was traveling southbound on Kedzie Avenue after dropping off a fare. When he attempted to circumvent traffic by moving to the right, Officer Eibar Fuentes (“Officer Fuentes”), who was a car behind him, began trailing him for approximately a block and a half. Officer Fuentes pulled ██████████ over near Ogden Avenue and Kedzie Avenue with lights and sirens. He then approached ██████████ who remained seated in his car, and requested ██████████ identification. Officer Fuentes informed ██████████ that he had been stopped because ██████████ made an improper lane change and was speeding. ██████████ stated that he disputed these allegations and when he did so, Officer Fuentes responded by placing a hand on his gun and stating that he felt threatened by ██████████ stated that Office Fuentes did not pull his gun out of his holster. Officer Fuentes then returned to his vehicle to run ██████████ identification. As he did so, a marked police vehicle pulled up. Officer Fuentes had a conversation with the officer inside the of the marked vehicle and then walked back to ██████████ car. Officer Fuentes returned ██████████ identification to him without issuing a citation and told ██████████ to have a nice day. ██████████ said that he feared for his life and that he would not have been pulled over if he were white, based on his experience.

Officer Eibar Fuentes (“Officer Fuentes”) provided a statement to COPA at COPA offices on September 30, 2021.³ At the time of the incident, Officer Fuentes was assigned to Unit 193, which had not been issued body worn camera. He recalled travelling behind ██████████ and observing him commit a minor traffic violation. Officer Fuentes could not remember what the traffic violation was. When he pulled ██████████ over, Officer Fuentes described ██████████ demeanor as aggressive because he was swearing and using threatening language. Officer Fuentes de-escalated the situation by explaining to ██████████ why he was being pulled over. Officer Fuentes requested ██████████ identification and went back to his vehicle to run it. After ██████████ license came back clear, Officer Fuentes used his discretion and let ██████████ go with a warning.

Officer Fuentes stated that he did not ask ██████████ to exit his vehicle and therefore did not submit an Investigative Stop Report or issue an Investigative Stop Receipt to ██████████ Officer Fuentes stated that he did complete a Traffic Stop Statistical Study Report (“TSSR”) card immediately and submitted it before the end of his shift. Officer Fuentes, said that at the time of the incident, in Unit 193 officers completed the TSSR cards and then put them in a bin to be entered into the system by civilians.

b. Digital Evidence

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. 13.

³ Att. 25.

A **Google satellite image** of the intersection of Kedzie Avenue near Cermak Avenue taken on November 2018 shows Kedzie Avenue (except for a left turn lane) to be a single lane street in both directions.⁴

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 reviewed complied with Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

a. Officer Fuentes was justified in detaining ██████████

Officer Fuentes stated that he stopped ██████████ because he observed ██████████ commit a minor traffic violation. According to ██████████ the violations Officer Fuentes noted at the time of the incident were improper lane changing and speeding. "When a police officer believes that a driver has committed a minor traffic offense, probable cause supports the stop."⁵ Here, probable cause exists if the facts known to Officer Fuentes at the time would lead a reasonable, cautious, person to believe ██████████ had committed the offense. If there is no justification for the stop, the

⁴ Att. 34.

⁵ *Jones v. Elkhart*, 737 F.3d 1107, 1114 (7th Cir. 2013) quoting, *United States v. Garcia-Garcia*, 633 F.3d 608, 612 (7th Cir. 2011).

stop would be a violation of [REDACTED] Fourth Amendment rights and a violation of Rule 1 of the Rules and Regulations of the Chicago Police Department.

[REDACTED] assertions to the contrary notwithstanding, clear and convincing evidence supports that Officer Fuentes' detention of [REDACTED] was justified. By his own admission, [REDACTED] moved his vehicle to the right to circumvent traffic while driving on Kedzie Avenue near Cermak Avenue. As verified via satellite photo of the area, Kedzie Avenue is a single lane street in both directions where [REDACTED] made his move to circumvent traffic.⁶ In order to pass therefore, [REDACTED] had to use the right shoulder, which is a vehicle code violation.⁷ Officer Fuentes, who according to [REDACTED] was travelling close behind him, would have been in position to observe [REDACTED] pass using the right shoulder. Thus, probable cause for the traffic stop existed and the detention of [REDACTED] for the stop was justified. COPA finds that [REDACTED] allegation that he was detained, without justification, by Officer Fuentes is **Exonerated**.

b. No evidence supports that a Traffic Stop Statistical Report ("TSSR") was completed.

Department members are required to complete TSSR information after traffic stops.⁸ Failure to do so is a violation of Rule 6. COPA was unable to find any record of a TSSR having been entered relating to this stop. Officer Fuentes asserts that he completed a TSSR card immediately and submitted it before the end of his shift. He stated that it was the practice of his unit to have civilians enter the data after the officers completed the card. While COPA finds Officer Fuentes generally credible, regardless of any office practice, it was ultimately Officer Fuentes' responsibility as the officer who conducted the stop, to ensure a TSSR was recorded. In the absence of a record of a TSSR being entered for this stop, COPA finds that the allegation that Officer Fuentes failed to complete a TSSR to be **Sustained**.

c. Officer Fuentes failed to complete a required Investigative Stop Report.

An investigative stop occurs when a person is temporarily detained and questioned based on a Reasonable Articulable Suspicion that the person is committing, about to commit or has committed a criminal act.⁹ Here, the suspected criminal act was [REDACTED] traffic violation. Members who conduct an investigatory stop are required to submit an Investigatory Stop Report ("ISR").¹⁰ Failure to submit an ISR when required, is a violation of Rule 6. Whether a subject is asked to exit their vehicle is not determinative of whether an ISR is required. Had Officer Fuentes entered a TSSR for the traffic stop, he would be correct in his assertion that an ISR was not required here.¹¹ However, as there is no record of a TSSR and no Notice of Violation was issued for this traffic stop, COPA finds the allegation that Officer Fuentes failed to complete and Investigative Stop Report to be **Sustained**.

⁶ Att. 33.

⁷ 625 ILCS 5/11-704c.

⁸ S0-14-09(V)(D).

⁹ S04-13-09(II)(A).

¹⁰ S04-13-09(VIII)(A)(1).

¹¹ See S04-13-09(VII)(A)(4)(d).

d. Officer Fuentes was not required to issue an Investigative Stop Receipt to [REDACTED]

When an investigative stop occurs that involves a pat down or a search of a subject, members are required to provide the subject an Investigative Stop Receipt.¹² Failure to issue the receipt is a violation of Rule 6. Here, the available evidence supports that Office did not perform a pat down of [REDACTED] or a search of [REDACTED] car as [REDACTED] did not exit his vehicle. Copa Finds this allegation to be **Exonerated**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Eibar Fuentes

i. Complimentary and Disciplinary History

Officer Eibar Fuentes has been a member of the Chicago Police department since August 25, 2003. Since that time, he has received one 2004 Crime Reduction Ribbon; one 2009 Crime Reduction Award; one 2019 Crime Reduction Award; four Attendance Recognition Awards; eleven Complimentary Letters; six Department Commendations; eleven Emblems of Recognition for Physical Fitness; fifty-nine Honorable Mentions; one Joint Operations Award; one NATO Summit Service Award; one Other Awards; one Presidential Election Deployment Award 2008; one Recognition/ Outside Governmental Agency Award; one Special Commendation; and two Unit Merit Performance Awards.

ii. Recommended Penalty

COPA recommends that Officer Eibar Fuentes receive a Reprimand. COPA has considered Officer Fuentes’ complimentary history, as well as his lack of disciplinary history, in mitigation. However, Officer Fuentes had a responsibility to ensure that his police activities involving [REDACTED] were properly documented and he failed to do so. For this reason, COPA recommends a Reprimand.

IX. CONCLUSION

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

| Officer | Allegation | Finding / Recommendation |
|-----------------------|--|---------------------------------|
| Officer Eibar Fuentes | 1. Detaining [REDACTED] without justification. | Exonerated |
| | 2. Failing to complete a Traffic Stop Statistical Study, after stopping [REDACTED] | Sustained/ Reprimand |

¹² S04-13-09(VII)(A)(3).

| | |
|--|-------------------------|
| 3.Failing to complete an Investigative Stop Report, after detaining [REDACTED] | Sustained/ Reprimand |
| 4.Failing to provide an Investigative Stop Receipt, after detaining [REDACTED] | Exonerated |

Approved:

[REDACTED]

1-6-2022

Angela Heart-Glass
Deputy Chief Investigator

Date