

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 2, 2017
Time of Incident:	Approximately 2:47 PM
Location of Incident:	745 W. Marquette Rd.
Date of COPA Notification:	January 17, 2019
Time of COPA Notification:	4:14 PM

On June 2, 2017, at approximately 2:47 pm, CPD officers formulated a plan to make controlled narcotic purchases from individuals suspected of engaging in illegal narcotics sales in the 007th district. CPD members became involved in a narcotics sale with Mr. [REDACTED] who allegedly sold crack cocaine to an undercover officer. He was subsequently arrested and charged with delivery of a controlled substance (crack cocaine) within 1000 feet of a park and a church. Mr. [REDACTED] denied doing so, but later pleaded guilty to possession.

According to police, Mr. [REDACTED] resisted arrest and sustained injuries to his lips and right cheek during an emergency arm bar take down. However, Mr. [REDACTED] claimed that an officer punched him in the face, then continued to punch and kick him until he became unconscious, sustaining broken teeth in addition to the lip and cheek injury. He said he could not remember anything that happened after he went unconscious, and finally came to while he was being fingerprinted at the 007th District station. EMS records reported that there was swelling to his lips and right cheek but indicated that there was no active bleeding or any cuts inside the mouth. There was no mention of broken teeth.

On January 17, 2019, Mr. [REDACTED] filed a complaint against Officers Gutkowski, Althoff and Lee for false arrest and excessive force.

II. INVOLVED PARTIES

Involved Officer #1:	Mark Gutkowski, star # 16228, employee ID# [REDACTED], Date of Appointment January 26, 2004, PO, Unit of Assignment 189, DOB [REDACTED], 1975, Male, White.
Involved Officer #2:	Kelin Althoff, star # 4163, employee ID# [REDACTED], Date of Appointment March 5, 2013, PO, Unit of Assignment 189, DOB [REDACTED], 1983, Male, White.
Involved Officer #3:	Michael Padalino, star# 15680, employee ID# [REDACTED], Date of Appointment July 7, 1997, PO, Unit of Assignment 189, DOB [REDACTED], 1973, Male, White.

Involved Officer #4: Gerold Lee, star # 15949, employee ID# [REDACTED], Date of Appointment March 26, 2001, PO, Unite of Assignment 189, DOB [REDACTED], 1973, Male, White.

Involved Individual #1: [REDACTED] DOB [REDACTED], 1971, Male, Black.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Mark Gutkowski	<p>It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.:</p> <ol style="list-style-type: none"> Officer Mark Gutkowski falsely arrested Mr. [REDACTED] Officer Mark Gutkowski used excessive force during the arrest of Mr. [REDACTED] 	<p>EXONERATED</p> <p>UNFOUNDED</p>
Officer Kelin Althoff	<p>It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.:</p> <ol style="list-style-type: none"> Officer Kelin Althoff falsely arrested Mr. [REDACTED] Officer Kelin Althoff used excessive force during the arrest of Mr. [REDACTED] 	<p>EXONERATED</p> <p>UNFOUNDED</p>
Officer Michael Padalino	<p>It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.:</p> <ol style="list-style-type: none"> Officer Michael Padalino used excessive force during the arrest of Mr. [REDACTED] 	<p>UNFOUNDED</p>
Officer Gerold Lee	<p>It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.:</p> <ol style="list-style-type: none"> Officer Gerold Lee falsely arrested Mr. [REDACTED] 	<p>EXONERATED</p>

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.

General Orders

1. G03-02 *De-Escalation, Response to Resistance and Use of Force*

State Laws

1. 725 ILCS 5/107-2 *Arrest by Peace Officer*

V. INVESTIGATION¹**a. Interviews**

██████████

COPA investigators interviewed Mr. ██████████ on October 23, 2019, at approximately 10:52 am, regarding his arrest by undercover police officers on June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.

According to Mr. ██████████ he was near 66th Place near Halsted, drinking beer, when a vehicle pulled up near him. The black gentleman driving the vehicle gestured to Mr. ██████████ as if he wanted some cigarettes, so Mr. ██████████ entered the vehicle.² Investigators asked Mr. ██████████ if he was selling cigarettes that day, and he responded yes. They then asked Mr. ██████████ if he usually entered the vehicles that approached him, and he responded no, and explained that he did not know why he did so that particular time.

When they reached the light at 67th and Halsted, the driver asked Mr. ██████████ about some crack.³ He asked the driver to pull over and let him out of the vehicle because he did not know anything about crack. Later in the interview he told the investigators that he did not sell the man any crack because he did not have any to sell.⁴ The driver of the vehicle made a turn and Mr. ██████████ got out. Shortly thereafter, an unmarked vehicle pulled-up and boxed Mr. ██████████ in.⁵ The two people in the unmarked vehicle, who turned out to be police officers, got out, approached Mr. ██████████ and told him he had just sold drugs to an undercover officer, which Mr. ██████████ denied.⁶ Later in the interview, Mr. ██████████ said he only recalled there being three officers present, the undercover officer in the first vehicle and two officers in the second vehicle.

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. 4 at 02:55.

³ Att. 4 at 03:14.

⁴ Att. 4 at 09:15.

⁵ Att. 4 at 10:00.

⁶ Att. 4 at 03:45.

One of the officers proceeded to punch Mr. ██████ in the jaw and knocked him unconscious.⁷ He was unable to describe the officer but said he woke up at the police station where he was charged with delivery of a controlled substance.⁸ It sounded like he told the investigators that he woke up as he was being fingerprinted and did not remember anything that happened before that.⁹ Mr. ██████ claimed that he did not recall what had happened but felt like he had been beaten when he woke up.¹⁰ When he was admitted to Cook County Jail, he was asked what happened to him. Because he did not remember, personnel took photos of him. Mr. ██████ said he had broken teeth and swelling on the right side of his face, but no black eye. He also mentioned that there were no pieces of tooth in his mouth when he woke up, none of his teeth were pulled while at Cook County Jail, and the injury was not documented while he was incarcerated. Furthermore, he was not sent to the jail infirmary or to a hospital. However, medical personnel gave him some medication while at the jail.¹¹

Mr. ██████ spent 13 months in Cook County Jail and was released after he pleaded guilty to the lesser charge of possession of a controlled substance.¹² He explained that he pleaded guilty because he wanted to end his incarceration. The injuries or photos were never mentioned or shown to the judge during any of his court hearings.¹³

b. Digital Evidence

PHOTOS

Surveillance photos of Mr. ██████ getting into the undercover police vehicle.¹⁴



Mugshot of Mr. ██████ taken on June 2, 2017, at approximately 4:44 pm.¹⁵



⁷ Att. 4 at 17:18.

⁸ Att. 4 at 04:00.

⁹ Att. 4 at 11:55 and 16:15.

¹⁰ Att. 4 at 12:40.

¹¹ Att. 4 at 06:19.

¹² Att. 23-Also see.

¹³ Att. 4 at 18:50.

¹⁴ Att. 13. Mr. ██████ alleged that he was told by the public defender there was audio and video but was never shown anything but these photos. COPA investigators searched for BWC but were unsuccessful, which is not surprising since the Narcotics teams are generally not issued BWC.

¹⁵ Att. 18. The investigator compared this mug shot with previous and subsequent mug shots and concluded that the left eye did not appear bruised.

c. Documentary Evidence**ARREST REPORT-** [REDACTED]¹⁶

On June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd, Mr. [REDACTED] was arrested by Officers Kelin Althoff and Mark Gutkowski, and charged under 720 ILCS 570.0/401-B-1 MFG/DEL Cocaine/SCH/PUB HS/PK for selling .5 grams of crack cocaine to an undercover officer. A custodial search of Mr. [REDACTED] uncovered \$60.00 USC in prerecorded 1505 Funds, and \$45.00 USC which was subsequently returned to Mr. [REDACTED]

In the Lockup Keeper Processing section of the report, it stated that there were no obvious signs of pain or injury. However, Lockup Keeper [REDACTED] commented that Mr. [REDACTED] had a bruised left eye.¹⁷

TRR¹⁸

Officer Michael Padalino, star# 15680, completed a Tactical Response Report subsequent to an encounter he had with [REDACTED] Mr. [REDACTED] was described as an active resister who pulled away from officers during the encounter on June 2, 2017, at approximately 2:47 pm. His condition was described as “under the influence.”

Lieutenant Evelynna Quarterman interviewed Mr. [REDACTED] at the 007th District Lockup. Mr. [REDACTED] stated that he did not know why he was there and did not know what happened to his lip and face. Lieutenant Quarterman could smell alcohol on Mr. [REDACTED] breath, and he admitted to having several alcoholic drinks according to the report. Mr. [REDACTED] was evaluated by personnel from CFD Ambulance #36.

Lieutenant Evelynna Quarterman also interviewed Officer Padalino who stated that during the arrest, Mr. [REDACTED] began to pull away in an attempt to defeat arrest. He then performed an emergency takedown and handcuffed Mr. [REDACTED] who injured his lip and cheek as he fell to the ground. The lieutenant determined that proper protocol was used in affecting the arrest of Mr. [REDACTED]

NARCOTICS SUPPLEMENTARY REPORT- [REDACTED]¹⁹

This report, drafted by Officer Michael Padalino, stated that on June 2, 2017, CPD personnel formulated a plan to make a controlled narcotics purchase from any individual or individuals engaging in illegal narcotic sales in the 007th District. While touring, officers noticed Mr. [REDACTED] loitering on the corner of 66th Place and Halsted. Under Cover Officer (UCO) Gerold Lee encountered Mr. [REDACTED] and called him over to his undercover vehicle. After a brief conversation, Mr. [REDACTED] walked back onto the sidewalk where he took a drink from a can, put it down and walked back over to the undercover vehicle (UCV). Mr. [REDACTED] entered the undercover

¹⁶ Att. 18.

¹⁷ Mr. [REDACTED] contradicted this during his interview with COPA when he told investigators he did not have a black eye. Furthermore, there is no obvious bruising of his left eye based on his mugshot. (also see footnote 15)

¹⁸ Att. 15.

¹⁹ Att. 12.

vehicle after UCO Lee assured him that he was not a police officer.²⁰ UCO Lee then drove away, followed by Officer Padalino. At some point UCO Lee purchased crack cocaine from Mr. [REDACTED] using \$60.00 USD in pre-recorded 1505 funds.²¹ Once UCO Lee pulled over and gave the nonverbal signal that a narcotics transaction had occurred, officers converged on the undercover vehicle to affect the arrest of Mr. [REDACTED]

Officer Padalino approached as another officer attempted to take Mr. [REDACTED] into custody. When he observed Mr. [REDACTED] resist in an attempt to defeat the arrest, by pulling away and violently refusing to give or show his left hand, Officer Padalino performed an emergency arm bar take down to gain control of Mr. [REDACTED]. Once on the ground the officers were able to affect the arrest.

CIVIL LAWSUIT FILED BY COMPLAINT²²

On or about May 22, 2018, Mr. [REDACTED] filed a 1983 Civil Rights lawsuit, case #: [REDACTED], against Officers Gutkowski, Althoff and Lee. Mr. [REDACTED] alleged that as he stood at the corner of W. 66th Place, he was approached by UCO Lee who stated he was looking for some “smoke.” Mr. [REDACTED] got into his vehicle and again asked UCO Lee what he needed, to which he responded crack cocaine. Mr. [REDACTED] told UCO Lee he knew he was the police and asked him to stop and let him out of the vehicle. He apparently then got out of the vehicle, walked two to three doors away from the vehicle, and was then approached by two tactical officers.

The officers told Mr. [REDACTED] that he had just delivered drugs to another officer, which he then denied. Mr. [REDACTED] was then “violently punched” by Officer Gutkowski or Officer Althoff and was knocked unconscious by further punches and kicks. He claimed he did not remember anything after being knocked out. He came to after he arrived at the 007th District police station, and he did not remember walking into the district station or being seen by an EMS.

This lawsuit was dismissed for failure to appear.²³

EMS REPORT²⁴

On June 2, 2017, at approximately 6:21pm, EMS personnel examined Mr. [REDACTED] while at the 007th District police station. The description of Mr. [REDACTED] injuries included swelling of the lips and a right cheek abrasion which was caused by a fall, from a standing position to the ground. Mr. [REDACTED] asked the EMS personnel to check his mouth, but they found no open cuts or active bleeding. Mr. [REDACTED] then refused to be transported to the hospital.

VI. LEGAL STANDARD

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

²⁰ Att. 12-see the Narcotics Supplementary Report drafted by PO Lee.

²¹ Att. 12-see the Narcotics Supplementary Report drafted by PO Lee.

²² Att. 21 and 14.

²³ Att. 14.

²⁴ Att. 20.

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

OFFICER MARK GUTKOWSKI

COPA finds **Allegation #1**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Mark Gutkowski falsely arrested Mr. [REDACTED] is not supported by the evidence and the officer is **Exonerated**.

A peace officer may arrest a person when he has reasonable grounds to believe that the person is committing or has committed an offense. 725 ILCS 5/107-2 *Arrest by Peace Officer*.

In this case, Mr. [REDACTED] who voluntarily entered an under-cover vehicle, was arrested by a team of CPD officers after he sold a quantity of narcotics to UCO Gerold Lee during a planned undercover operation. His claim that he sold cigarettes, itself a crime, on that particular day was put into question by the absence of any mention of cigarettes on the related inventory forms or other departmental reports. Furthermore, Mr. [REDACTED] later pleaded guilty to possession of a controlled substance. However, his credibility was further damaged when he later told COPA investigators that he did so because he wanted to end his incarceration, in other words, suggesting he lied to the court.

Based on the totality of the circumstances, to include all the evidence and Mr. [REDACTED] confession and damaged credibility, it is highly probable that Mr. [REDACTED] was lawfully arrested, therefore the officer is Exonerated.

COPA finds **Allegation #2**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Mark Gutkowski used excessive force during the arrest of Mr. [REDACTED] is not supported by the evidence and is **Unfounded**.

Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, bring a person or situation safely under control, or prevent escape. G03-02 *De-Escalation, Response to Resistance and Use of Force*. Furthermore, Department members confronted by an Active Resister, one who used movement to avoid physical control, are authorized to use emergency takedown procedures to gain control of said resister. *Force Option Model CPD-11.960 (11/17)*.

While Mr. [REDACTED] civil lawsuit complaint and his statement to COPA were similar, both accounts are unbelievable when, inter alia, photographic evidence and the EMS report are taken into account. Mr. [REDACTED] mugshot, taken roughly two hours after his arrest, shows a slight injury on his right cheek and a swollen lip. The EMS report described the injury as a swollen lip and cheek abrasion, suffered 30 minutes earlier, which was caused by a fall from a standing position onto the ground. The EMS inspection of the inside of Mr. [REDACTED] mouth resulted in no open cuts or active bleeding, and there was no mention of broken teeth in the report. Mr. [REDACTED] also refused transport to the hospital.

All things considered, this type of minor injury would more reasonably be consistent with an emergency take-down than it would being punched and kicked until unconscious. Furthermore, not only did Mr. [REDACTED] admit to ingesting several alcoholic drinks before the incident, Department personnel also reported the smell of alcohol on Mr. [REDACTED] breath. When you add the fact that Mr. [REDACTED] was an active resister at the time, it is reasonable to conclude that the emergency take-down performed by Officer Padalino was lawful, and that there is a lack of evidence to suggest the force used was excessive. Therefore, this allegation is Unfounded.

OFFICER KELIN ALTHOFF

COPA finds **Allegation #1**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Kelin Althoff falsely arrested Mr. [REDACTED] is not supported by the evidence and is **Exonerated**.

The analysis for this allegation is consistent with that of Allegation #1 for Officer Gutkowski.

COPA finds **Allegation #2**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Kelin Althoff used excessive force during the arrest of Mr. [REDACTED] is not supported by the evidence and is **Unfounded**.

The analysis for this allegation is consistent with that of Allegation #2 for Officer Gutkowski.

OFFICER MICHAEL PADALINO

COPA finds **Allegation #1**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Michael Padalino used excessive force during the arrest of Mr. [REDACTED] is not supported by the evidence and is **Unfounded**.

The analysis for this allegation is consistent with that of Allegation #2 for Officer Gutkowski.

OFFICER GEROLD LEE

COPA finds **Allegation #1**, that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd., Officer Gerold Lee falsely arrested Mr. [REDACTED] is not supported by the evidence and is **Exonerated**.

The analysis for this allegation is consistent with that of Allegation #1 for Officer Gutkowski.

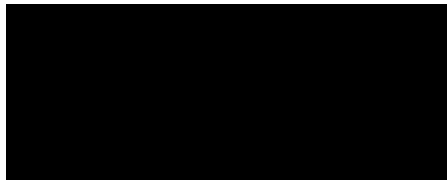
VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer Mark Gutkowski	It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.: 1. Officer Mark Gutkowski falsely arrested Mr. [REDACTED] 2. Officer Mark Gutkowski used excessive force during the arrest of Mr. [REDACTED]	EXONERATED UNFOUNDED
Officer Kelin Althoff	It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.: 1. Officer Kelin Althoff falsely arrested Mr. [REDACTED] 2. Officer Kelin Althoff used excessive force during the arrest of Mr. [REDACTED]	EXONERATED UNFOUNDED
Officer Michael Padalino	It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.:	

	1. Officer Michael Padalino used excessive force during the arrest of Mr. [REDACTED]	UNFOUNDED
Officer Gerold Lee	It is alleged that on or about June 2, 2017, at approximately 2:47 pm, at or near 745 W. Marquette Rd.: 1. Officer Gerold Lee falsely arrested Mr. [REDACTED]	EXONERATED

Approved:



2/23/2022

Matthew Haynam
Deputy Chief Administrator

Date