

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 15, 2019 and July 16, 2019
Time of Incident:	12: 04 p.m. and approximately 1:00 p.m. and 6:00 p.m.
Location of Incident:	1922 S. Springfield Avenue and 3315 W. Ogden Avenue (10 th District station lobby)
Date of COPA Notification:	July 17, 2019
Time of COPA Notification:	10:53 a.m.

██████████ was in the process of repossessing ██████████ vehicle. A verbal and physical altercation ensued between the two that resulted in Mr. ██████████ allegedly punching Mr. ██████████ in the face and being arrested for Battery. Mr. ██████████ repossessed Mr. ██████████ vehicle. Mr. ██████████ alleges he was falsely arrested, that Officer Jesus Garcia referred to his daughter, ██████████ as a liar, and without justification, instructed his kids to exit his vehicle so Mr. ██████████ could repossess it. The following day Mr. ██████████ went to the 10th District station to file a complaint. Mr. ██████████ alleges Sergeant Ontiveros refused/failed to register his complaint and, without justification, had him and his family removed from the station.

II. INVOLVED PARTIES

Involved Officer #1:	Gena Ontiveros, Star #1469, Employee ID # ██████████, Date of Appointment: March 25, 2002, Sergeant, Unit of Assignment: 10 th District, DOB: ██████████, 1978, female, white.
Involved Officer #2:	Jesus Garcia, Star #11044, Employee ID # ██████████, Date of Appointment: August 31, 2015, Police Officer, Unit of Assignment: 10 th District, DOB: ██████████, 1977, male, white Hispanic.
Involved Individual #1:	██████████, 1975, male, black.
Involved Individual #2:	██████████, 2008, female, black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Sgt. Gena Ontiveros	<p>It is alleged that on July 16, 2019 at an unspecified time at 3315 W. Ogden Ave. (010th District Station) that you:</p> <ol style="list-style-type: none"> <li data-bbox="532 491 1110 596">1. Failed to register a complaint on behalf of the Complainants █████ and █████ <li data-bbox="532 642 1110 747">2. Without justification, had █████ and members of his family removed from the 10th District station. 	<p>Sustained/10 Day Suspension</p> <p>Not Sustained</p>
Officer Jesus Garcia	<p>It is alleged that on July 15, 2019 at 1204 hours at 1922 S. Springfield Ave. that you:</p> <ol style="list-style-type: none"> <li data-bbox="532 963 1149 1110">1. Without justification, commanded the child/children of █████ and █████ from their vehicle to allow their vehicle to be repossessed. <li data-bbox="532 1146 1149 1251">2. Were rude and unprofessional in that Officer Garcia referred to the child/children of █████ and █████ as a liar. 	<p>Unfounded</p> <p>Unfounded</p>

IV. APPLICABLE RULES AND LAWS

Rules

Rule 8 - Disrespect to or maltreatment of any person, while on or off duty.

Rule10 - Inattention to duty.

General Orders

G08-01-02 - Specific Responsibilities Regarding Allegations of Misconduct.

V. INVESTIGATION

a. Interviews

In a **statement** to COPA on July 18, 2019, ██████████ related he and his children were visiting his father, ██████████ on July 15, 2019. Mr. ██████████ parked his van in front of Mr. ██████████ garage. Mr. ██████████ took two of his younger kids inside the home with him, while his 11-year-old daughter, ██████████ remained in the backseat of the van. When Mr. ██████████ returned to the van, he observed ██████████ running towards his vehicle. A month prior, Mr. ██████████ had attempted to repossess Mr. ██████████ vehicle. Mr. ██████████ opened the passenger door of the vehicle and retrieved the car keys before Mr. ██████████ could grab them. Mr. ██████████ entered the vehicle from the passenger side and pushed Mr. ██████████ from the driver's seat. Mr. ██████████ held on to the steering wheel and told Mr. ██████████ he could not repossess the vehicle because his kids were inside.

Mr. ██████████ told Mr. ██████████ that if he did not let him repossess the vehicle, he was going to call the police and tell them that he punched him on the face. Mr. ██████████ told ██████████ to start recording the incident on her cellphone. Mr. ██████████ called 911 and requested police assistance. Mr. ██████████ then instructed Mr. ██████████ to call 911 and told his kids to get inside the van. When officers arrived at the scene, Mr. ██████████ was still holding onto the steering wheel. Officers instructed Mr. ██████████ and Mr. ██████████ to exit the vehicle. Mr. ██████████ told the officers that he was behind on his car payments. An officer informed Mr. ██████████ that Mr. ██████████ stated he would not sign a Battery complaint against him if he allowed him to repossess the vehicle. Mr. ██████████ denied battering Mr. ██████████ and related he wanted to file a cross-complaint against Mr. ██████████ for pushing him. Mr. ██████████ showed the officers the video recording from ██████████ cellphone. Thereafter, officers placed Mr. ██████████ in custody on Mr. ██████████ signed complaint of Battery. As Mr. ██████████ was being transported from the scene in a squadrol, he observed officers instructing his kids to exit the van and Mr. ██████████ taking possession of his vehicle.

The following day, July 16, 2019, Mr. ██████████ went to the 10th District station to file a complaint regarding his arrest, Mr. ██████████ spoke with Sergeant Ontiveros. Mr. ██████████ alleged he was falsely arrested, that he was not allowed to file a cross-complaint and that without justification, officers instructed his kids to exit his van, which allowed Mr. ██████████ to repossess the vehicle. Sergeant Ontiveros told Mr. ██████████ that the officers did not do anything wrong, that he was mad his car got repossessed, and he should not have punched Mr. ██████████. Sergeant Ontiveros refused to register Mr. ██████████ complaint and advised him to contact COPA. Mr. ██████████ observed the arresting officers in the lobby and identified the officers to Sergeant Ontiveros. Sergeant Ontiveros advised Mr. ██████████ to speak to the officers. Mr. ██████████ asked the officers what time their supervisor started, and they told him 1800 hours.

Mr. ██████████ along with his family, returned to the station at 1800 hours. After waiting approximately 30 minutes, Mr. ██████████ still had not spoken to a supervisor. Sergeant Ontiveros told Mr. ██████████ that she had already addressed his concern and was not going to register his complaint. Sergeant Ontiveros told Mr. ██████████ that she did not tell him to return to the station. After exchanging words, Sergeant Ontiveros instructed Mr. ██████████ and his family to exit the station because they were causing a disturbance. Mr. ██████████ and his family stood outside the station and

waited to speak to a supervisor. An unidentified Supervisor eventually spoke to Mr. [REDACTED] and told him that he would contact him after he viewed the officers' Body Worn Camera and Department reports. Per Mr. [REDACTED] the Supervisor never contacted him. [REDACTED] was not present during this incident.¹

In a **statement** to COPA on January 24, 2020, [REDACTED] related she, her 2 siblings, and father were sitting in their vehicle as they visited her grandfather, [REDACTED]. [REDACTED] siblings had to use the bathroom, so Mr. [REDACTED] took them inside the house. [REDACTED] was laying down in the backseat of the van when she observed a car approach the van. Two men exited the car and approached the van. One of the men opened the passenger door, hopped across the passenger seat, and removed the keys from the ignition. The same man then tossed the keys to the other man who was on driver side of the van. Moments later, [REDACTED] returned and asked the men what they were doing. The men stated they were repossessing the van. [REDACTED] told the men they could not repossess the van.

Her father told [REDACTED] to start recording the incident on her cellphone. One of the men repossessing the vehicle called 911 and related to the dispatcher that Mr. [REDACTED] had knocked his glasses off his face. During this time, Mr. [REDACTED] instructed the other two children to enter the van. Per [REDACTED] the man's glasses fell from his face when he entered the van. Mr. [REDACTED] grabbed the steering wheel of the vehicle. Officers arrived at the scene, placed [REDACTED] in custody and transported him to the 10th District station. Thereafter, Mr. [REDACTED] removed the family's belongings from the van, and the men repossessed the vehicle. Per [REDACTED] the men did not initially know she was in the van when they attempted to repossess it. [REDACTED] moved to the front seat of the van and told an officer that her father did not hit anyone. The officer responded, "You don't have to lie." The same officer then instructed [REDACTED] and her siblings to exit the van. [REDACTED] was hesitant to exit the van, but did so after Mr. [REDACTED] instructed her to do so. [REDACTED] provided a description of the officer (Male/white wearing a vest and a white, short-sleeve shirt, ripped jeans and a backwards turned baseball hat) that instructed them to exit the van and referred to her as a liar.²

In a **statement** to COPA on October 15, 2019, **Sergeant Ontiveros** related she was the Acting District Station Supervisor on July 16, 2019. Mr. [REDACTED] and his family came to the station regarding his arrest the previous day. Mr. [REDACTED] was upset and wanted to know why Mr. [REDACTED] was not arrested, why the police were speaking to his kids, why the police were involved in the repossession of his vehicle. He also wanted to register a complaint against the officers for their actions. Sergeant Ontiveros informed Mr. [REDACTED] that the officers responded because there was a 911 call of a Battery. Sergeant Ontiveros viewed a video of the incident on a cellphone provided by Mr. [REDACTED]. The video showed Mr. [REDACTED] being the aggressor and reaching over Mr. [REDACTED] as Mr. [REDACTED] attempted to repossess his vehicle.

Sergeant Ontiveros informed Mr. [REDACTED] to go to court and the judge would make a determination. Mr. [REDACTED] overheard Sergeant Ontiveros ask the arresting officers where their sergeant was, and the officers stated their sergeant would be in at 1800 hours. Thereafter, Mr. [REDACTED] and his family left the station and returned at 1800 hours. Mr. [REDACTED] informed the officers

¹ Att. 39

² Att. 2

at the front desk that he wanted to speak to someone of a higher rank than Sergeant Ontiveros. Due to the disruptive behavior (yelling/screaming) of Mr. [REDACTED] and his family, they were asked to leave the station. Sergeant Ontiveros instructed officers to activate their BWC.³ Due to her assignment of working the desk, Sergeant Ontiveros was not wearing a BWC. Without any physical contact, officers escorted Mr. [REDACTED] and his family from the station. Mr. [REDACTED] and his family stood outside the station for unknown period of time. Eventually, Commander James Sanchez went outside to speak to Mr. [REDACTED]. Sergeant Ontiveros had no knowledge of the conversation between Commander Sanchez and Mr. [REDACTED] or if Commander Sanchez registered a complaint on Mr. [REDACTED] behalf.

Based on her review of Department reports and the cellular telephone video she viewed, Sergeant Ontiveros did not observe any conduct by Mr. [REDACTED] that warranted him being arrested. Sergeant Ontiveros stated she did not register a complaint on Mr. [REDACTED] behalf because she did not view the allegations by Mr. [REDACTED] as misconduct. Sergeant Ontiveros advised Mr. [REDACTED] to contact COPA. Sergeant Ontiveros related that if a citizen has a complaint of misconduct against a Department member, it is not at her discretion as to whether a complaint should be registered.⁴

In a **statement** to COPA on February 10, 2020, **Officer Garcia** related that on the date of incident he was dressed in civilian clothing and his partner was Officer Richard Waszak, #5131. They were working in an unmarked tan SUV (Chevrolet Tahoe). Officer Garcia and his partner responded to an OEMC call of assistance at the address of incident. Upon arriving at the scene, Officer Garcia came into contact with the involved parties, Mr. [REDACTED] and Mr. [REDACTED]. Officer Garcia and other responding officers spoke to the involved individuals separately. Mr. [REDACTED] related to Officer Garcia that he was sitting in the driver's seat of Mr. [REDACTED] vehicle, when Mr. [REDACTED] reached inside the vehicle and punched him on the face. Thereafter, Mr. [REDACTED] instructed his children to get inside the van. Mr. [REDACTED] expressed that he wanted to file a complaint against Mr. [REDACTED] for Battery, and Mr. [REDACTED] was placed in custody.

Officer Garcia denied having any verbal interaction with Mr. [REDACTED] children. Officer Garcia recalls seeing two children in the van during this incident. Officer Garcia informed the children's grandfather, [REDACTED] that the van was going to be repossessed and to have them exit the van; which Mr. [REDACTED] did. Based on their preliminary investigation, Officer Garcia and responding officers believed Mr. [REDACTED] to be more credible, which resulted in the arrest of Mr. [REDACTED] and his vehicle being repossessed. Officer Garcia had no recollection of having any contact with Mr. [REDACTED] the following day at the 10th District station. Officer Garcia denied the allegations against him.

b. Digital Evidence

Body worn camera footage⁵ (BWC) of Officers Garcia, Waszak, Salgado, and Valdez shows officers arrive at the scene of incident and conduct a preliminary investigation by speaking to the involved parties. The officers view video on Mr. [REDACTED] cellular telephone regarding the incident. Mr. [REDACTED] informs officers he wants to sign a complaint against Mr. [REDACTED] for striking

³ COPA was unable to locate any BWC capturing this interaction.

⁴ Att. 29.

⁵ Atts. 35-38.

him on the face. Mr. [REDACTED] is placed in custody and transported to the 10th District station. Officer Garcia's BWC does not show him having any interaction with Mr. [REDACTED] kids, however, Officer Garcia suggests to Mr. [REDACTED] father that he have the children come out of the van.⁶

Mr. [REDACTED] provided COPA with a still **photograph** that shows Mr. [REDACTED] sitting in the driver's seat of Mr. [REDACTED] van with Mr. [REDACTED] reaching over him. Mr. [REDACTED] also provided COPA with an **audio recording** of his interaction with officers at the 10th District station when he attempted to file his complaint. The recordings essentially relate what Mr. [REDACTED] related in his statement to COPA.⁷

c. Documentary Evidence

According to Mr. [REDACTED] **Arrest Report**, Officers Waszak and Garcia were in-route to a vehicle repossession dispute between Mr. [REDACTED] and Mr. [REDACTED] when they were further informed that Mr. [REDACTED] struck Mr. [REDACTED]. Upon arriving at the scene, Mr. [REDACTED] informed the officers that Mr. [REDACTED] struck him on the face with a closed fist as he attempted to repossess his vehicle. Mr. [REDACTED] signed a complaint to have Mr. [REDACTED] arrested for Battery. Per the Visual Check of Arrestee Section, there was no obvious pain or injury to Mr. [REDACTED].⁸

The **Original Case Incident Report** essentially relates the same narrative as the Arrest Report.⁹

An **Office of Emergency Management and Communications (O.E.M.C.)** Event Query shows Mr. [REDACTED] called 911 alleging Mr. [REDACTED] was irate, threatening him because he was attempting to repossess his vehicle. Moments later, Mr. [REDACTED] called 911 alleging Mr. [REDACTED] was on private property attempting to repossess his vehicle with his kids inside.¹⁰

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

⁶ Att. 36 at 8:10 minutes.

⁷ Att. 11.

⁸ Att. 18.

⁹ Att. 21.

¹⁰ Att. 27 and 30.

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

Sergeant Gena Ontiveros

COPA finds **Allegation #1** that Sergeant Ontiveros failed to register a complaint on behalf of the of Complainants █████ and █████ is **Sustained**. Mr. █████ complained to Sgt. Ontiveros regarding the actions of the officers on scene. His complaints consisted of allegations of being falsely arrested, instructing his children to exit the vehicle, interfering in the repossession of his vehicle, and denying him a police report. Sergeant Ontiveros is bound by General Order 08-01-02 to register the complaint but failed to do so because she did not believe officers had done anything wrong. The General Order does not allow Sergeant Ontiveros the use of discretion regarding a citizen's complaint. Thus, this allegation is Sustained.

COPA finds **Allegation #2** that without justification, Sergeant Ontiveros had █████ and members of his family removed from the 10th District station is **Not Sustained**. Sergeant Ontiveros alleges Mr. █████ and members of his family were causing a disturbance inside the station and for that reason she had them removed. Mr. █████ denied the allegation. There is insufficient evidence to either prove or disprove this allegation.

Officer Jesus Garcia

COPA makes a finding of **UNFOUNDED** for **Allegation #1**, that Officer Garcia commanded the child/children of █████ and █████ from their vehicle to allow their vehicle to be repossessed. Based on their preliminary investigation, Officer Garcia and other officers determined Mr. █████ account of the incident to be more credible than Mr. █████ Thereafter, Mr. █████ was arrested and Mr. █████ repossessed Mr. █████ vehicle. Officer Garcia suggested to Mr. █████ that he have his grandchildren exit the vehicle because it was going to be repossessed. Mr. █████ then instructed his grandchildren to exit the vehicle and gathered their personal belongings from the van.¹¹ Officer Garcia's actions were based on the

¹¹ Att. 36 at 8:10 minutes

results of their preliminary investigation and not for the purpose of Mr. [REDACTED] to repossess Mr. [REDACTED] vehicle.

COPA recommends a finding of **UNFOUDED** for **Allegation #2**, that Officer Garcia was rude and unprofessional in that Officer Garcia referred to the child/children of [REDACTED] and [REDACTED] as a liar. Officer Garcia denied having any verbal interaction with any of Mr. [REDACTED] kids and denied the allegation. Officer Garcia’s BWC supports his statement as it does not show him having any interaction with Mr. [REDACTED] kids.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Sergeant Gena Ontiveros

i. Complimentary and Disciplinary History

1. Sergeant Ontiveros has received; a 2004 Crime Reduction Ribbon Award, 2009 Crime Reduction Award, 2019 Crime Reduction Award, three Attendance Recognition Award, three Complimentary Letter, three Department Commendations, six Emblem of Recognition- Physical Fitness, sixty-one Honorable Mentions, A Life Saving Award, NATO Summit Service Award and a Presidential Election Deployment Award 2008.
2. Sergeant Ontiveros has no disciplinary history.

ii. Recommended Penalty, by Allegation

1. Allegation No. 1: 10-day Suspension

Sergeant Ontiveros failed to register a complaint on behalf of the Complainants, [REDACTED] and [REDACTED]. However, during her statement, she did recognize that that was not within her discretion. COPA recommends a 10-day suspension.

Approved:

[REDACTED]

 Sharday Jackson
 Deputy Chief Administrator – Chief Investigator

2/28/22

 Date