

SUMMARY REPORT OF INVESTIGATION¹

Date/Time/Location of Incident:	August 10, 2019, 8:13p.m., 603 S. Cicero Ave., 60644
Date/Time of COPA Notification:	August 14, 2019 / 2:40 p.m.
Involved Officer #1:	Jose Castro, Star 11031, Employee # [REDACTED], Date of Appointment May 16, 2017, Rank Police Officer, Unit of Assignment 015, DOB, Male, WWH
Involved Officer #2:	Noel Reina, Star #7440, Employee # [REDACTED], Date of Appointment August 31, 2015, Rank Police Officer, Unit of Assignment 015, DOB [REDACTED], 1987, Male, WWH.
Involved Officer #3:	Hector DeLeon, Star #15156, Employee # [REDACTED], Date of Appointment April 1, 2013, Rank Police Officer, Unit of Assignment 015, DOB [REDACTED], 1983, Male, WWH.
Involved Individual:	[REDACTED] 1970, Male, Black
Case Type:	4 th Amendment – Search and Seizure

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Jose Castro ²	<p>It is alleged by [REDACTED] that on August 10, 2019, at or near 603 S. Cicero Ave, Chicago IL 60651, Officer Jose Castro committed misconduct, through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. conducted a street stop – detained him without justification, 2. searched his person without justification, and 3. improperly arrested him. 	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p>

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² See Attachment 37, 3220 PAR reply mail - Outlook.pdf. Per CPD, Officer Jose Castro is deceased.

Officer Noel Reina	<p>It is alleged by ██████████ that on August 10, 2019, at or near 603 S. Cicero Ave, Chicago IL 60651, Officer Noel Reina committed misconduct, through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. conducted a street stop – detained him without justification, 2. searched his person without justification, and 3. improperly arrested him. 	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p>
Officer Hector DeLeon	<p>It is alleged by ██████████ that on August 10, 2019, at or near 603 S. Cicero Ave, Chicago IL 60651, Officer Hector DeLeon committed misconduct, through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. conducted a street stop – detained him without justification, and 2. improperly arrested him. 	<p>EXONERATED</p> <p>EXONERATED</p>

II. SUMMARY OF EVIDENCE³

On August 10, 2019, at approximately 8:13 p.m., members of the Chicago Police Department conducted an investigative stop near 603 S. Cicero Ave. in Chicago Illinois. Officers detained ██████████ (██████████) questioned him, patted him down and arrested him for possession of illegal narcotics. ██████████ filed a complaint with the Civilian Office of Police Accountability on August 14, 2019, alleging officers stopped him, searched him and arrested him without justification.

██████████ was walking and was stopped by officers after he exited a nearby gas station. Officers asked what he held in his hands. As he approached them, officers observed a green leafy substance and suspected he was in possession of marijuana, an illegal narcotic. After conducting a field investigation, officers performed a protective pat down. ██████████ alerted officers to knives he was carrying in his pockets. During the plain touch search, Officers reached into ██████████ pockets

³ COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

and recovered the knives and suspected illegal narcotics (suspected bags of heroine and a bag containing marijuana). Subsequently, officers placed [REDACTED] under arrest.⁴

III. 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.

⁴ See Attachment 48, – Results of Records Request 3633_001.pdf Noted is the strip search of [REDACTED] while at the district station, captured on BWC video. Strip searches require authorization from supervisors. However, a request of CPD records for a related strip search rendered negative results.

IV. ANALYSIS AND CONCLUSION

Alleged Detention Without Justification

The complainant alleged that members detained him without legal justification. COPA finds that the detention is supported by the weight of the evidence, and this allegation is **EXONERATED**.

The Original Case Report⁵ and the Arrest Report⁶ note that officers observed ██████ rolling an item with both hands as he walked out of the gas station. Officers believing that he was rolling a cigarette containing narcotics approached for a field interview. Officers observed a green leafy substance, suspect cannabis, with white rolling paper in his hands. ██████ approached with an open hand⁷ and stated, not verbatim, “it’s weed” officers recognized the term to refer to cannabis, a controlled substance. 0:6:15 ██████ stated, “I was twisting my reefer up...”⁸ ██████ continuously asks the members to “let him go” but he does not deny the officer’s account of his possession of illegal narcotics.

An investigatory stop is authorized by Department policy.⁹ Department members are permitted to detain a person when there is reasonable articulable suspicion that the person is about to commit, is committing, or has committed a criminal offense¹⁰. Department members are permitted to conduct a stop when there is “at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law.”¹¹ “Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observed and the reasonable inferences that are drawn based on the sworn member’s training and experience.”¹²

Based on the observations, training and experience, officers had reasonable suspicion to detain the complainant for suspected possession of illegal narcotics.

After careful consideration of all the facts, COPA has determined that the detention described in the allegation occurred, but it is lawful and proper. Accordingly, COPA finds that this allegation is **EXONERATED**.

Alleged Pat Down Without Justification

The complainant alleged that members patted him down without justification. COPA finds that the search is supported by the weight of the evidence, and this allegation is **EXONERATED**.

⁵ See Attachment 30, Original Case Report – ██████ – 192216118.pdf.

⁶ See Attachment 26, Arrest Report – ██████ – 19853190.pdf.

⁷ See Attachment 17, Reina Noel_AXON_Body_2_Video_2019-08-10_2012.mp4

⁸ See Attachment 1, Castro Jose_AXON_Body_2_Video_2019-08-10_2012-2

⁹ CPD S04-13-09 III (A) Investigatory Stop System, (effective July 10, 2017, to current).

¹⁰ S04-13-09 II (A), Investigatory Stop System (effective July 10, 2017 to current).

¹¹ United States v. Rodriguez-Escalera, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing Delaware v. Prouse, 440 U.S. 648, 663 (1979))

¹² S04-13-09 II(C), Investigatory Stop System (effective July 10, 2017 to current)

Officers placed ██████ in handcuffs and continued to investigate the suspicion of possession of a controlled substance. Combined with the ██████ on-scene admission of marijuana in his cigarette, and the officers' observations, officers performed a limited search. Noted is the officer's communication with ██████ Prior to searching him, officers informed him that he would be searched and asked if there were any objects in his pockets that could cause harm. In the BWC video, ██████ informs the officers that he is carrying a knife. The BWC video captures recovered suspected narcotics from ██████ pockets in addition to two knives^{13 14}.

Members may conduct a protective pat down for weapons based on a reasonable suspicion of criminal activity and that the person is armed and dangerous or presents a danger of attack¹⁵. Based on the ██████ admission, officers were justified in performing the protective pat down of ██████ for weapons¹⁶.

After careful consideration of all the facts, COPA has determined that the protective pat down described in the allegation occurred, but it is lawful and proper. Accordingly, COPA finds that this allegation is **EXONERATED**.

Alleged Improper Arrest

The complainant alleged that members arrested him without justification. COPA finds that the arrest is supported by the weight of the evidence, and this allegation **EXONERATED**.

Officers recovered suspected contraband from his pockets: a bag containing suspected cannabis and two black tinted bags containing suspected heroin. ██████ does not refute the officer's assertion regarding heroine on his person.

During the interview, ██████ admitted that he was rolling a marijuana cigarette as he was leaving the gas station.¹⁷ ██████ statement is consistent with the Arrest Report and Original Case Report. ██████ does not refute the member's assertion of the recovery of a controlled substance.

If during the limited search, the Department member "encounters an object that, based on their training and experience, they... believe the object is contraband, the ... member may seize the item without a warrant and lawfully charge the person with it."¹⁸

Based on the totality of the circumstances, members had probable cause to arrest ██████

After careful consideration of the facts enumerated above, COPA finds the arrest was lawful and proper and followed CPD policy. COPA finds the allegation that members improperly arrested ██████ is **EXONERATED**.

¹³ See Attachments 6, Castro Jose_Audit_Log_for_AXON_Body_2_Video_2019-08-10_2012-2.pdf.

¹⁴ See Attachment 17, Reina Noel_AXON_Body_2_Video_2019-08-10_2012.mp4.

¹⁵ Terry v. Ohio, People v. Gavin

¹⁶ CPD S04-13-09 III (B) Investigatory Stop System, (effective July 10, 2017 to current).

¹⁷ See Attachment 34, ██████ – occurred August 14, 2019 – video.mp4 at 27:19 – 30:35.

¹⁸ CPD S04-13-09 II (E) Investigatory Stop System, (effective July 10, 2017 to current).

Approved:



2-10-2022

Angela Hearts-Glass
Deputy Chief Investigator

Date