

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	November 16, 2019 / 10:22 pm / 4400 W. Congress Parkway, Chicago, IL 60624.
Date/Time of COPA Notification:	November 17, 2019 / 11:02 am.
Involved Officer #1:	Officer Hugo Diaz / Star#18700 / Employee ID [REDACTED] / DOA: December 14, 2015 / Unit: 011/715 / Male / Hispanic.
Involved Officer #2:	Officer Tito Jimenez / Star#14955 / Employee ID [REDACTED] / DOA: October 27, 2014 / Unit: 011/716 / Male / Hispanic.
Involved Individual #1:	[REDACTED] / Male / Hispanic.
Case Type:	03Q – Improper Detention.

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officers Tito Jimenez and Hugo Diaz	1. Detaining Mr. [REDACTED] without justification.	Exonerated.
	2. Searching Mr. [REDACTED] without justification.	Exonerated.
	3. Searching the vehicle Mr. [REDACTED] was in, without justification.	Exonerated.
	4. Seizing Mr. [REDACTED] cellular telephone, without justification.	Sustained / 10-day suspension and training.
	5. Failing to return Mr. [REDACTED] cellular telephone, without justification.	Not Sustained.
	6. Failing to comply with S03-14, by failing to activate your Body Worn Camera.	Sustained / 10-day suspension and training.
	7. Failing to comply with S04-13-09, by failing to complete an Investigatory Stop Report detailing the interaction with Mr. [REDACTED]	Sustained / 10-day suspension and training.
	8. Failing to comply with S04-13-09, by failing to provide Mr. [REDACTED] with an Investigatory Stop Receipt.	Sustained / 10-day suspension and training.

	9. Failing to comply with G07-01, by failing to inventory Mr. [REDACTED] cellular telephone.	Not Sustained.
Officer Hugo Diaz	10. Grabbing Mr. [REDACTED] by the throat, without justification.	Not Sustained.

II. SUMMARY OF EVIDENCE

Officers Hugo Diaz and Tito Jimenez (the accused) were in the parking lot of the 4400 W. Congress Parkway, when they observed Mr. [REDACTED] seated in a parked vehicle that was emitting the odor of cannabis. Upon detecting the odor of cannabis, the accused approached the vehicle and directed [REDACTED] to exit. [REDACTED] complied and the accused proceeded to search the passenger compartment of the vehicle. While the search was occurring, [REDACTED] began to record the accused’s actions. In response to [REDACTED] recording the accused seized his cellular telephone. The accused searched [REDACTED] person placed him in handcuffs and secured him in the rear of a Department vehicle. Once the search of the vehicle and [REDACTED] were complete, the accused released [REDACTED] and left the area.

During his statement to COPA, [REDACTED] alleged that he was improperly detained and searched by the accused and that his cellular telephone was never returned to him. Additionally, [REDACTED] alleged that Officer Diaz grabbed him by the throat as he was detained in the rear of the Department vehicle.

During their statements to COPA, the accused officers recounted their detention and search of [REDACTED] and the search of vehicle were based on the odor of cannabis emitting from the vehicle. While both accused acknowledged that [REDACTED] cellular telephone was seized, neither could provide a reason for the seizure nor could they explain what happened to the cellular telephone after the seizure. Officer Diaz denied using any force on [REDACTED] while he was seated in the rear of the Department vehicle.

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 occurred and violated Department policy.¹ 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.² 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."³

IV. ANALYSIS AND CONCLUSION

COPA finds that Allegations # 1, 2, and 3 against the accused are **exonerated**. Department members are permitted to detain a person when there is reasonable articulable suspicion that person is about to commit, is committing, or has committed a criminal offense.⁴ This detention is an Investigatory Stop. In instances in which an officer smells marijuana, the officer has probable cause to conduct a search of a vehicle; further, this principle has been extended to include searches of the driver and passengers of that vehicle.⁵

Here, it is undisputed that [REDACTED] was the occupant of a vehicle when the accused initially contacted him. Additionally, Officer Michael Guzman's BWC footage details the contemporaneous observations of the accused and Officer Guzman that the odor of cannabis was emitting from the vehicle that [REDACTED] occupied, which provided the reasonable articulable suspicion that a crime was occurring – the possession of cannabis – and the probable cause to search the vehicle. Since the accused reasonably detected the odor of cannabis emitting from the vehicle, their decisions to detain [REDACTED] and search the vehicle and his person were reasonable and proper.

COPA finds that Allegation #4 against the accused officers is **sustained**. Department members are permitted to seize property that is in plain view and the evidentiary value is readily apparent.⁶ Here, it is undisputed that [REDACTED] cellular telephone was in the plain view of the accused. However, the accused officers could provide no evidentiary value of the cellular telephone or reasonable explanation as to why it was seized. Therefore, the seizure of the cellular telephone was in violation of Rules 2 and 3.

COPA finds that Allegations #6, 7 and 8 against the accused are **sustained**. Department Members are required to activate BWC "at the beginning of" or "as soon as practical" for "all law-

¹ *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).

² *People v. Coan*, 2016 IL App (2d) 151036 (2016).

³ *Id.* at ¶ 28.

⁴ S04-13-09 II (A)

⁵ *People v. Zayed*, 2016 IL App (3rd) 140780 (2016).

⁶ *Horton v. California*, 496 U.S. 128 (1990).

enforcement-related activities.”⁷ Additionally, Department members who complete an investigatory stop are required to complete an investigatory stop report that details “[a]ll of the factors that support” the detention of the subject.⁸ Further, Department members “are required to provide” an Investigatory Stop Receipt to any individual subjected to a “[p]rotective [p]at [d]own or any other search” during an Investigatory Stop.⁹

Here, it is undisputed that the accused failed to activate their BWCs. Additionally, it is undisputed that an ISR detailing the accused’s interaction with ██████ was not completed. Finally, it is undisputed that ██████ was not provided an ISR receipt, despite being subjected to a search. The accused’s failures are in violation of Department policy and Rule 6.

COPA finds that Allegations #5 and 9 against the accused officers and Allegation #10 against Officer Diaz are **not sustained**. While it is undisputed that the accused seized ██████ cellular telephone, COPA was unable to determine what happened to the cellular telephone once it was seized. Additionally, COPA was unable to determine what transpired between Officer Diaz and ██████ while ██████ was detained in the rear of the Department vehicle. Since COPA was unable to locate any evidence, beyond ██████ and the accused’s statements that support or refute the allegations they must be **not sustained**.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Hugo Diaz

i. Complimentary and Disciplinary History

Officer Diaz has a complimentary history of; 1 2019 Crime Reduction Award, 1 Annual Bureau Award of Recognition, 1 Attendance Recognition Award, 1 Complimentary Letter, 3 Department Commendation, 68 Honorable Mentions, 1 Honorable Mention Ribbon Award, 1 Military service award, Police Officer of the Month Award, Problem Solving Award, Unit Meritorious Performance Award. Officer Diaz does not have any Disciplinary History.

b. Officer Tito Jimenez

i. Complimentary and Disciplinary History

Officer Jimenez has a complimentary history of, 1 2019 Crime Reduction Award, and 86 Honorable Mentions, 2 Annual Bureau Awards of Recognition, and Department Commendations, Police Officer of the Month Awards. One Emblem of Recognition-Physical

⁷ “Law-enforcement-related activities include but are not limited to:” “calls for service; investigatory stops; traffic stops; traffic control; foot and vehicle pursuits; arrest; use of force incidents; seizure of evidence; interrogations; searches, including searches of people, items, vehicle, buildings, and places; statements made by individuals in the course of an investigation; requests for consent to search; emergency driving situations; emergency vehicle responses where fleeing suspects or vehicle may be captured on video leaving the crime scene; high-risk situations; any encounter with the police that becomes adversarial after the initial contact; arrestee transports; any other instance when enforcing the law.” S03-14 III(A)(2)(a-r) – Body Worn Cameras (effective April 30, 2018).

⁸ S04-13-09 VIII (A)(1) – Investigatory Stop System (effective July 10, 2017 to current).

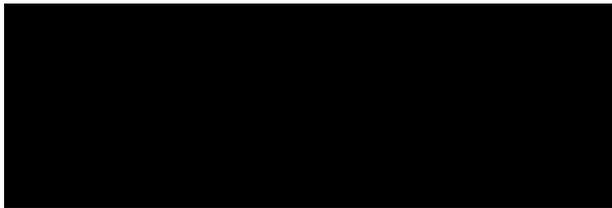
⁹ S04-13-09 VIII (A)(3).

Fitness, Honorable Mention Ribbon Award, Problem Solving Award, Special Commendation, and Unit Meritorious Performance Award.

c. Recommended Penalty for both accused officers

The failure of the accused officers to activate their BWCs and completed the required reports had a direct negative impact on this investigation. These failures directly impeded the ability to identify the accused quickly and accurately. These failures are unacceptable and should not have occurred. Additionally, the seizure of [REDACTED] phone was improper and unreasonable, especially considering that [REDACTED] was merely recording the actions of the Accused, which is permissible. Since the Accused officers' failures and seizure actions were improper, COPA recommends that the Accused receive a **10-day suspension** and **training on the seizure of personal property**.

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

6-6-2022

Date