

**SUMMARY REPORT OF INVESTIGATION**

Date/Time/Location of Incident:	January 17, 2020/ 12:38 pm/ 3946 W. Cermak
Date/Time of COPA Notification:	January 17, 2020/ 1:26 pm
Involved Officer #1:	Jesus Garcia, Star #11044, Emp. [REDACTED], Date of Appointment: August 31, 2015, Officer, Unit 010/191, DOB: [REDACTED] 1977, Male, White Hispanic
Involved Officer #2:	Jose Carrera, Star #12997, Emp. [REDACTED], Date of Appointment: November 30, 2012, Officer, Unit 010/610, DOB: [REDACTED] 1976, Male, White Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1963, Male, Hispanic
Case Type:	Improper Stop & Search/ Operational Violations

**I. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officers Garcia & Carrera	It is alleged by [REDACTED] that on or about January 17, 2020, at approximately 12:38 pm, at or near 3946 W. Cermak, the accused committed misconduct through the following acts or omissions, by:	
	1. stopping [REDACTED] without justification.	Exonerated
	2. searching [REDACTED] without justification.	Exonerated
	3. failing to complete an investigatory stop report documenting your interaction with [REDACTED]	Sustained
	4. failing to issue an investigatory stop receipt to [REDACTED]	Sustained
	5. failing to timely activate your body worn camera.	Sustained

## II. SUMMARY OF EVIDENCE<sup>1</sup>

On January 17, 2020, ██████████ (██████████) called COPA to file a complaint against two CPD officers who stopped and questioned him as he rode his bike to the store earlier that day. ██████████ alleged the stop was unjustified and one of the officers searched him without consent.<sup>2</sup> ██████████ subsequently declined to provide a formal statement regarding the incident to COPA; however, COPA obtained an affidavit override to continue to investigate his allegations.<sup>3</sup> As part of the investigation, COPA interviewed Officer Jesus Garcia (Officer Garcia)<sup>4</sup> and Officer Jose Carrera (Officer Carrera)<sup>5</sup>, as well as obtained and reviewed body worn camera (BWC) footage from the stop.<sup>6</sup>

On the date of the incident, Officers Garcia and Carrera were at the 10<sup>th</sup> District station monitoring the POD camera located near 2214 S. Keeler Avenue. The officers were watching the live POD video looking for any narcotics activity in conjunction with the Trespass Affidavit Program.<sup>7</sup> The officers observed a Hispanic male, now identified as ██████████ speak to an unknown person outside 2214 S. Keeler Avenue.<sup>8</sup> ██████████ then entered the property briefly, exited, got back on his bike, and rode eastbound on Ogden. Officers Garcia and Carrera exited the station in their unmarked squad vehicle and headed westbound on Ogden to look for ██████████. When the officers caught up with ██████████ they observed him riding his bike into oncoming vehicular traffic. They activated their emergency lights and asked ██████████ to approach them. Both officers were equipped with a BWC, but they did not activate their cameras until after they had already started speaking with ██████████. Both officers maintained they activated their cameras as soon as it was safe to do so, which they defined as after ██████████ and his bike were safely out of the flow of traffic.

The officers told COPA they briefly detained ██████████ because he entered a property enrolled in the Trespass Affidavit Program, and because he rode his bike into oncoming traffic. During the stop, Officer Carrera questioned ██████████ about why he entered the property and whether he purchased narcotics. ██████████ replied that he was looking to buy loose cigarettes, but no one answered the door. ██████████ gave the officers permission to search him, which they did with negative results.<sup>9</sup> The officers subsequently released ██████████ but failed to provide him

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<sup>1</sup> COPA conducted a full and complete investigation of this matter, including the interview of all involved officers and the collection and review of digital evidence. The following is a summary of the material evidence gathered and relied upon in the analysis.

<sup>2</sup> COPA contacted ██████████ to request more information and obtain a formal statement, but ██████████ missed multiple scheduled appointments at COPA's offices and ultimately declined to provide a statement due to work obligations. CMS Notes CO-0043696, 60978.

<sup>3</sup> Att. 2.

<sup>4</sup> Att. 25.

<sup>5</sup> Att. 26.

<sup>6</sup> Att. 9, Officer Garcia's BWC footage; Att. 10, Officer Carrera's BWC footage.

<sup>7</sup> This is a program in which a Chicago property owner can sign an affidavit granting the Chicago Police Department the authority to enter their property and enforce all applicable laws, including prohibitions against trespassing.

<sup>8</sup> The owner of 2214 S. Keeler Avenue enrolled the property in the Trespass Affidavit Program on January 8, 2019, and he re-signed the affidavit on January 8, 2020. The enrollment form documents a history of "multiple individuals accessing the property without owner's consent, and breaking into the unit while engaging in narcotics sales." Att. 23.

<sup>9</sup> BWC footage captured Officer Carrera tell Officer Garcia, in Spanish, to check ██████████ "other side." In response, ██████████ immediately told the officers to "check whatever you like." Both officers then proceeded to search ██████████ person. Att. 10 at 23 seconds; Att. 27.

with an investigatory stop receipt. They also failed to complete an Investigatory Stop Report (ISR) documenting the justification for [REDACTED] detention.

### 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.<sup>10</sup> 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. 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.”<sup>11</sup>

### IV. ANALYSIS AND CONCLUSION

#### a. Officers Garcia and Carrera had justification to stop [REDACTED]

A police officer may temporarily detain an individual for an investigatory stop when the officer’s decision is based on specific, articulable facts which warrant the intrusion of an investigative stop.<sup>12</sup> The officer must have a reasonable articulable suspicion that the person is committing, is about to commit, or has committed a criminal offense.<sup>13</sup> In this case, COPA finds that Officers Garcia and Carrera were justified in stopping [REDACTED] for two reasons. First, the

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<sup>10</sup> 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).

<sup>11</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

<sup>12</sup> *People v. Moore*, 286 Ill. App. 3d 649, 653 (3d Dist. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 30 (1968); *People v. Stewart*, 242 Ill. App. 3d 599, 605 (5th Dist. 1993)).

<sup>13</sup> Special Order S04-13-09 (II)(A), Investigatory Stop System (effective July 10, 2017 to present); see also *Moore*, 286 Ill. App. 3d at 653.

officers observed [REDACTED] riding his bike against the flow of traffic, which is a violation of the Chicago Municipal Code.<sup>14</sup> BWC footage captured [REDACTED] admit this violation to the officers during the stop. Second, the officers observed [REDACTED] ride his bike up and down the street, then briefly enter and exit a property enrolled in the Trespass Affidavit Program. The property owner had reported that unknown individuals were accessing the property to engage in narcotics sales, and the officers stopped [REDACTED] to determine if he purchased narcotics when he entered the building. [REDACTED] denied it, but he admitted he attempted to buy loose cigarettes at the location, which is also a violation of the Chicago Municipal Code.<sup>15</sup> As such, COPA finds there is clear and convincing evidence that the stop of [REDACTED] was justified, and Allegation #1 against both officers is **exonerated**.

**b. Officers Garcia and Carrera had consent to search [REDACTED]**

The Fourth Amendment protects individuals against unreasonable searches and seizures. However, a search conducted with valid consent does not violate the Fourth Amendment.<sup>16</sup> In this case, BWC footage captured [REDACTED] consent to the search of his person when he told the officers, in Spanish, to “check whatever you like.”<sup>17</sup> Therefore, COPA finds Allegation #2 against both officers is **exonerated**.

**c. Officers Garcia and Carrera failed to complete an ISR.**

Special Order S04-13-09 requires sworn members to submit an investigatory stop report (ISR) when they conduct an investigatory stop, probable cause stop when no other document captures the reason for the detention, or a protective pat down or other search in a public place.<sup>18</sup> In this case, however, neither officer completed an ISR or any other paperwork documenting their interaction with [REDACTED]. Both officers admitted their failure, explaining they became distracted by a juvenile arrest after their interaction with [REDACTED] and they forgot to complete the ISR. As a result, COPA finds Allegation #3 against both officers is **sustained** as a violation of Rules 5 & 6 of CPD’s Rules and Regulations.

**d. Officers Garcia and Carrera failed to provide [REDACTED] with an investigatory stop receipt.**

Special Order S04-13-09 further states that, upon the completion of an investigatory stop that involves a protective pat down or any other search, sworn members are required to provide the subject of the stop a completed investigatory stop receipt.<sup>19</sup> Here, it is undisputed that [REDACTED] person was searched. Both officers admitted they did not provide [REDACTED] with a receipt because they did not have any receipts readily available. As such, COPA finds that Allegation #4 against both officers is **sustained** as a violation of Rules 5 & 6 of CPD’s Rules and Regulations.

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<sup>14</sup> MCC 9-52-010 (a).

<sup>15</sup> MCC 4-64-350.

<sup>16</sup> See, e.g., *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973).

<sup>17</sup> Att. 10 at 24 seconds (in Spanish, “chequea lo que quieras.”)

<sup>18</sup> Special Order S04-13-09 (VIII)(A)(1).

<sup>19</sup> Special Order S04-13-09 (VIII)(A)(3).

**e. Officers Garcia and Carrera failed to timely activate their BWCs.**

Special Order S03-14 requires Department members to activate their BWCs to event mode at the beginning of an incident and record the entire incident for all law-enforcement-related activities.<sup>20</sup> Here, Officers Garcia and Carrera admitted they did not activate their BWCs at the beginning of the stop. According to both officers, they began recording when it was safe to do so, which they defined as after [REDACTED] and his bike were safely out of the flow of traffic. However, even if the officers’ explanations were credible, their own videos show they did not activate their cameras until [REDACTED] was standing against the unmarked vehicle, already engaged in a conversation with the officers. As such, COPA finds Allegation #5 against both officers is **sustained** as a violation of Rules 5 & 6 of CPD’s Rules and Regulations.

**V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**i. Complimentary and Disciplinary Histories**

In considering disciplinary recommendations for the sustained findings, COPA reviewed the disciplinary and complimentary histories of both officers.<sup>21</sup> Officer Garcia has received 94 awards and no sustained discipline in the past five years. Officer Carrera has received 138 total awards. He has one SPAR for failure to perform assigned tasks (reprimand), one sustained complaint for failure to properly search an arrestee (reprimand), and one sustained complaint for failure to properly secure his carbine (5-day suspension).

**ii. Recommended Penalties**

COPA has found that Officers Garcia and Carrera violated Rules 5 and 6 when they failed to complete an ISR regarding [REDACTED] detention, failed to issue [REDACTED] an investigatory stop receipt, and untimely activated their BWCs during the stop. The officers’ operational errors violated Department regulations and prevented a complete record of [REDACTED] detention for later review. Considering the severity of the misconduct and the officers’ records of service, COPA recommends Officer Garcia receive a **1-day suspension** and Officer Carrera receive a **5-day suspension**.

Approved:

[REDACTED]

8/23/2022

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date

<sup>20</sup> Special Order S03-14 (III)(A)(2), Body Worn Cameras (effective April 30, 2018 to present).

<sup>21</sup> Attachment 28.