

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	January 9, 2021/ 9:00 p.m./ [REDACTED] [REDACTED]
Date/Time of COPA Notification:	January 28, 2021 / 1:26 a.m.
Involved Officer #1:	Sherrick DAVIS; Star #12192; Employee ID # [REDACTED]; Date of Appointment: April 6, 2015, Police Officer; Unit of Assignment: 007; ¹ Date of Birth: [REDACTED], 1987; Male; Black.
Involved Officer #2:	Jimmy FRANCOIS; Star #14574; Employee ID# [REDACTED]; Date of Appointment: October 16, 2019; Police Officer; Unit of Assignment: 002; Date of Birth: [REDACTED], 1987; Male; Black.
Involved Officer #3:	Daniel MONDAINE; Star #7938; Employee ID # [REDACTED]; Date of Appointment: July 17, 2017; Police Officer; Unit of Assignment: 002; Date of Birth: [REDACTED], 1983; Male; Black.
Involved Officer #4:	Reynol CUELLAR DE LA CRUZ; Star #7661; Employee ID # [REDACTED]; Date of Appointment: August 16, 2017; Police Officer; Unit of Assignment: 002; Date of Birth: [REDACTED], 1981; Male; Hispanic
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED], 1994; Male; Black.
Case Type:	Improper Search or Seizure

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Sherrick Davis	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you improperly searched Mr. [REDACTED] bedroom without justification.	Sustained / 2-Day Suspension
Officer Jimmy Francois	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate	Unfounded

¹ Officer Davis was detailed to the 002 District on the date of incident. He has been detailed from the 007 District to the 002 District since August 12, 2018.

	your body worn camera (BWC) in accordance with S03-14.	
Officer Daniel Mondaine	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate your body worn camera (BWC) in accordance with S03-14.	Unfounded
Officer Reynol Cuellar de la Cruz	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate your body worn camera (BWC) in accordance with S03-14.	Sustained / 2-day Suspension

II. APPLICABLE LAWS AND RULES

Rules

The Chicago Police Department Rules of Conduct set forth expressly prohibited acts:

1. Rule 1: Violation of any law or ordinance
2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals
3. Rule 6: Disobedience of an order or directive, whether written or oral
4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty

Special Orders

1. Special Order S03-14, Body Worn Cameras (effective date: April 30, 2018)²
2. Special Order S04-19-01, Consent to Search Incidents (effective date: August 10, 2015)³

Federal Laws

1. The Fourth Amendment to the Constitution of the United States⁴

² Att. 53.

³ Att. 52.

⁴ U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .").

III. SUMMARY OF EVIDENCE⁵

In an online complaint,⁶ followed-up by a statement to COPA on February 3, 2021,⁷ ██████████ (██████████) stated that he was walking from the fifth to the sixth floor in a stairway of the ██████████ apartment building when at least five police officers burst into the stairway and ordered him to place his hands on the wall. As other officers pointed guns at him, one officer asked if ██████████ had a gun. ██████████ complied with the commands and told the officers that he was not armed, and an officer patted ██████████ down. ██████████ stated that he did not understand why so many guns were drawn, making him shocked and terrified. The officers continued to question him about why he was there and what apartment he lived in. He stated that he answered all the officers' questions in a calm tone. Eventually, ██████████ was handcuffed and led to his apartment to retrieve his identification.

██████████ stated that he was not read his *Miranda* rights when he was handcuffed.⁸ Before entering his apartment, an officer informed ██████████ that one of his neighbors called about a Black male, matching his description, walking in the hallway with a gun in his hand. Once inside his apartment, officers sat ██████████ in a chair, still handcuffed, while a Black police officer (now identified as Officer Sherrick Davis #12192) went into his bedroom, flipping stuff and making loud noises. At least two of five officers that entered the apartment had guns drawn. Officer Davis came out of ██████████ room without his identification and asked where ██████████ wallet was located. Officer Davis then re-entered the bedroom and found his identification. ██████████ stated that even after confirming his identity, the officers continued to question him about why he was in the hallway. ██████████ answered their questions and politely asked them to leave his apartment, adding that the officers never identified themselves. ██████████ acknowledged that he never asked the officers for their names or star numbers, explaining that he was intimidated by the officers and fearful of retaliation.

According to Office of Emergency Management and Communications Event Queries, 911 telephone-call recordings, and recordings of police radio transmissions, officers were dispatched to the address of incident for a man with a gun call.⁹ The caller, a resident of the building, reported that there was a Black male wearing a white shirt pacing the 5th floor with a gun. A GPS query of the location showed several Chicago Police Department (CPD) vehicles in the area.¹⁰ Based on the CPD members assigned to the identified vehicles, a related body-worn camera (BWC) search was conducted. COPA personnel reviewed BWC footage of several officers on scene and

⁵ 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.

⁶ Att. 1.

⁷ Att. 5.

⁸ Police officers are only required to provide *Miranda* warnings when a person is being questioned after being taken into police custody, and there is no requirement for *Miranda* warnings when a person has been briefly detained for an investigatory stop. *See* *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984).

⁹ Attachments 6–13. Reports obtained from the University of Chicago Police Department (UCPD) document that UCPD officers responded to the same incident. Attachment 37.

¹⁰ Attachments 14–15.

determined that BWC footage could not be located for Officer Francois, Officer Mondaine, or Officer Cuellar De La Cruz.

BWC video recordings¹¹ depicted both CPD members and University of Chicago Police Department (UCPD) members interacting with ██████. Officers entered the apartment building and cleared each residential floor and stairway. As officers entered the fifth-floor corridor, a female resident opened her apartment door and told officers (including Officer Davis) that the subject they were looking for had just been in the corridor, and she pointed to another stairwell door at the opposite end of the corridor. UCPD officers, holding handguns at the low-ready or Sul position, entered the far stairwell and immediately encountered ██████. UCPD officers ordered Davis to put his hand on the wall.¹² One officer continued up the stairs, while those remaining with ██████ holstered their handguns after patting down ██████ without locating a weapon.¹³ The female resident confirmed that the person she saw was wearing a white t-shirt and had messy hair, and the officers appeared to believe that ██████ matched that description. A UCPD officer explained to ██████ that they were responding to a report of a man with a gun and that ██████ matched the description given by the caller. The officer asked if ██████ had seen anyone else in the stairwell, and he replied “no.” As several UCPD officers continued up the stairwell, one remained and handcuffed ██████ while Officer Davis stood by.

Officer Davis asked ██████ where he lived, and ██████ replied that he lived in apartment ██████. Upon further questioning by Officer Davis, ██████ said that he had no weapons in his apartment and that his identification was in his apartment. Officer Davis then said, “Let’s go upstairs.”¹⁴ ██████ asked why he was handcuffed, and Officer Davis explained that they were investigating a report of a person with a gun who matched ██████ description. The UCPD officer then told ██████ that he was not being arrested, but he was being detained while the officers investigated. Officer Davis told ██████ that if he lived in the building, “It’s all good.”¹⁵ Officer Davis and the UCPD officer then escorted ██████ still handcuffed, up the stairs with the UCPD officer holding ██████ arm. After arriving on the ██████ floor, ██████ stood in front of apartment ██████ while Officer Davis asked if anyone else lived in the apartment. After ██████ replied “no,” officer Davis instructed ██████ to “open it,”¹⁶ and ██████ opened the unlocked door. ██████ then entered the apartment, followed by Officer Davis and two UCPD officers.

Inside the apartment, Officer Davis asked ██████ if he had his identification, and ██████ began walking towards his bedroom. Officer Davis then grabbed ██████ by the arm, pulling him back towards the living room while asking for his name. ██████ stated his full name, and Officer Davis said that he would look for something with ██████ name written on it. Officer ██████ then instructed other officers¹⁷ to watch ██████ and directed ██████ towards a chair in the living room. After ██████ sat in the chair, Officer Davis asked where ██████ identification was located, and

¹¹ Attachments 18–33, 37.

¹² A UCPD officer used profanity when directing ██████ to place his hands on the wall. No CPD members were observed on the BWC recordings directing profanity at ██████

¹³ One UCPD officer was also equipped with a rifle, which he carried with a sling.

¹⁴ Officer Davis’s BWC recording at 05:25 (21:20:26). Attachment 19.

¹⁵ *Id.* at 05:40.

¹⁶ *Id.* at 06:18.

¹⁷ Four other officers were inside the apartment. All the officers’ firearms appeared to be holstered.

█████ replied that it might be “in my room.”¹⁸ While other officers questioned █████ to determine if he really lived in the apartment, Officer Davis walked to the bedroom, picked up a wallet from the top of a nightstand, and briefly looked inside the wallet. Officer Davis then opened and closed the nightstand drawer, apparently finding it empty. Officer Davis then walked back to the living and again asked █████ where his wallet was located. █████ replied that it was either in his bedroom or in the living room, and █████ said that he could retrieve the wallet if Officer Davis would let him. Officer Davis replied that he would prefer for █████ to remain in the living room and then turned around and walked back to the bedroom, where he searched the same wallet again, this time locating an identification card.

With █████ identification in hand, Officer Davis returned to the living room and told the other officers that █████ lived in the apartment. An officer then removed the handcuffs from █████ wrists. Officer Davis apologized to █████ and again explained that they were responding to a report of a person with a weapon. █████ asked the officers to leave his apartment, and they complied.

In a statement to COPA on June 14, 2021, Officer Jimmy Francois, #14574,¹⁹ stated that he did not recall responding to this specific incident. He stated that it was possible he and his partner, Officer Daniel Mondaine responded but stayed outside of the building.

In a statement to COPA on June 15, 2021, Officer Daniel Mondaine, #7938,²⁰ stated that on the date of incident, he and Officer Francois responded to an incident in the near vicinity involving █████ who went on a shooting spree throughout the city.²¹ Officer Mondaine stated that he parked his vehicle within the same block of this incident. Officer Mondaine stated that he did not respond to this incident because he was assigned to the other call. Officer Mondaine further relayed that his partner, Officer Francois was with him on the call. Additionally, Officer Mondaine stated that his BWC was activated during his response.

In a statement to COPA on June 23, 2021, Officer Reynol Cuellar de la Cruz, #7661,²² stated that he responded to the incident but did not have any contact with the subject or any other member of the public. Officer Cuellar de la Cruz was not sure if he activated his BWC during this call but was certain he activated it during other calls throughout his shift.

In a statement to COPA on November 17, 2021, Officer Sherrick Davis, #12192,²³ stated that he and his partner, Officer Patrick Brandon, responded to the location of this incident to assist the UCPD for a man-with-a-gun call. A resident of the building provided a description of the subject. As the officers searched the building, they encountered a man, later identified as █████ who matched the description provided by the resident. Officer Davis stated that █████ appeared to be having a mental health episode. After asking █████ if he had any weapons, Officer Davis then asked for identification. Officer Davis stated that █████ informed him that his

¹⁸ *Id.* at 07:15.

¹⁹ Attachment 39.

²⁰ Attachment 41.

²¹ Refer to reports filed under RD # █████ for further details.

²² Attachment 43.

²³ Attachment 48.

identification was in his apartment. ██████ led Officer Davis and other officers to his apartment where ██████ opened the door and allowed the officers entry.

Once inside the apartment, Officer Davis asked ██████ where his identification was located, and ██████ replied that the identification was in his bedroom. Officer Davis then entered ██████ bedroom and ultimately located ██████ identification in a wallet on the nightstand. Officer Davis exited the bedroom and confirmed ██████ identity. Subsequently, ██████ asked the officers to leave his apartment, and they complied.

When asked if he ransacked ██████ bedroom, Officer Davis stated that he did not ransack the bedroom; however, in search of ██████ identification, he opened a drawer in the nightstand. Officer Davis also denied that he improperly searched ██████ bedroom without justification, explaining that ██████ allowed the officers to enter his apartment and to search his bedroom for his identification. Officer Davis was asked why he did not allow ██████ to locate the wallet himself, and Officer Davis explained that based on his experience with mental health and domestic calls, he wanted to prevent a more critical incident from occurring, such as an officer involved shooting.

IV. 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 did not comply with CPD policy.²⁴ If the evidence gathered in an investigation establishes that it is more likely that the conduct violated CPD 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.²⁵ 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."²⁶

²⁴ See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.")

²⁵ See, e.g., *People v. Coan*, 2016 IL App (2d) 151036.

²⁶ *Id.* ¶ 28.

V. ANALYSIS

a. Allegations Regarding Officer Davis

During the incident, ██████ was subject first to a stop and search of his person and later a search of his home by Officer Davis. Both aspects of the incident warrant separate analysis.

An officer may make an investigatory stop if they can “point to specific and articulable facts” constituting reasonable suspicion of criminal activity.²⁷ A use or display of force does not necessarily transform a stop into an arrest if the surrounding circumstances justify a fear for personal safety.²⁸ In the incident under investigation, officers were responding to a report of an armed individual. Upon arriving at the building, the resident who made the report directed the officers to the stairwell where ██████ was located. ██████ description matched that of the individual reported to be carrying a gun. Based on their belief that they were confronting an armed individual, the responding officers had reasonable suspicion to stop ██████ and acted reasonably in drawing their firearms when engaging him.

A UCPD officer completed a search of ██████ person and discovered no weapons. Following the search, a UCPD officer handcuffed ██████ Officer Davis then sought identification from ██████ When ██████ reported that his identification was in his apartment, Officer Davis directed ██████ to lead him and the other officers to his apartment to obtain his identification and confirm his residence in the building. Upon arriving at the entrance of ██████ apartment, Officer Davis instructed ██████ to open the door, and Officer Davis followed ██████ into the apartment. In the apartment ██████ sought to retrieve his identification from his bedroom. Officer Davis stopped ██████ from entering the bedroom and proceeded to search ██████ bedroom for his identification. Officer Davis was initially unsuccessful in locating ██████ identification and questioned him in the living room regarding the location of his wallet. Upon returning to the ██████ bedroom, Officer Davis was able to locate ██████ identification in his wallet and confirm his identity and residence in the apartment.

During his interview with COPA, Officer Davis indicated that he believed ██████ consented to the search of his bedroom. Whether consent is voluntary depends upon all of the circumstances of the case; consent may not be obtained by “explicit or implicit” force.²⁹ A suspect’s “acquiescence to a police search, coupled with an ambiguous gesture, d[oes] not constitute

²⁷ See *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

²⁸ See *United States v. Tilmon*, 19 F.3d 1221, 1226 (7th Cir. 1994) (citing *United States v. Greene*, 783 F.2d 1364, 1367-68 (9th Cir. 1986)).

²⁹ *People v. Anthony*, 198 Ill.2d 194, at 203-04 (2001). See also *People v. Redman*, 386 Ill.App.3d 409, 424 (2008) (holding that relevant factors in deciding whether consent was involuntary include whether “(1) the arrest occurred late at night; (2) the officers made the arrest while displaying weapons; (3) the arrest was made by forcible entry or the use of force; (4) the defendant was handcuffed or kept in close restraint; (5) the officers gained a key or similar means of entry during a search incident to arrest for the place they were asking to search; (6) the officers used the custody to make repeated requests for consent; (7) the custody was used for leverage, such as the officer telling the defendant that he would be released if he consented; (8) the defendant knew or was told he had the right to refuse consent; and (9) consent was obtained after the officer refused to grant the defendant’s request to consult with counsel.”).

voluntary consent.”³⁰ ██████ conduct during Officer Davis’ search suggests that he was compliant with directives issued by Officer Davis such as leading Officer Davis to his apartment, opening the door to his apartment, and assisting Officer Davis in locating his identification. These actions are not sufficient to constitute the unambiguous consent needed to conduct a search.

██████ circumstances at the time of the search further undercut the notion that he voluntarily consented to the search. The officers confronted him with their weapons drawn. ██████ was handcuffed prior to the search, and he remained handcuffed during the duration of the search. Officer Davis issued directives to ██████ and did not ask to enter ██████ apartment or to conduct the search. Officer Davis told ██████ that if he lived in the building, “It’s all good,” which had the effect of conditioning ██████ release on the execution of the search. These factors taken together suggest that ██████ did not voluntarily consent to a search of his bedroom.

Because Officer Davis conducted a search without receiving voluntary consent,³¹ **Allegation One against Officer Davis is Sustained.** COPA finds that Officer Davis’ search was in violation of the Fourth Amendment (violating Rule 1), constituted a failure to promote the Department’s efforts to implement its policy and accomplish its goals (violating Rule 3), and constituted the maltreatment of ██████ (violating Rule 8).

b. Allegations Regarding Officer Cuellar de la Cruz

Special Order S03-14 sets out the Department’s directives on members’ use of body-worn cameras. This order requires members to activate their body-worn cameras at the beginning of an incident where they are engaging in law enforcement activities, including service calls. Because Officer Cuellar de la Cruz failed to activate his body-worn camera when responding to this incident, **Allegation 1 against Officer Cuellar de la Cruz is Sustained.** COPA finds that Officer Cuellar de la Cruz disobeyed a written directive to activate his body worn camera (violating Rule 6).

c. Allegations Regarding Officers Mondaine and Francois

Officers Mondaine and Francois responded to an unrelated incident on the same block as ██████. They were incorrectly identified as responding to the incident at issue in this report. Because they were not responding to this incident, COPA finds that **Allegation 1 against Officer Mondaine is Unfounded, and Allegation 1 against Officer Francois is Unfounded.**

³⁰ People v. Banta, 2021 IL App (4th) 180761, ¶ 33.

³¹ There is also no suggestion that any exigency could have allowed a warrantless search without consent.

VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Davis****i. Complimentary and Disciplinary History**

Officer Davis' complimentary record consists of one crime reduction award, two complimentary letters, one department commendation, thirty-eight honorable mentions, one problem solving award, and one unit meritorious performance award. His disciplinary record includes three sustained SPARs: a reprimand for failing to perform assigned tasks, a one-day suspension for a medical roll violation, and a preventable accident where no discipline was issued. Officer Davis has no sustained complaints aside from the SPARs.

ii. Recommended Penalty

COPA has found that Officer Davis conducted an improper search. During his interview, Officer Davis indicated that he believed the search was performed pursuant to ██████ consent. Officer Davis' conduct as shown in the BWC footage is consistent with this belief, and there is no indication that he willfully or maliciously acted with a disregard of ██████ rights. Nonetheless, Officer Davis did not receive unambiguous and voluntary consent from ██████ to search his home and did act in violation of ██████ Fourth Amendment rights. Considering these factors and Officer Davis' service and disciplinary record, COPA finds that a 2-day suspension is the appropriate discipline to issue in this case. COPA also recommends that Officer Davis receive additional training in search and seizure topics.

b. Officer Cuellar de la Cruz**i. Complimentary Disciplinary History**

Officer Cuellar de la Cruz' complimentary record consists of one crime reduction award, one department commendation, and sixteen honorable mentions. His disciplinary record includes one sustained complaint for failing to follow a General Order for which he was reprimanded. His disciplinary record includes no SPARs.

ii. Recommended Penalty

COPA finds that Officer Cuellar de la Cruz failed to activate his body worn camera at the start of the incident as required by S03-14. Officer Cuellar de la Cruz appears to have been diligent in activating his camera during other incidents, and there is no apparent pattern of BWC misuse. There is no indication that Officer Cuellar de la Cruz engaged with ██████ or any other member of the public while responding to this incident, minimizing the impact of the failure to activate the body worn camera in this instance. But the nature of an incident and an officer's role in responding can change quickly and unexpectedly, underlining the importance of activating their cameras at the beginning of each incident. Failures to abide by S03-14 can compromise the integrity of officer misconduct investigations due to the lack of objective evidence and can undermine public confidence in the Department. Considering these factors and Officer Cuellar de la Cruz' service

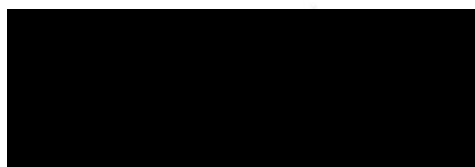
and disciplinary record, COPA finds that a 2-day suspension is the appropriate discipline to issue in this case.

VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Sherrick Davis	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you improperly searched Mr. [REDACTED] bedroom without justification.	Sustained / 2-day Suspension
Officer Jimmy Francois	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate your body worn camera (BWC) in accordance with S03-14.	Unfounded
Officer Daniel Mondaine	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate your body worn camera (BWC) in accordance with S03-14.	Unfounded
Officer Reynol Cuellar de la Cruz	1. It is alleged that on or about January 9, 2021, at approximately 9:22 p.m., at or near [REDACTED] you failed to activate your body worn camera (BWC) in accordance with S03-14.	Sustained / 2-day Suspension

Approved:



1/13/2021

Matthew Haynam
Deputy Chief Administrator / Chief Investigator

Date