

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 16, 2019
Time of Incident:	7:47 pm
Location of Incident:	7500 S. State Street
Date of COPA Notification:	June 17, 2019
Time of COPA Notification:	1:13 pm

Involved Individual [REDACTED] alleges the Involved Officers conducted a traffic stop of her and her son, [REDACTED] without justification. Ms. [REDACTED] refused to provide the Involved Officers with her Driver’s License/Insurance, because she believed the stop was unjustified. The Involved Officers returned to their SUV and drove away. Ms. [REDACTED] followed behind the officers momentarily and then went to the 6th District station to file a complaint against the Involved Members.

II. INVOLVED PARTIES

Involved Officer #1:	Jonathan Dibiase, Star #14050, Employee ID # [REDACTED], Date of Appointment: November 30, 2012, Police Officer, Unit of Assignment: 312, DOB: [REDACTED], 1984, Male/White.
Involved Officer #2:	Fortino Garibay, Star #16358, Employee ID # [REDACTED], Date of Appointment: May 5, 1997, Police Officer, Unit of Assignment: 312, DOB: [REDACTED], 1972, Male/Hispanic.
Involved Officer #3:	Matt Dercola, Star #15740, Employee ID # [REDACTED], Date of Appointment: August 29, 2005, Police Officer, Unit of Assignment: 312, DOB: [REDACTED], 1981, Male/White.
Involved Individual #1:	[REDACTED] 1975, Female/Black
Involved Individual #2:	[REDACTED], 1994, Male/Black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer J. DIBIASE	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Were rude and unprofessional by wishing [REDACTED] [REDACTED] a Happy Father's Day.	Not Sustained
	3. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 days Suspension
Officer F. GARIBAY	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 days suspension
Officer M. DERCOLA	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 days suspension

IV. APPLICABLE RULES AND LAWS

Rules

RULE 1: - Violation of any law or ordinance.

RULE 6: - Disobedience of an order or directive, whether written or oral.

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

General Orders

Special Order: S04-13-09 Investigatory Stop System.

V. INVESTIGATION

In a **statement** to COPA on November 18, 2019, ██████████ related as she drove away from a traffic light, a white/gray colored unmarked SUV pulled alongside her vehicle (2005 Volkswagen Beetle). Mrs. ██████████ and the officer/driver of the SUV made eye contact. Mrs. ██████████ son, ██████████ was seated in the front passenger seat. Seconds later, the officer drove in front of Ms. ██████████ causing her to stop. Per Mrs. ██████████ four white, civilian dressed, officers exited the SUV and approached her vehicle. One of the officers knocked on the driver's window and another knocked on the passenger window of her vehicle. Mrs. ██████████ lowered the driver's window, but not the passenger window.

Mrs. ██████████ instructed ██████████ to keep his hands visible and she did the same. The tallest officer asked Mrs. ██████████ for her license and registration three times. Mrs. ██████████ response to the officer each time was, "Why did you stop me?" The officer eventually stepped away from Mrs. ██████████ vehicle. The shortest officer stated to Mrs. ██████████ that they had received a call about a suspicious Volkswagen. ██████████ was nervous and told Mrs. ██████████ to give the officers the requested information. Mrs. ██████████ told ██████████ to be quiet and that she was not going to give the officer anything until he provided her with an explanation as to why they stopped her. The short officer then stated Mrs. ██████████ "Happy Father's Day anyway." The officers smirked, returned their SUV and drove off.

Mrs. ██████████ followed the officers as they drove approximately 5 miles per-hour. Mrs. ██████████ took a photograph of the back of the SUV. Upon reaching 75th and Halsted, Ms. ██████████ stopped following the officers and went to the 6th District station at 7808 S. Halsted. Mrs. ██████████ was instructed to contact COPA to file a complaint. Mrs. ██████████ was unable to provide the R/I the name of the Department member(s) she spoke with. Mrs. ██████████ related the officers stopped her without justification and harassed her because she is black. Mrs. ██████████ was also upset that the officer wished her a happy Father's Day, because she is a woman and not a man.

Mrs. ██████████ later learned from ██████████ that there was another Department vehicle behind them during this incident. Mrs. ██████████ was unaware of the vehicle and did not have any interaction with the occupants of that vehicle. Per Mrs. ██████████ this incident lasted approximately 4 minutes. Upon registering her complaint, Mrs. ██████████ provided a typed narrative of the incident. During her interview with COPA, Ms. ██████████ confirmed that she had typed and signed the letter dated June 28, 2019; ██████████ also signed the letter. Due to a diabetic illness, ██████████ declined to provide a statement to COPA regarding this investigation¹.

In their statements to COPA on February 6, 2020, **Involved Members Jonathan DIBIASE, Fortino GARIBAY and Matt DERCOLA** related they had no recollection of the incident with Mrs. ██████████ and denied the allegations against them. The R/I showed the Involved Members a photo of Mrs. ██████████ driver's license and the photo Mrs. ██████████ took of their vehicle; but it did not help the officers recall the encounter².

¹ Att. 14

² Att. 23, 24, 25

a. Digital Evidence

Ms. █████ provided COPA with a photograph of the SUV (rear) the Involved Members were working in on the date of incident. Ms. █████ took the photo with her cell telephone. The municipal license plate on the vehicle is “MP 17 354.” The vehicle make is a Ford³.

No **Body-worn camera or In-Car Camera** was found for this incident⁴.

b. Documentary Evidence

Attendance & Assignment Records show the Involved Members were working the 4th Watch, Beats 6724D and 6724B, Car/Vehicle #2676⁵.

A **Department Vehicle Inquiry** shows vehicle #2676 is a 2018 Ford Utility Interceptor, bearing municipal license plate MP 17 354⁶.

A **GPS Report** identifies vehicle #2676 stopped within 200 feet of 7500 S. State Street on June 16, 2019 at 7:40 p.m. and 31 seconds⁷.

An **Investigatory Stop Report** search for Ms. █████ was unsuccessful⁸.

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
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

³ Att. 15

⁴ Att. 7

⁵ Att. 19

⁶ Att. 9

⁷ Att. 2, 3

⁸ Att. 10

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.

VII. ANALYSIS

Officer Jonathan DIBIASE:

COPA recommends a finding of **NOT SUSTAINED** for **Allegation #1** that **Officer Jonathan Dibiase** conducted a traffic stop of [REDACTED] [REDACTED] without justification. Officer Dibiase had no recollection of conducting a traffic stop of Mrs. [REDACTED] and denied the allegations against him. Mrs. [REDACTED] provided a consistent and credible account of the incident in her typed letter on June 28, 2019 and in her statement to COPA on November 18, 2019. Immediately following the incident, Mrs. [REDACTED] went to the 6th District station to file a complaint against Officer Dibiase and the other Involved Members. Mrs. [REDACTED] delivered her typed letter to COPA on June 28, 2019. Department Attendance & Assignment records identified Officer Jonathan and the other Involved Members working in the vehicle (#2676) photographed by Mrs. [REDACTED] on the date and time of incident. A GPS Report shows the aforementioned vehicle was stopped at the location of incident on the date and time of incident. However, Mrs. [REDACTED] did inform COPA that one of the officers informed her that they had information regarding a suspicious Volkswagon in the area. While there is no evidence to corroborate this statement, there is also no evidence to disprove it. Simply because the officer's do not recall this stop, and making this statement, does not mean that COPA can find that it was not true that they were looking for a suspicious Volkswagon. Therefore, there is insufficient evidence to prove that the officers were not justified in conducting a traffic stop of Mrs. [REDACTED]

COPA finds **Allegation #2 NOT SUSTAINED**, in that Officer Jonathan Dibiase was rude and unprofessional by wishing [REDACTED] [REDACTED] a Happy Father's Day. Officer Dibiase had no recollection of conducting a traffic stop of Mrs. [REDACTED] and denied the allegation. While Mrs. [REDACTED] provided a credible and consistent account of the incident and Department reports and the photograph by Mrs. [REDACTED] give credence to her account of the incident, the statement, "Happy Father's Day" is, in and of itself, not rude or unprofessional. In fact, the statement could have been directed at [REDACTED] a male, who was twenty-four years old at the time of the stop. Based on the totality of the circumstances this allegation is NOT SUSTAINED.

COPA finds **Allegation #3 SUSTAINED**, in that Officer Jonathan DIBIASE failed to complete and Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED] Based on Mrs. [REDACTED] consistent and credible account of the incident and Department reports, there is a preponderance of evidence to believe the incident occurred as Mrs. [REDACTED] related. Therefore, an Investigatory Stop Report should have been completed by Officer Dibiase and the other Involved Members documenting the traffic stop of Mrs. [REDACTED] but it was not.

Officer Fortino GARIBAY:

COPA finds **Allegation #1 NOT SUSTAINED**, in that Officer Fortino GARIBAY conducted a traffic stop of Mrs. [REDACTED] without justification for the same reasons as Officer Dibiase.

COPA finds **Allegation #2 SUSTAINED**, in that Officer Fortino GARIBAY failed to complete and Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]. Based on Mrs. [REDACTED] consistent and credible account of the incident and Department reports, there is a preponderance of evidence to believe the incident occurred as Mrs. [REDACTED] related. Therefore, an Investigatory Stop Report should have been completed by Officer Garibay and the other Involved Members documenting the traffic stop of Mrs. [REDACTED] but it was not.

Officer Matt DERCOLA:

COPA finds **Allegation #1 NOT SUSTAINED**, in that Officer Matt Dercola conducted a traffic stop of [REDACTED] without justification for the same reasons as Officer Dibiase.

COPA finds **Allegation #2 SUSTAINED**, in that Officer Matt Dercola failed to complete and Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]. Based on Mrs. [REDACTED] consistent and credible account of the incident and Department reports, there is a preponderance of evidence to believe the incident occurred as Mrs. [REDACTED] related. Therefore, an Investigatory Stop Report should have been completed by Officer Dercola and the other Involved Members documenting the traffic stop of Mrs. [REDACTED] but it was not.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Jonathan Dibiase****i. Complimentary and Disciplinary History****1. Complimentary History:**

- a. 210 Honorable Mentions
- b. 15 Department Commendations
- c. 3 Unit Meritorious Performance Awards
- d. 3 Traffic Stop of the Month Awards
- e. 3 Police Officer of the Month Awards
- f. 3 Honorable Mention Ribbon Awards
- g. 16 Other Awards

2. Disciplinary History: 2020-Reprimand for Court Appearance**ii. Recommended Penalty, by Allegation**

1. Allegation No. 3

Based on the totality of circumstances, there is a preponderance of evidence that this incident more than likely occurred as reported by Mrs. [REDACTED] than not. COPA recommends a 3-day suspension.

b. Officer Fortino Garibay**i. Complimentary and Disciplinary History**

- a. 145 Honorable Mentions
- b. 12 Department Commendations
- c. 4 Unit Meritorious Performance Awards
- d. 2 Complimentary Letters
- e. 2 Special Commendations
- f. 2 Honorable Mention Ribbon Awards
- g. 11 Other Awards

iii. **Disciplinary History:** None

ii. Recommended Penalty, by Allegation**1. Allegation No. 2**

Based on the totality of circumstances, there is a preponderance of evidence that this incident more than likely occurred as reported by Mrs. [REDACTED] than not. COPA recommends a 3-day suspension.

b. Officer Matt Dercola**i. Complimentary and Disciplinary History**

- a. 160 Honorable Mentions
- b. 10 Department Commendations
- c. 6 Complimentary Letters
- d. 5 Unit Meritorious Performance Awards
- e. 2 Special Commendations
- f. 16 Other Awards

ii. **Disciplinary History:** None

ii. **Recommended Penalty, by Allegation**

1. **Allegation No. 2**

Based on the totality of circumstances, there is a preponderance of evidence that this incident more than likely occurred as reported by Mrs. [REDACTED] than not. COPA recommends a 3-day suspension.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer J. DIBIASE	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Were rude and unprofessional by wishing [REDACTED] a Happy Father’s Day.	Not Sustained
	3. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 Days Suspension
Officer F. GARIBAY	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 Days Suspension
Officer M. DERCOLA	1. Conducted a traffic stop of [REDACTED] [REDACTED] without justification.	Not Sustained
	2. Failed to complete an Investigatory Stop Report regarding the traffic stop of [REDACTED] [REDACTED]	Sustained/3 Days Suspension

Approved:

[REDACTED]

8-25-2021

Angela Hearts-Glass
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Darren Bowens
Supervising Investigator:	Andrew <u>Dalkin</u>
Deputy Chief Administrator:	Angela Hearts-Glass