

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	May 07, 2018/ 6:45 p.m. / 5700 W. Corcoran Place
Date/Time of COPA Notification:	May 08, 2018/ 1:20 p.m.
Involved Officer #1:	David Hardt, star #14529, employee ID # [REDACTED], Date of Appointment August 31, 2012, Police officer, Unit of Assignment 015 th District, DOB [REDACTED], 1985, Male, White.
Involved Officer #2:	Jeffery Allen, star #1851, employee ID # [REDACTED], Date of Appointment March 26, 1990, Sergeant of Police, Unit of Assignment 015 th District, DOB [REDACTED], 1964, Male, White.
Involved Individual #1:	[REDACTED], DOB [REDACTED], 1990, Male, Black.
Case Type:	Unnecessary Physical Contact/Improper Search

I. ALLEGATIONS

Officer	Allegation	Finding
Officer David Hardt	<p>It is alleged that on or about May 7, 2018, at approximately 6:45 p.m., at or near 5700 W. Corcoran Place, Officer Hardt:</p> <ol style="list-style-type: none"> 1. Pulled [REDACTED] out of the vehicle without justification. 2. Stated words to the effect of, “shut the fuck up.” 3. Searched the front area of Mr. [REDACTED]’s vehicle without justification. 4. Handcuffed Mr. [REDACTED] too tightly. 	<p>Exonerated</p> <p>Sustained</p> <p>Sustained</p> <p>Unfounded</p>
Sergeant Jeffery Allen	<p>It is alleged that on or about May 7, 2018, at approximately 6:45 p.m., at or near 5700 W. Corcoran Place, Sgt. Allen:</p> <ol style="list-style-type: none"> 1. Accused Mr. [REDACTED] of being affiliated with gangs, drug sales, and/or having firearms relating to an arrest in 2015 at or about 5226 W. Quincy St. 2. Referred to Mr. [REDACTED] as “a little fag.”¹ 	<p>Exonerated</p> <p>Sustained</p>

¹ Mr. [REDACTED] did not make this allegation. COPA brought the allegation based on Sgt. Allen’s own body-worn camera recording.

II. SUMMARY OF EVIDENCE²

On May 7, 2018, Officers David Hardt and Daniel Trakes³ stopped [REDACTED] and passanger [REDACTED] for a broken taillight.⁴ In his statement to COPA and a letter he sent to the Commander of the 15th District, Mr. [REDACTED] complained that he was unlawfully stopped, handcuffed and his car was searched without justification. He described the officers as aggressive. COPA reviewed relevant Department paperwork, complainant and witness interviews as well as relevant Body-worn camera (“BWC”) recordings of the incident. The following is a summary of the facts found by COPA.

Officer Hardt curbed the vehicle after observing the driver’s side taillight out. Upon approach Officer Hardt asked Mr. [REDACTED] for his license and insurance and upon inquiry informed Mr. [REDACTED] the reason for the stop. Mr. [REDACTED] acknowledged that he was aware the light was out and asked Officer Hardt if the officer had a record that he was stopped for the same offense earlier that day. Officer Hardt said he did not and asked Mr. [REDACTED] for his license and insurance. As Mr. [REDACTED] appeared to look through his phone, Officer Hardt told Mr. [REDACTED] to get his license. Mr. [REDACTED] reached toward his right rear pocket and Officer Hardt immediately opened the van door and grabbed Mr. [REDACTED] by the wrists. Officer Hardt, with a far more assertive tone, instructed Mr. [REDACTED] to get out of the car. Mr. [REDACTED] stayed seated while protesting the reasons for the Officer Hardt’s response. Both go back and forth, Officer Hardt repeating his instructions to exit while Mr. [REDACTED] insists the officer take his hand off him. Mr. [REDACTED] begins to exit the car, while stating I agree to exit the car but take your hands off me. Officer Hardt physically assisted Mr. [REDACTED] out of the car and placed him in handcuffs. Officer Hardt retrieved Mr. [REDACTED]’s license from his pants pocket, then went to the passenger side and asked Mr. [REDACTED] to exit. Mr. [REDACTED] demanded a supervisor be called as he was detained. Both men were cuffed while Officer Hardt went to his PDT to run their criminal and driving history.

Additional officers arrived, including Sgt. Jeffrey Allen. Sgt. Allen attempted to explain the situation to Mr. [REDACTED] and de-escalate the situation. Mr. [REDACTED] continued to express his protest of both his detention and handcuffing. Sgt Allen informed Mr. [REDACTED] that he needed to show proof of insurance and Mr. [REDACTED] was provided his phone so he could do so. Mr. [REDACTED] was able to move his arms enough to use his phone and did not complain at any point that his handcuffs were too tight.

After entering information into his PDT, Officer Hardt entered the front passenger door and began to search. Officer Hardt moved what appeared to be garbage from the ground between the two front captains’ seats, attempted to open the glove box and searched the foot well area

²COPA 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.

³ PO Trakes, #7546, left the Chicago Police Department on November 8, 2018, prior to being served allegations in this matter.

⁴ Mr. [REDACTED] acknowledged that he knew the taillight was broken because he had been stopped earlier for the same issue. The officers ultimately issued citations for the broken taillight and no city sticker. Officer Hardt also completed an Investigatory Stop Report for this incident.

before moving to the driver's side. Officer Hardt looked through the door compartments and under the rugs.

During the traffic stop, Sgt. Allen got into Officer Hardt's vehicle and telephoned someone to ask about Mr. [REDACTED], whom he referred to as a "little fag." After getting off the phone, Sgt. Allen asked Mr. [REDACTED] about an incident that happened two years earlier,⁵ but Mr. [REDACTED] said he was living out of state at that time and was not involved in the incident Sgt. Allen mentioned.

In his statement to COPA, Sgt. Allen said he called his Confidential Informant ("CI") to find out information about Mr. [REDACTED] in an effort to de-escalate the situation. The CI told Sgt. Allen he thought Mr. [REDACTED] was involved in a previous incident with him. However, when Sgt. Allen tried to talk to Mr. [REDACTED] about it, Mr. [REDACTED] denied his involvement and got upset. Sgt. Allen acknowledged referring to Mr. [REDACTED] as a "little fag" explaining that it was because it is the kind of language, he and his CI use when getting information.

Officer Hardt admitted that he used the word "fuck" when speaking with Mr. [REDACTED] but explained that he used that language only to gain control of Mr. [REDACTED].⁶ Officer Hardt said he searched the front area of Mr. [REDACTED]'s vehicle because Mr. [REDACTED] had been fidgeting around the center console area.

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.

⁵ This incident happened on the same block as the address on Mr. [REDACTED]'s ID.

⁶ BWC recordings reveal Officer Hardt told Mr. [REDACTED] to "get out of the fucking car" when Mr. [REDACTED] was not cooperating. He did not tell Mr. [REDACTED] to "shut the fuck up" as Mr. [REDACTED] alleged.

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.

IV. ANALYSIS AND CONCLUSION

COPA finds that **Allegations #1 against Officer Hardt is Exonerated**. It is well settled that officers may ask the occupants of a vehicle to exit during a traffic stop.⁷ It is undisputed that Mr. ██████'s vehicle had a taillight burned out.⁸ As such, Officer Hardt did not violate Mr. ██████'s constitutional rights when he asked him to exit.

COPA finds that **Allegations #2, and #3 against Officer Hardt are Sustained**. In contrast to Mr. ██████'s complaint, the BWC recordings revealed Officer Hardt never said "shut the fuck up," but instead said "Get the fuck out of the car." Officer Hardt stated he used the word "fuck" as a control tactic after Mr. ██████ repeatedly refused to follow commands. However, the BWC also shows that Officer Hardt opened the door and grabbed Mr. ██████ before ever ordering him to exit the car. In fact, the officer's actions followed a request to produce a driver's license. COPA is unconvinced that Officer Hardt's language was reasonable or necessarily to perform a lawful police function. Moreover, use of profanity directed at civilians violates departments missions and objectives. Therefore, the allegation is sustained.

Finally, Officer Hardt also admitted he searched the front area of Mr. ██████'s vehicle. Officer Hardt articulated that Mr. ██████'s movements were typical behavior of someone attempting to hide a weapon and/or drugs. Officers are permitted to conduct limited searches of vehicles if they have reasonable suspicion that they contain a weapon⁹ or probable cause that they contain other contraband.¹⁰ Neither exception to the warrant requirement are present in the instant case. BWC clearly shows that Mr. ██████ was moving to unclip his seat belt or reach for his pocket when Officer Hardt entered the vehicle. COPA finds no observable facts leading to reasonable belief Mr. ██████ was moving toward a weapon or hiding contraband. Moreover, the search was conducted after both men were removed from the car, in cuffs and Officer Hardt had run a search via his PDT. Therefore, the search violated Mr. ██████'s constitutional rights and the allegations is sustained.

COPA finds that the **Allegation #4 against Officer Hardt is Unfounded**. Mr. ██████ never complained that the handcuffs were on too tight and was able to move his arms about freely enough to use his phone. Based on the BWC footage, COPA finds the allegation exonerated.

⁷ *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)

⁸ Chicago Ordinance 9-76-050(c) in relevant part explains that motor vehicles are required to have at least *one* lighted lamp which shall be so situated as to throw a red light visible for at least 500 feet in the reverse direction. In contrast, Illinois statute requires two reverse lamps. Based on the principles of the Illinois "Home Rule," courts have held the local law prevailing over that of the State law.

⁹ *Michigan v. Long*, 463 U.S. 1032 (1983).

¹⁰ *Maryland v. Dyson*, 527 U.S. 465 (1999).

COPA finds that **Allegations #1 against Sgt. Allen is Exonerated, and Allegation #2 is Sustained.** Sgt. Allen called his CI to find out more information about Mr. [REDACTED]. During that call he referred to Mr. [REDACTED] as a “little fag.” While Sgt. Allen explained that he was simply using the language his CI uses, there is no excuse that mitigates Sgt. Allen’s conduct. Department members are prohibited from engaging in “any action or conduct which imped[s] the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”¹¹ Department policy mandates that all members “treat all persons with the courtesy and dignity which is inherently due every person as a human being” and do so while “speak[ing] ... in a professional manner and maintain[ing] a courteous attitude in all contacts with the public.”¹² Additionally, Department Rules prohibit a member from showing “[d]isrespect to or maltreatment of any person, while on or off duty.”¹³ Here, the video and photographic evidence showing Sgt. Allen engaged in his official capacity as a Department member, directing derogatory homophobic slur towards a member(s) of the public is irrefutable and speaks for itself. It is undisputed that Sgt. Allen’s actions fail to comply with Department policy mandating that members “treat all persons with courtesy and respect” while “speak[ing] in a professional manner.” Additionally, Sgt. Allen’s actions bring “discredit upon the Department,” and the law enforcement profession as a whole. As such Allegation 2 is sustained.

In contrast to allegation 2, Sgt. Allen is directed and authorized to use information he lawfully gathers to further any investigation. Questioning Mr. [REDACTED] about prior activity or affiliation with criminal acts does not violate policy or law.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer David Hardt

COPA sustained the allegation that Officer Hardt improperly searched the complainants vehicle and stated, “get the fuck out” toward the complainant without justification. COPA has considered Officer Hardt’s training, complimentary and lack of any disciplinary history when making this recommendation. The search of the vehicle was without probable cause or reasonable articulable suspicion that Mr. [REDACTED] had a weapon. Additionally, after demanding Mr. [REDACTED]’s license he immediately opened the door, grabbed Mr. [REDACTED] and demanded, using profanity, he exits the car. There was no reason for the profanity, it was disrespectful and in the context demeaning. COPA suggests a 3-day suspension

b. Sergeant Jeffery Allen

COPA sustained the allegation that Sergeant Allen called Mr. [REDACTED] a “little fag.” COPA has considered Sergeant Allen’s training, complimentary and lack of any disciplinary history when making this recommendation. Using such a derogatory term is offensive, demeaning, and undermines the missions of the Department. COPA is conscious that the

¹¹ Article V, Rule 2 of the Rules and Regulations of the Chicago Police Department

¹² G02-01 III (B); G02-04 II (C).

¹³ Article V, Rule 8 of the Rules and Regulations of the Chicago Police Department

sergeant's statement was not directed toward Mr. [REDACTED], or uttered toward a crowd of civilians, however the use of such language is nonetheless powerful, divisive and problematic. Each incident of bigotry erodes what trust exists in the belief in fair government, in no place is that felt more than with police and community. Even assuming Sergeant Allen's comments were benign and intended only to further rapport building with a CI, use of that language to a civilian and in front of his direct report casts a long shadow perpetuating the disenfranchising of marginalized people. Based on the reasons stated, COPA recommends a penalty of 5 days and training.

Approved: [REDACTED]

James Murphy-Aguilu
Deputy Chief Administrator – Chief Investigator

10/27/20

Date

Appendix A

Assigned Investigative Staff

Squad#:	One
Investigator:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	James Murphy-Aguilu