

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	June 15, 2019 / 12:20 pm / 1531 N. Lavergne Avenue, Chicago, IL 60651
Date/Time of COPA Notification:	June 15, 2019 / 1:55 pm.
Involved Officer #1:	Officer Jonathan Diaz / Star #17227 / Employee ID# [REDACTED] / DOA: August 31, 2015 / Unit: 015 / DOB: [REDACTED], 1988 / Male / Hispanic.
Involved Officer #2:	Officer Pierre Tyler / Star #10228 / Employee ID# [REDACTED] / DOA: April 25, 2016 / Unit: 015/314 / DOB: [REDACTED] 1992 / Male / Black.
Involved Individual #1:	[REDACTED] / DOB: [REDACTED] 1969 / Male / Black.
Case Type:	03Q – Improper Search and Seizure

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Jonathan Diaz and Officer Pierre Tyler	1. Stopping Mr. [REDACTED] without justification, in violation of Rule 6. 2. Searching Mr. [REDACTED] without justification, in violation of Rule 6. 3. Failing to comply with S04-13-09, by failing to issue Mr. [REDACTED] an Investigatory Stop Receipt, in violation of Rule 6. 4. Failing to comply with S04-13-09, by failing to complete an Investigatory Stop Report detailing the interaction with Mr. [REDACTED] in violation of Rule 6. 5. Failing to comply with S03-14, by deactivating your Body Worn Camera while still engaged in law-enforcement-related activity, in violation of Rule 6.	Exonerated.. Sustained / 3-day suspension and retraining. Sustained / 3-day suspension and retraining. Sustained / 3-day suspension and retraining. Sustained / 3-day suspension and retraining.

II. SUMMARY OF EVIDENCE¹

Officers Pierre Tyler and Jonathan Diaz (collectively “the Officers”) were observing live POD footage at the 015th District Station when they observed Mr. ██████ engage in a hand-to-hand transaction with an unidentified individual.² After observing ██████ actions the Officers responded to the area of 1531 N. Lavergne Ave., located ██████ and two unidentified males were standing on the sidewalk next to an occupied parked vehicle. The Officers stopped and detained ██████. Once ██████ was detained, Officer Tyler completed a custodial search of ██████ person and Officer Diaz searched ██████ personal effects.³ Once Officer Tyler completed the custodial search, a name check of ██████ was completed. As Officer Tyler was returning ██████ identification and speaking with ██████ both the Officers deactivated their Body Worn Cameras (BWCs.) ██████ was released;⁴ however, he was not provided an Investigatory Stop Receipt nor did the Officers complete an Investigatory Stop Report detailing the interaction with ██████⁵

In his statement to COPA, ██████ alleged he was stopped and searched without justification.⁶ During our investigation COPA identified the procedural allegations detailed above. COPA finds that the stopping allegation is **not sustained** and that all the other allegations are **sustained**.

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

¹COPA 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.

² During his statement, Officer Diaz was unable to recall exactly why ██████ was stopped and detained but explained that he knew the area to be a high drug area and likely observed ██████ engaged in activity akin to a hand-to-hand transaction. *See* Att. 23 from 03:18 to 04:05. During his statement, Officer Tyler explained that the Officers observed, via live POD feed, ██████ engage in a hand-to-hand transaction but that the POD footage was not preserved. *See* Att. 30 from 02:50 to 03:20.

³ Both Officers explained that ██████ had not been arrested and admitted their search was a custodial search. *See* Att. 23 from 04:23 to 04:57; *also see* Att. 30 from 08:30 to 08:35.

⁴ Both Officers acknowledged they deactivated their BWC while still engaged in law-enforcement-related activity. *See* Att. 23 at 08:33; *also see* Att. 30 from 09:04 to 09:48.

⁵ Both Officers admitted failing to provide ██████ an Investigatory Stop Receipt and failing to complete an Investigatory Stop Report. *See* Att. 23 at 07:07:25; *also see* Att. 30 at 09:56.

⁶ ██████ alleged that the Officers demand he lower his pants; however, a review of the BWC footage revealed that ██████ lowered his pants after being asked if he had any contraband on him and that neither Officer requested ██████ to lower his pants. Therefore; COPA determined there was no factual basis for the allegation.

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. *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 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. *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 Allegation #1 against both Officers is **exonerated**. Officers 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.⁷ Here, the Officers observed ██████ engage in what they believed was a hand-to-hand narcotics transaction in a high narcotics area. While there is no POD video to corroborate this observation, COPA finds the officers credible. First, ██████ version of events and those of the Officers were consistent. Additionally, the Officers detained ██████ while he was with four friends but did not detain the other persons indicating the Officers identified ██████ intentionally. While the suspicion must be more than a mere hunch, the Officers articulated the suspected hand-to-hand transaction. Given the area and subsequent officer actions, COPA to finds by clear and convincing evidence that Allegation #1 is **exonerated**.

COPA finds that Allegation #2 against both Officers is **sustained**. Department members are permitted to complete a "warrantless search of a person under *arrest* with or without probable cause to believe there is any contraband or evidence to subject to seizure on the [arrested] person[,]" this type of search is a "custodial search."⁸ Here, it is undisputed that ██████ had not been *arrested*, when the Officers completed what they described as a custodial search of his person and effects. Since ██████ had not been *arrested*. The Officers' search of his person and effects was in violation of Department policy and was improper.

COPA finds that Allegations #3 and 4 against both Officers are **sustained**. 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.⁹ Further, Department members "are required to provide" an Investigatory Stop Receipt to any individual subjected to a

⁷ S04-13-09 II (A).

⁸ G06-01-20 IV(A) (emphasis added.)

⁹ S04-13-09 VIII (A)(1).

“[p]rotective [p]at [d]own or any other search” during an Investigatory Stop.¹⁰ Here, it is undisputed that the Officers stopped and searched [REDACTED]. It is also undisputed that neither officer provided [REDACTED] an Investigatory Stop Receipt, nor did they complete an ISR detailing their interaction with [REDACTED].¹¹

COPA finds that Allegation #5 against the Officers is **sustained**. Department members are permitted to deactivate their BWCs only when “the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity.”¹² The Department defines the “conclusion of law-enforcement-related activity” as instances in which “the member has cleared the assignment;” or “leaves the scene of the incident.”¹³ Here, it is undisputed that the Officers were still on scene and actively engaged in their assigned task, specifically the self-initiated Investigatory Stop of [REDACTED] when they both deactivated their BWC.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Complimentary and Disciplinary History

i. Officer Jonathan Diaz

1. **Complimentary:** 1 Life Saving Award; 1 Superintendent Honorable Mention; 34 Honorable Mentions; 2 Complimentary Letters.
2. **Disciplinary:** None

ii. Officer Pierre Tyler

1. **Complimentary:** 1 Police Officer of the Month; 41 Honorable Mentions; 3 Department Commendations; 1 Special Commendation.
2. **Disciplinary:** None

b. Recommended Penalty, by Allegation

- i. **Allegation No. 2** – 3-days suspension and Retraining on Custodial Searches.
- ii. **Allegation No. 3** – 3-days suspension and Retraining on the Investigatory Stop System.

¹⁰ S04-13-09 VIII (A)(3).

¹¹ COPA notes that the Officers failure to complete an ISR had a direct impact on COPA’s investigation and likely contributed to the Officers’ inability to recall exactly why [REDACTED] was detained.

¹² S03-14 III (B)(1)(a).

¹³ S03-14 III (B)(1)(a)(1) and (2).

iii. Allegation No. 4 – 3-days suspension and Retraining on the Investigatory Stop System.

iv. Allegation No. 5 – 3-days suspension

Both Officers admitted to their misconduct and agreed that their custodial search of [REDACTED] should not have occurred. Additionally, both Officers explained the failure to complete an ISR was due to a breakdown in communication. While the custodial search of [REDACTED] was improper and an unnecessary intrusion, it did not contribute to a prolonged detention nor did it serve as the basis for any additional enforcement action.

Ap [REDACTED]

10/6/20

James Murphy-Aguilu
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	[REDACTED]
Supervising Investigator:	[REDACTED]
Deputy Chief Administrator:	James Murphy-Aguilu