

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	May 23, 2018
Time of Incident:	10:35 pm
Location of Incident:	820 North Springfield Avenue
Date of COPA Notification:	May 24, 2018
Time of COPA Notification:	7:52 am

Mr. [REDACTED] was stopped by Officer Nicu Tohatan and then-Probationary Police Officer (“PPO”) Angel Nunez for failure to display a front license plate.<sup>1</sup> During the stop, Officer Tohatan noticed a pack of pills in the back seat. The Officers ordered Mr. [REDACTED] out of the car and handcuffed him, realizing shortly after that the pack of pills was a sealed vitamin pack from a national retailer of nutritional supplements. Despite this discovery, Officer Tohatan returned to the vehicle and searched it, moving multiple objects and opening and sniffing another one.

During the encounter, Mr. [REDACTED] objected to his treatment, while Officer Tohatan raised his voice and engaged in arguments with Mr. [REDACTED]. Mr. [REDACTED] informed the officers that he had proof of insurance on his phone but he was not asked to show it. At the end of the stop, Mr. [REDACTED] received citations for not displaying a license plate and for not having proof of insurance.

**II. INVOLVED PARTIES**

Involved Officer #1:	Nicu Tohatan Star #18703 / Employee # [REDACTED] Date of Appointment: October 26, 2015 PO / District 011 DOB: [REDACTED], 1984 Male / White
Involved Officer #2:	Angel Nunez Star #16191 / Employee # [REDACTED] Date of Appointment: January 17, 2017 PO / District 011 DOB: [REDACTED], 1987 Male / White Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1965 Male / Black

<sup>1</sup> See 625 ILCS 5/3-413(a).

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Tohatan	<p>It is alleged that, on May 23, 2018, at 10:35 PM, near 820 North Springfield Avenue, Officer Tohatan:</p> <ol style="list-style-type: none"> <li>1. Verbally abused Complainant based on Complainant’s race, in violation of Rules 8 and 9;</li> <li>2. Engaged in an unjustified verbal altercation with Complainant, in violation of Rules 8 and 9;</li> <li>3. Searched Complainant’s vehicle with no justification after he had dispelled his suspicion that the vehicle contained illegal drugs, in violations of Rules 1, 2, 3, 10, and 11; and</li> <li>4. Improperly issued a citation for no insurance to Complainant even though Complainant stated that he had proof of insurance on his phone, in violation of Rules 2 and 11.</li> </ol>	<p><b>UNFOUNDED</b></p> <p><b>SUSTAINED/ 7 days</b></p> <p><b>SUSTAINED/ 7 days</b></p> <p><b>SUSTAINED/ 7 days</b></p>

**IV. APPLICABLE RULES AND LAWS**

**Rules** – The following acts are prohibited:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

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

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 10: Inattention to duty.

Rule 11: Incompetency or inefficiency in the performance of any duty.

---

**Special Orders**

---

1. Special Order S04-14-02: Traffic Court Citing and Scheduling
- 

**Federal Laws**

---

1. Fourth Amendment, United States Constitution
- 

**State Laws**

---

1. 625 ILCS 5/3-413: Display of registration plates, registration stickers, and drive-away permits; registration plate covers.
2. 625 ILCS 5/7-602: Insurance card. (“Illinois Safety and Family Financial Responsibility Law,” part of the Illinois Vehicle Code.)

**[The remainder of the page is left intentionally blank.]**

## V. INVESTIGATION<sup>2</sup>

### a. Digital Evidence<sup>3</sup>

COPA obtained video footage of the incident from the Chicago Police Department. The video came from four sources: Officer Angel Nunez's<sup>4</sup> body-worn camera ("BWC")<sup>5</sup>; Officer Nicu Tohatan's BWC<sup>6</sup>; the in-car camera ("dashcam")<sup>7</sup>; and Sgt. Ramiro Aguirre's BWC<sup>8</sup>.

The videos show Officers Nunez and Tohatan stopping a vehicle, exiting the police car, and walking to either side of the stopped vehicle—Officer Nunez on the driver side and Officer Tohatan on the passenger side. Officer Nunez instructs the driver to lower the windows; after the driver lowers the front windows, Officer Nunez instructs him to lower the back windows as well. Officer Tohatan repeats the instruction as the driver lowers the back window.

Officer Nunez informs the driver, now identified as Mr. ██████ that he was stopped because he did not have a front license plate. As Mr. ██████ is explaining to Officer Nunez that the license plate was "bent down," Officer Tohatan instructs him to turn off the vehicle. Mr. ██████ ignores Officer Tohatan and tells Officer Nunez that Officer Tohatan seems nervous. Officer Nunez then instructs Mr. ██████ to turn off the car and, after asking why, Mr. ██████ complies.

Mr. ██████ asks to get a Sergeant to the scene and Officer Nunez says that would be fine, but first he must see the license. Officer Nunez assures Mr. ██████ that it is a simple traffic stop and that he just needs Mr. ██████ license and insurance. Officer Nunez sees Mr. ██████ FOID card in his wallet and asks him whether there are any weapons in the vehicle; Mr. ██████ responds in the negative. While Mr. ██████ is getting his license, Officer Tohatan tells him to step out of the car. Mr. ██████ asks why and contends that he does not have to step out. After Officer Tohatan, and then Officer Nunez, repeat the instruction four times, Officer Tohatan finally explains to Mr. ██████ that there is a bag with pills in the back seat. Mr. ██████ seemingly dials a number on his phone, puts the cigar in his mouth, and exits the vehicle.

Immediately after Mr. ██████ exits the vehicle, Officer Tohatan walks over to his side, instructs him to put his ██████ behind his back, and handcuffs him. Mr. ██████ presumably talking to an operator on the other end of the line via an earpiece, states that he is being harassed by Chicago police officers.

---

<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> Att. 24 (Cover Sheet).

<sup>4</sup> Officer Nunez was a PPO at the time of the incident. At the time of his COPA interview, Officer Nunez was one day away from completing his probationary period. At the time of the completion of the investigation, Officer Nunez had completed his probationary period. For ease of reference, he will be referred to as Officer Nunez throughout this Summary Report of Investigation.

<sup>5</sup> Att. 24.3.

<sup>6</sup> Att. 24.2.

<sup>7</sup> Att. 24.1.

<sup>8</sup> Att. 24.4.

As the officers are walking Mr. ██████ to the front of the police car, Officer Tohatan asks, “What’s up with the pills in the clear bag on the back seat, sir?” Mr. ██████ contends that they are vitamins and Officer Nunez explains that they cannot know that without turning them around. Officer Tohatan, meanwhile, is walking back to Mr. ██████ vehicle, saying, “That’s a felony charge, just so you know.”<sup>9</sup> Officer Tohatan retrieves the pills and turns them around to see that they are in GNC packaging.

Mr. ██████ says that they are GNC pills. Officer Tohatan, with his voice getting louder, asks Mr. ██████ “What do they look [like] here? What does it look like?” Officer Tohatan throws the pills on the hood of the car. Mr. ██████ says that it does not make sense, and Officer Tohatan responds, again with his voice getting louder, “Yes it does make sense.”

Officer Tohatan returns to Mr. ██████ car and goes to the back seat where he found the pills. He moves some items, including what appears to be clothing, a hat, and a CD cover. Meanwhile, Mr. ██████ is presumably speaking to dispatch, asking to speak to a Sgt. Omar. As Officer Tohatan hears Mr. ██████ complaining on the phone, he returns to Mr. ██████ side. “It’s all recorded on video. That’s a clear bag, it was facing with the clear side up, with no markings at all.” Mr. ██████ points out that it has markings, and Officer Tohatan flips the pack to have the clear side facing up, showing Mr. ██████ that it has no markings on one side. Officer Tohatan says loudly, “Do you see markings here? Show me the markings.” Officer Tohatan takes off his body-worn camera and points it directly at the pack. “That’s on camera right now, okay?” Meanwhile, Mr. ██████ is telling the person on the other side of the phone conversation that Officer Tohatan has already flipped the pack and confirmed that it is a GNC pack.<sup>10</sup>

Officer Tohatan then walks back to the passenger side of Mr. ██████ car, retrieves a small bottle from the car, opens its cap, brings it to his nose, then replaces the cap and returns the bottle. He returns to Mr. ██████ takes the license from his cuffed ██████ and asks Mr. ██████ if he has insurance. Officer Tohatan continues walking towards the police car before Mr. ██████ answers. Next, Officer Nunez asks Mr. ██████ whether he has proof of insurance on his phone and Mr. ██████ answers in the affirmative.

As Officer Tohatan is using the Portable Data Terminal (“PDT”) in his car, Officer Nunez and Mr. ██████ are standing calmly—Mr. ██████ handcuffed, and Officer Nunez scanning the scene. A call can be heard on the radio stating that a supervisor is requested on Chicago and Springfield (where the stop occurred) and that a Mr. ██████ has complained of being harassed by CPD. Later, Officer Tohatan asks Officer Nunez about Mr. ██████ insurance. Officer Nunez responds that Mr. ██████ has proof of insurance on his phone. At this point, Mr. ██████ is still handcuffed.

---

<sup>9</sup> Att. 24.2 at 2:40.

<sup>10</sup> It seems that there was a miscommunication between Mr. ██████ and the officers. Mr. ██████ was stating that the officers had *already confirmed* that the pills were part of a GNC pack. The officers were stating that they could not *initially* know whether it contained illicit substances without flipping it over. As explained in the analysis below, any problem with the search did not involve the initial contact with the pack of pills to confirm whether it contained illicit substances; rather, it is the search that Officer Tohatan conducted *after* dispelling himself of the suspicion that was problematic.

More than seven minutes after Officer Tohatan handcuffed him, Mr. [REDACTED] is uncuffed and instructed to sit in his car and wait for the supervisor he requested. The officers return to their car. At some point, Officer Tohatan states that, even though Mr. [REDACTED] vehicle is registered in Olympia Fields, he will still write him a ticket for not displaying a city sticker because he stated that he lived on the block. A supervisor, identified as Sgt. Aguirre, arrives, and he speaks with Officer Tohatan about what transpired. Officer Tohatan implies that Mr. [REDACTED] was angry and loud—the video shows that he was not—and does not mention anything about the additional search of the vehicle. Officer Tohatan tells Sgt. Aguirre that they placed Mr. [REDACTED] in cuffs until they verified what the pill pack contained, while the video shows seven minutes elapsed between identifying the pack as containing GNC pills and uncuffing Mr. [REDACTED]. Officer Tohatan stated that Mr. [REDACTED] had a “huge problem” with them investigating the suspected narcotics; based on the video, Mr. [REDACTED] did not raise his voice or become aggressive. Officer Tohatan also tells Sgt. Aguirre that Mr. [REDACTED] does not have “insurance on him,” without mentioning that Mr. [REDACTED] offered to show them digital proof of insurance on his phone.

Sgt. Aguirre speaks with Mr. [REDACTED] and apologizes for the situation but not for any specific actions by the officers. After realizing that he will be receiving a citation for not having his vehicle insured, Mr. [REDACTED] says that he would like to file a complaint because he was not allowed to show his proof of insurance. Sgt. Aguirre instructs Mr. [REDACTED] that he may file a complaint if he wishes, either with him or with COPA.

Mr. [REDACTED] exits the vehicle and asks if he can have his license back. Officer Tohatan tells him he will get it at court. When Mr. [REDACTED] asks again why he received a no-insurance ticket, Officer Tohatan informs that digital proof of insurance is not sufficient: “You have to have a hard card—on the phone is not acceptable.” Mr. [REDACTED] responds, “That is a total lie. Now you are lying.” Officer Tohatan tells Mr. [REDACTED] to tell it to the judge. Mr. [REDACTED] contends that Officer Tohatan needs to be taken off the streets, and Officer Tohatan once again engages: “Why? Because we’re giving tickets? Why? Because we’re giving tickets?” Mr. [REDACTED] responds by stating what he has stated throughout the encounter, that Officer Tohatan is simply too aggressive. The parties continue talking, with Officer Tohatan arguing with Mr. [REDACTED] that his opinion is just that, an opinion, and that the camera has been recording the entire time.

As Mr. [REDACTED] goes to pull over his vehicle so that he can file his complaint with Sgt. Aguirre, he states that he will file a complaint so that everybody knows about Officer Tohatan, who responds, “Yeah sure. Alright.” Officer Tohatan then tells the Sergeant, “Everybody wants to get a number on me, Sarge, when I give ‘em tickets. Everybody, alright?”

## **b. Interviews**

### **i. [REDACTED] – Complainant<sup>11</sup>**

COPA interviewed Mr. [REDACTED] on June 1, 2018. He stated that on the date and time in question he had finished work early, visited a cigar shop, and was on his way home to a building he owns at [REDACTED]. Mr. [REDACTED] described his front plate as having been “flipped down” during a vehicle cleaning. While Mr. [REDACTED] was still driving on Chicago Avenue, he saw the

---

<sup>11</sup> Att. 7.

officers turn around. The officers followed him and stopped him after he turned onto Springfield. Mr. [REDACTED] found it strange that the officers would wait to stop him on a side street with bad lighting; a better lit street would have been safer for both the officers and Mr. [REDACTED]

Mr. [REDACTED] said that he was nervous because of the current climate of distrust between the police and the community. The officers told him to lower his windows, which he did not hear at first. He lowered his windows after he heard the instructions. An officer, now identified as Officer Nunez, asked him for license and insurance. Mr. [REDACTED] retrieved his license and was attempting to pull up proof of insurance on his phone. He also had a phone headset in his ear. Officer Nunez explained to Mr. [REDACTED] that he was stopped because he did not have a front license plate.

Mr. [REDACTED] said that he was nervous because, while Officer Nunez was handling the situation professionally, Officer Tohatan was “overly aggressive” and was sometimes giving instructions at the same time as Officer Nunez. For example, Mr. [REDACTED] said, Officer Nunez was asking him for his proof of insurance while Officer Tohatan was instructing him to keep his [REDACTED] visible.

Mr. [REDACTED] stated that Officer Nunez saw his Firearm Owners Identification, which prompted him to ask if he had any weapons. Officer Tohatan, who was on the passenger side, instructed Mr. [REDACTED] to get out of his car. Mr. [REDACTED] asked why, but Officer Tohatan just repeated the instruction before finally telling Mr. [REDACTED] that there was a pack of pills in the back seat. The pills were a vitamin pack sold by GNC under the Mega Men® Vitapak® label, and were in a small sealed plastic bag, clear on one side and with conspicuous GNC labelling on the back. While getting out of the car, Mr. Tohatan dialed 911 to request a Sergeant’s presence. Immediately after Mr. [REDACTED] exited the car, Officer Tohatan handcuffed him and moved him to the front of the police car but did not search him or pat him down.

Next, Officer Tohatan returned to Mr. [REDACTED] vehicle and searched it without asking for consent to do so. Mr. [REDACTED] stated that, when Officer Tohatan returned with the bag of pills, he purposefully placed the pack “upside-down” on the hood of the police car so that the clear, unlabeled side was faceup.

After the officers uncuffed Mr. [REDACTED] they directed him to his car to await the arrival of the supervisor he requested. A CPD member in a white shirt, now identified as Sgt. Aguirre, arrived. He spoke with the officers then approached Mr. [REDACTED] vehicle to speak with him in a professional manner, apologizing for the situation.

At the end of the stop, when Mr. [REDACTED] realized that they were ticketing him for not having proof of insurance, he decided to file a complaint. Mr. [REDACTED] felt that Officer Tohatan only issued the ticket to inconvenience him and make him go to court, despite knowing that electronic proof of insurance is acceptable.

When asked why he alleged that Officer Tohatan was motivated by racial bias, Mr. [REDACTED] explained that it was because he thought Officer Tohatan was acting in a hostile and unprofessional way for no reason. If Officer Nunez had no problem with how Mr. [REDACTED] was acting, he wondered,

why would Officer Tohatan have a problem with him? Mr. ██████ stated that Officer Tohatan did not verbally threaten him in any way.

**ii. Officer Angel Nunez – Witness Officer<sup>12</sup>**

COPA interviewed Officer [then-PPO] Angel Nunez on July 16, 2018. Officer Nunez had been working with Officer Tohatan for about a month and a half preceding the incident and worked with him for approximately two weeks afterwards. Officer Nunez characterized Officer Tohatan as generally respectable with a professional demeanor.

After the officers noticed a vehicle driving without a front license plate, they turned around and followed it, curbing it after it turned onto Springfield. Officer Nunez approached Mr. ██████ on the driver's side, while Officer Tohatan approached on the passenger side.

As Officer Nunez was dealing with Mr. ██████ Officer Tohatan ordered Mr. ██████ out of the car, and Officer Nunez echoed the order. Mr. ██████ finally exited the vehicle after being told to do so three or more times and after Officer Tohatan told him about the pills. Officer Nunez had not noticed the pills until Officer Tohatan pointed them out.

After handcuffing Mr. ██████ the officers moved him to the front of the police car. Officer Tohatan returned to Mr. ██████ car and retrieved the pack of pills. Although Officer Nunez did not see exactly how Officer Tohatan searched the car during the incident, when he observed the In-Car Camera and BWC footage, he realized that Officer Tohatan moved objects around on the back seat and removed an object from the front passenger side before returning it to the car. Officer Nunez believes that Officer Tohatan knew that the pills were a GNC pack before returning to the car to search it.

The remainder of Officer Nunez' account is consistent with the video evidence—it neither contradicts nor adds to it.

**iii. Officer Nicu Tohatan – Accused Officer<sup>13</sup>**

COPA interviewed Accused Officer Nicu Tohatan on July 18, 2018. Prior to the interview, Officer Tohatan reviewed video of the incident as well as the Investigatory Stop Report he prepared following the incident. This summary will not discuss the portions of Officer Tohatan's interview that are consistent with the remaining evidence, i.e. the video recordings and the statements from the Complainant and the Witness Officer. This summary will include portions of the interview where Officer Tohatan's version of what happened differs from the above, or where he provides additional detail or explanation.

Officer Tohatan stated that he ordered Mr. ██████ out of the vehicle in accordance with case law that allows officers to ask subjects to step out of a vehicle so that they can conduct a safe investigation. Officer Tohatan described Mr. ██████ as "very aggressive from the beginning."<sup>14</sup>

---

<sup>12</sup> Att. 22.

<sup>13</sup> Att. 23.

<sup>14</sup> Att. 23 at 15.



Officer Tohatan conceded that, after retrieving the suspected narcotics, “as soon as [he] flipped it over on the back of it,”<sup>15</sup> he realized it was a GNC product.

After Officer Tohatan “figured out that it was actually vitamins,” he walked around the car looking for “anything else that might be contraband or illegal”;<sup>16</sup> when Officer Tohatan was asked whether he had any reason to believe that the vehicle contained contraband, he replied: “the time, the day, the location.”<sup>17</sup> Officer Tohatan stated that he was looking for items in plain view. While doing so, he saw a “small container, clear glass containing a suspect liquid in there.”<sup>18</sup> He retrieved the item, smelled it, and realized it was cologne.

When pressed on whether he manipulated any other objects in Mr. ██████ car, he stated that he went to the spot from which he retrieved the GNC vitamin pack, and that in trying to make sure that the GNC vitamin pack was in fact what he observed earlier from the other side of the vehicle, he “might have touched something, like a sweater or something.”<sup>19</sup> Later, however, Officer Tohatan would admit that he was searching for other pills in addition to the GNC pack.<sup>20</sup>

Officer Tohatan conceded that he moved what looked like a sweat shirt, a hat, and CDs. Officer Tohatan insisted, however, that what he did was not in fact a search; rather, he was looking for items in plain view. When pressed on why he moved the objects, he stated that he can do so if he thinks an object is suspicious based on his plain-view evaluation. But Officer Tohatan could not articulate anything suspicious about the sweater, CDs, or hat. He did, however, suspect that the bottle may have contained an illicit substance. When asked what made him suspicious, he answered, “I don’t recall seeing marks on it. It was – it was a small bottle containing a clear liquid, and I just wanted to make sure there’s – it’s not an illegal substance, or alcohol.”<sup>21</sup>

Officer Tohatan further stated that part of the reason for the “plain-view” sweep of the car was to make sure there were no weapons. However, Officer Tohatan did not search the glove compartment or center console for weapons because he “didn’t want to search the vehicle.”<sup>22</sup>

When asked about the proof of insurance, Officer Tohatan insisted that Mr. ██████ had ample opportunity to show the officers proof of insurance, but that he “never put the phone in my face with the insurance telling me that’s my insurance Officer right here.”<sup>23</sup> Even if Mr. ██████ had shown Officer Tohatan digital proof of insurance, Officer Tohatan is unsure what he would have done, since he admitted that he only discovered that state law allows digital proof of insurance on the day before his COPA interview. Officer Tohatan claimed that, when he went to court regarding Mr. ██████ case, Mr. ██████ did not provide proof of insurance to the judge.

---

<sup>15</sup> *Id.* at 16.

<sup>16</sup> *Id.* at 16 – 17.

<sup>17</sup> *Id.* at 17.

<sup>18</sup> *Id.* at 19.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Id.* at 35 – 36. (Q: “[O]ther pills, other than the GNC pills?” A: “Yes.” Q: “So, a different bag of different pills?” A: “Yes.”)

<sup>21</sup> *Id.* at 66.

<sup>22</sup> *Id.* at 62.

<sup>23</sup> *Id.* at 22.

After viewing the footage described above, Officer Tohatan conceded that Mr. [REDACTED] demeanor was calmer and voice was lower than his own, but insisted that Mr. [REDACTED] demeanor was “more dangerous” and that Officer Tohatan did not feel safe.<sup>24</sup> Officer Tohatan acknowledged that he may have yelled at Mr. [REDACTED] especially during the interaction when he was arguing with Mr. [REDACTED] about the GNC vitamin pack; however, Officer Tohatan insisted he never lost control of the situation. He admits that he threw the vitamin pack on the hood of the car during what he called a disagreement, but he disagreed that he engaged in a verbal altercation with Mr. [REDACTED]

## VI. ANALYSIS

COPA finds that the allegation against Officer Tohatan that he verbally abused Mr. [REDACTED] based on his race is UNFOUNDED; there is no evidence supporting this allegation. There is ample evidence, however, to SUSTAIN the remaining allegations against Officer Tohatan: that he engaged in an unjustified verbal altercation; that he searched Mr. [REDACTED] vehicle with no justification; and that he improperly issued Mr. [REDACTED] a citation.

### a. Allegation 1 – Race-based verbal abuse

The first allegation against Officer Tohatan is that he abused Mr. [REDACTED] based on Mr. [REDACTED] actual or perceived race. There is no evidence to support this claim. Officer Tohatan did not make any statements or gestures suggestive of racial motivation or animus. Mr. [REDACTED] only stated reason for alleging racial bias is that Officer Tohatan was unprofessional and rude while Officer Nunez was not. But that does not suggest racial animus, much less prove it by a preponderance of the evidence. Because there is no evidence to suggest any racial bias motivating Officer Tohatan to stop the Complainant or treat him in a certain way, it is more likely than not that there was no such bias; accordingly, COPA finds that the first allegation is UNFOUNDED.

### b. Allegation 2 – Verbal altercation

Officer Tohatan denied getting into a verbal altercation with Mr. [REDACTED] But the video demonstrates that Officer Tohatan was argumentative and loud during the encounter. He threatened Mr. [REDACTED] with felony charges prior to determining whether Mr. [REDACTED] possessed contraband. Officer Tohatan’s demeanor was aggressive – he twice threw the GNC vitamin pack on the hood of the police car. Officer Tohatan did not use profanity, but that does not mean he carried himself with professionalism and poise. Officer Tohatan should not have yelled or threatened a felony charge, especially without investigating whether Mr. Hand had illegal drugs. His demeanor and behavior, after he confirmed the innocuous nature of the pills, were unjustified. No one should be berated by a police officer, especially the subject of a mere alleged vehicle code violation—not having a front license plate. Mr. [REDACTED] demeanor was calmer than Officer Tohatan’s and he spoke in a softer manner than the officer. Mr. [REDACTED] did not instigate and did not raise his voice. He calmly protested a GNC vitamin pack warranting Officer Tohatan’s mistreatment. Officer Tohatan’s attitude was unjustified; accordingly, the allegation that Officer Tohatan engaged in an unjustified verbal altercation, conducting himself in an unbecoming manner, is SUSTAINED.

---

<sup>24</sup> *Id.* at 34.

### c. Allegation 3 – Unjustified Search



Figure 1. GNC Mega Men® 50 Plus Vitapak®. Source: GNC.com (2018).

Officer Tohatan's order to Mr. ██████ to exit the vehicle, based on his plain view of the bag of pills, was justified. It is more likely than not that the vitamin pack had its clear side facing up, which makes it nearly impossible to identify without further investigation (see Figure 1). Ordering Mr. ██████ out of the vehicle, handcuffing him for officer safety, moving him to stand near the police car, and going back to Mr. ██████ car to retrieve the suspicious pills was entirely appropriate police work since the pack contained pills of different shapes, sizes, and colors, similar to packs of ecstasy that Officer Tohatan had encountered on the job before. It is clear from the video and the interviews that Officer Tohatan—almost immediately—realized that the pill pack was innocuous.

But what Officer Tohatan did after he dispelled his suspicion that the pack contained narcotics did not comport with the Fourth Amendment. When Officer Tohatan saw the pack of pills, he had probable cause to search the vehicle for drugs, which he did, starting with the GNC vitamin pack. Once Officer Tohatan realized that the pack did not contain drugs, there was no longer probable cause to search the vehicle. Officer Tohatan could not articulate a reason for searching the vehicle, although that was not for lack of trying. He provided multiple rationalizations as to why he searched the car, without ever admitting that he conducted a search.

Officer Tohatan first moved around an article of clothing, a hat, and some CDs inside their covers. To explain that search, Officer Tohatan at various times stated that he was looking for other possible drugs or that he was confirming that the pack he recovered was indeed the one he saw. He also mentioned the possibility of a weapon being present in the car. Had Officer Tohatan's actions indeed qualified as a plain-view sweep of the vehicle, his actions would be consistent with the Fourth Amendment. But manipulating and moving around objects constituted a search. And that search was unreasonable because it was not supported by probable cause.



Figure 2. In these four stills from his BWC, Officer Tohatan can be seen moving a sweat shirt, a hat, and CDs.

Additionally, Officer Tohatan removed a bottle from the car and sniffed it. That also constituted a search, and that search was also unreasonable. Officer Tohatan stated that he was suspicious of the bottle because it was small, it had no markings on it, and it contained a clear liquid. Such factors do not give rise to probable cause to believe that the bottle contained contraband. Therefore, the continued search of the vehicle, by removing the bottle

and sniffing it, was a continuation of Officer Tohatan's violation of Mr. ██████ Fourth Amendment rights to be free from unreasonable searches.



Figure 3. Officer Tohatan retrieves a bottle from the car, inspects it, and sniffs it.

Officer Tohatan searched Mr. Hand's vehicle by moving an article of clothing, a hat, CDs, and a bottle. That search was not supported by probable cause. Accordingly, the allegation that Officer Tohatan searched Mr. ██████ car without justification is SUSTAINED.

#### d. Allegation 4 – Improper Citation

The final allegation against Officer Tohatan is that he issued an improper citation to Mr. ██████. As conceded by Officer Tohatan, Illinois law allows for digital proof of insurance.<sup>25</sup> That law took effect in 2013.<sup>26</sup> Officer Tohatan began his Police Academy training in August of 2015. By the time this incident occurred, the law had been in effect for over four years. Officer Tohatan was aware that Mr. ██████ offered to show proof of insurance on his phone; however, Officer Tohatan did not allow Mr. ██████ that opportunity. Issuing a citation without first giving a driver the chance to provide proof of insurance is unreasonable. This no-insurance citation is akin to an officer issuing a citation for driving without a license when that officer did not give the driver the opportunity to produce her license.

Whether or not Mr. ██████ presented proof of insurance in court is irrelevant. Similarly, what Officer Tohatan *would have done* had he seen the electronic proof of insurance is also irrelevant. What is relevant is that, when the driver told him that he had proof of insurance, Officer Tohatan did not afford him the chance to produce it. Officer Tohatan's suggestion that Mr. ██████ should have "put the phone in [his] face" is unreasonable for two reasons. First, Mr. ██████ was handcuffed for a substantial portion of the stop before he was told to go wait in his car. Second, Officer Tohatan insisted that this stop involved elevated risk due to the location, time of day, and

<sup>25</sup> 625 ILCS 5/7-602.

<sup>26</sup> See, e.g., ABC7 Eyewitness News, Aug. 23, 2013, *Gov. Quinn passes law allowing electronic proof of insurance*, <https://abc7chicago.com/archive/9217064/> (last accessed September 6, 2018).



tinted windows. Mr. [REDACTED] approaching the officers with a phone and placing it in their faces after they sent him to his car would not have been prudent; after all, he was following the instructions given to him by the officers after they handcuffed him and searched his vehicle.

Special Order S-04-14-02 (Traffic Court Citing and Scheduling) states that “the sworn member will . . . accept the driver’s license and proof of insurance...” Officer Tohatan did not accept the driver’s proof of insurance and therefore violated the special order.

Because Officer Tohatan did not allow Mr. [REDACTED] a chance to prove that he had insurance, Officer Tohatan’s citation was improper. Accordingly, the fourth allegation against Officer Tohatan is SUSTAINED.

**VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. Officer Nicu Tohatan**

**i. Complimentary and Disciplinary History**

Officer Tohatan has thirty-two Honorable Mentions and his disciplinary history consists of two reprimands for policy violations related to court appearances and equipment.

**ii. Recommended Penalty, by Allegation**

A common aggravating factor for all three sustained allegations is that Officer Tohatan had a Probationary Police Officer with him. Officer Tohatan was entrusted by CPD with the task of showing then-PPO Nunez policework that was responsible and within regulations. Another aggravating factor is the fact that Officer Tohatan had been an officer for more than two and a half years at the time of the incident. COPA could find no mitigating factors in this case.

Accordingly, COPA recommends a seven-day suspension for each allegation, with each suspension to run concurrently.

**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Tohatan	It is alleged that, on May 23, 2018, at 10:35 PM, near 820 North Springfield Avenue, Officer Tohatan: <ol style="list-style-type: none"> <li>1. Verbally abused Complainant based on Complainant’s race, in violation of Rules 8 and 9;</li> </ol>	<b>UNFOUNDED</b>

- 2. Engaged in an unjustified verbal altercation with Complainant, in violation of Rules 8 and 9;
- 3. Searched Complainant's vehicle with no justification after he had dispelled his suspicion that the vehicle contained illegal drugs, in violations of Rules 1, 2, 3, 10, and 11; and
- 4. Improperly issued a citation for no insurance to Complainant even though Complainant stated that he had proof of insurance on his phone, in violation of Rules 2 and 11.

**SUSTAINED/  
7 days**

**SUSTAINED/  
7 days**

**SUSTAINED/  
7 days**

Approved:



Angela Hearts-Glass  
*Deputy Chief Administrator – Chief Investigator*

11-27-18

Date

Appendix A

Assigned Investigative Staff

---

<b>Squad#:</b>	11
<b>Investigator:</b>	Tamer Abouzeid
<b>Supervising Investigator:</b>	Brian Dollar
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass
<b>Attorney:</b>	Gino Betts