

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

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| Date of Incident: | December 9, 2015 |
| Time of Incident: | 5:30 p.m. |
| Location of Incident: | 65 E. North Water Street |
| Date of IPRA Notification: | December 14, 2015 |
| Time of IPRA Notification: | 6:28 p.m. |

On December 9, 2015, there was a Black Lives Matter demonstration taking place in downtown Chicago. The demonstration, coupled with general holiday season activity, led to large crowds of people on and around Michigan Avenue. For this reason, a large contingency of police officers from different units and departments were on duty in the area. Illinois State Police were monitoring cameras up and down Michigan Avenue when they observed a man with a gun in his waistband. Illinois State Police transmitted a description of the subject over Citywide radio. The description was of a tall white male with red hair, in his early twenties, wearing a green hat. Illinois State Police continued to transmit the location and movement of the subject as he made his way south on Michigan Avenue, stopping at a Nike store, and then continuing toward the Wrigley Building.

At roughly the same time, ██████ left his office at ██████ to go meet a friend at the Billy Goat Tavern, located at 430 North Lower Michigan Avenue. Other than being 36 years old and not wearing any hat, ██████ fit the physical description that had been transmitted on the radio; ██████ was a tall white male with red hair. ██████ walked south on Wabash to Kinzie and then east to Rush, never stepping on Michigan Avenue. At this point, Chicago Police Officers quickly approached ██████ pointed their firearms at him, and ordered him to "drop it" and raise his hands. The officers placed ██████ in handcuffs, conducted a field interview and pat down of ██████ and searched ██████ bag, tearing open a box of audio equipment located inside. The officers determined that ██████ did not have a weapon. After his name check came back clear, the officers let ██████ go and completed a Contact Card.

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

This case was initiated under IPRA and COPA acknowledges that this investigation may have endured periods of delayed and/or no investigative activity prior to COPA. While there may be legitimate cause for the delay, such was not noted in the file. Since launch, COPA has undertaken a concerted effort to facilitate the expeditious review of all cases initiated under IPRA while ensuring that each complaint has been subject to a full and thorough investigation prior to its closure.

COPA’s investigation addressed allegations regarding the officers’ detention of ██████ display of weapons, and search of ██████ belongings. COPA’s investigation demonstrates the officers’ actions were not justified.

II. INVOLVED PARTIES

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| Involved Officer #1: | Michael Wagner, Star #14637 Employee ID # ██████ Date of Appointment: November 30, 2012 Rank: Police Officer Unit of Assignment: 018 DOB: ██████, 1986 Gender: Male Race: White |
| Involved Officer #2: | Michael Shields, Star #5951 Employee ID # ██████ Date of Appointment: December 18, 2000 Rank: Police Officer Unit of Assignment: 018 DOB: ██████, 1977 Gender: Male Race: White |
| Involved Individual #1: | ██████ DOB: ██████, 1979 Gender: Male Race: White |

III. ALLEGATIONS

| Officer | Allegation | Finding / Recommendation |
|---------------------------|--|--|
| Officer Michael Wagner | 1. It is alleged that on 9 Dec 2015, at 1730 hours, at 65 E. Water Street, you stopped Mr. ██████ without justification, in violation of Rule 6; 2. Pointed your gun at him, in violation of Rule 38; and | Sustained / Violation Noted and training Sustained / Violation Noted and training |

| | | |
|-------------------------|--|--|
| | 3. Searched his possessions without justification, in violation of Rules 1 and 6. | Sustained / 5 days suspension and training |
| Officer Michael Shields | 1. It is alleged that on 9 Dec 2015, at 1730 hours, at 65 E. Water Street, you stopped Mr. [REDACTED] without justification, in violation of Rule 6; | Sustained / Violation Noted and training |
| | 2. Pointed your gun at him, in violation of Rule 38; and | Sustained / Violation Noted and training |
| | 3. Searched his possessions without justification, in violation of Rules 1 and 6. | Sustained / 5 days suspension and training |

IV. APPLICABLE RULES AND LAWS

Rules

Rule 1 - Prohibits violating any law or ordinance.

Rule 6 – Prohibits violating an order or directive, whether written or oral.

Rule 38 – Prohibits unlawful or unnecessary use or display of a weapon.

General Orders

G03-02-01: The Use of Force Model (effective 5/16/2012 through 10/16/2017)

G03-02-02: Force Options (effective 3/11/2015 through 1/1/2016)

G04-03: Interrogations: Field and Custodial (effective 4/3/2014 through 12/31/2015)

Special Orders

S04-13-09: Contact Information System (effective 1/7/2015 through 1/1/2016)

Federal Laws

U.S. Constitution, Amendment IV

State Laws

Illinois Constitution (1970), Art. I, § 6

725 ILCS 5/107-14: Temporary Questioning Without Arrest

430 ILCS 65/0.01: Firearm Owners Identification Card Act

430 ILCS 66/1: Firearm Concealed Carry Act

V. INVESTIGATION²

a. Interviews

IPRA conducted an audio-recorded interview of Complainant [REDACTED] [REDACTED]¹ on January 28, 2016. [REDACTED] stated that on December 9, 2015, he walked from his office at the [REDACTED], south on Wabash to Kinzie and then east to Rush (under Michigan Avenue). He did not walk on Michigan Avenue at any point. [REDACTED] stated he was wearing a light navy, blue cloth jacket, blue jeans and brown boots. He was not wearing a hat of any kind. [REDACTED] intended to go to the Billy Goat Tavern to have a drink with a friend. [REDACTED] was carrying a light-colored Styrofoam cup of tea in his right hand. When [REDACTED] reached Rush and North Water,⁴ three or four officers in dark uniforms ran south on Rush and turned west to face him. The officers, who had their guns displayed, screamed at him to "stop" and "drop it", and they told him to raise his hands. According to [REDACTED] at least one officer pointed his gun at [REDACTED] until he was approximately four or five feet away. That officer then holstered his weapon. [REDACTED] held his hands up and dropped the cup of tea. The officer took [REDACTED] black shoulder bag and handcuffed him behind his back. [REDACTED] was placed against a railing. The officer told [REDACTED] he was stopped because officers thought he was armed with a gun, and he had been observed on video for about 15 minutes walking on Michigan Avenue. Officers asked [REDACTED] why he had been on Michigan Avenue. Officers patted him down, checked the inside of his pockets, and went through his wallet. Officers looked through [REDACTED] bag and took out a box that contained audio equipment. One of the officers tore open part of the box.⁵ A male whom [REDACTED] believed was a sergeant, possibly named "Tierney", from Internal Affairs, arrived on scene.⁶ After [REDACTED] had been stopped for about ten minutes, officers unhandcuffed him and allowed him to leave. [REDACTED] stated he was not injured. He walked around the block before going to Billy Goat Tavern.

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

³ Attachment 12.

⁴ Kinzie turns into North Water.

⁵ See Attachment 8.

⁶ COPA verified that there was a Sgt. Tierney on scene and interviewed him about this event (see below).

IPRA conducted an audio-recorded interview of Accused Officer Michael Shields⁷ on June 20, 2017. Officer Shields stated that, on December 9, 2015, there was a large contingency of officers in the area from different units for the holiday season. He stated that Illinois State Police, in conjunction with CPD and Homeland Security, were monitoring cameras up and down Michigan Avenue through CPIC.⁸

Officer Shields stated that an Illinois State Police Officer broadcasted over Zone 4 that he observed a man with a gun around 700 North Michigan Avenue.⁹ The Illinois State Police Officer continued to call out the subject's movements. As Officer Shields and his partner, Officer Wagner, were monitoring the transmissions, they saw an individual matching the description provided for the subject.¹⁰ Officer Shields stopped an individual (now known to be [REDACTED]) because he matched the description, and also because "the State Trooper was actually, uh, positively identifying the man, that he was talking to us saying whoever is, is right there at Wabash and whatever street, you have the guy, that's him."¹¹ Officer Shields further commented, "It's kind of like having a policeman right next to you sayin' that's, that is the guy."¹²

When asked if he pointed his gun at [REDACTED] Officer Shields responded, "I know I would've had the gun out, you know, on a call like this without, just for my own officer safety and my partner's and citizens'. Did I point the gun? I don't know. Why I, if I did I certainly would be justified in doing so."¹³ Officer Shields stated that he conducted a pat down of [REDACTED] body and searched his bag but did not find anything illegal. Officer Shields authored a contact card regarding this incident.

IPRA conducted an audio-recorded interview of Accused Officer Michael Wagner¹⁴ on June 13, 2017. Officer Wagner stated that, on December 9, 2015, CPIC broadcasted over Zone 4 and Citywide 5 the location of a person with a gun as viewed on camera by the Illinois State Police. Officer Wagner stated that the Illinois State Police were monitoring an application called Periscope, which Officer Wagner understood to be a live broadcast that can be seen on the internet or an application.

Officer Wagner stated that he and his partner, Officer Shields, spotted [REDACTED] under a viaduct with the river to the south. The officers approached [REDACTED] and the Illinois State Police, through CPIC, confirmed [REDACTED] to be the same person viewed with a gun on the Periscope application. Officers Wagner and Shields approached [REDACTED] and ordered him to show his hands. The officers then conducted a field interview and a protective pat down of [REDACTED]. At this point, other officers had arrived on scene and began searching for a weapon. It was determined that [REDACTED] did not have a weapon and the name check came back clear. Officer Wagner stated that Officer Shields completed a contact card for the incident.

⁷ Attachment 40.

⁸ Chicago Police Department's Crime Prevention Information Center.

⁹ Intersection of Michigan Avenue and Huron Street.

¹⁰ Officer Shields did not state what description was provided other than an individual with a revolver.

¹¹ Attachment 40 at 09:57.

¹² *Id.* at 10:13.

¹³ *Id.* at 10:40.

¹⁴ Attachment 37.

Officer Wagner stated that his justification for stopping ██████ was the call on the radio and the description of the subject as being armed and walking around Michigan Avenue. Officer Wagner did not recall if he pointed his gun at ██████ during the stop. However, Officer Wagner stated, that "given the nature of the call my hand may have been on my holster. But given the nature of the call, my training and given the fact that he's viewed live streaming walking around public way with a pistol it's a possibility."¹⁵

Officer Wagner stated that his justification for searching ██████ possessions was that he was looking for a weapon. Officer Wagner stated that he looked through a box "where a weapon could fit" that was found in ██████ backpack.

COPA conducted an audio-recorded interview of Sergeant John Tierney¹⁶ on July 20, 2018. Sgt. Tierney stated that on December 9, 2015, he was on normal duty during the day and in the evening, he was detailed to monitor a protest. Sgt. Tierney stated that CPIC related that they had spotted a man on Michigan Avenue with a gun, and they were following him on camera. CPIC continuously updated the subject's location and movement as he walked. Sgt. Tierney was within two blocks of the subject's location (provided by CPIC as near Trump Tower and the Wrigley Building¹⁷), so he and his partner proceeded to the area. Sgt. Tierney did not recall if he was there from the beginning, but he did recall making positive contact with the subject. He noted that the situation was fluid, and there were officers coming from all directions.

Sgt. Tierney did not recall if he personally searched or handcuffed ██████ He did not recall if he had any conversation with ██████ Sgt. Tierney did not recall if he or any other officers had their guns unholstered as they approached ██████ However, when asked if it would have been appropriate to have his gun unholstered, Sgt. Tierney responded, "I think so because you're approaching a man that supposedly has a gun. And they said he had a pistol in his waistband. So people would have been on the ready position just in case."¹⁸ When asked what crime ██████ was suspected of committing, Sgt. Tierney responded, "Carrying a weapon."¹⁹ Sgt. Tierney explained that, despite the Conceal and Carry law, knowledge that a person is supposedly carrying a weapon was "probable cause to approach for a field interview to determine if the gun was legal."²⁰ If the stop uncovered that the subject had a valid FOID card and Conceal/Carry permit, the weapon would be returned to the subject, a contact card would be filled out, and the subject would be sent on his way.

Sgt. Tierney stated that CPIC was "adamant that he had gun,"²¹ but no gun was ever recovered. ██████ was released, and a contact card was completed by Officer Shields. Sgt. Tierney did not personally complete any reports for this incident.

¹⁵ *Id.* at 12:41.

¹⁶ Attachment 47.

¹⁷ *Id.* at 6:01.

¹⁸ *Id.* at 11:25.

¹⁹ *Id.* at 11:43.

²⁰ *Id.* at 12:33.

²¹ *Id.* at 13:24.

b. Digital Evidence

Photographs of Complainant ██████████ taken a few weeks after the incident depict him with reddish blonde hair and beard.

██████████ took a **photograph of the box of audio equipment**²³ that the officers tore open during their search of his bag. See the picture below.



██████████ took a **photograph of the area where the stop occurred**²⁴. The photo is described by Mr. ██████████ to have been taken on (lower) North Water Street, facing the base of the Wrigley Building.

OEMC audio transmission²⁵ was obtained from December 9, 2015, from 5:14p.m. - 6:15p.m. A transmission came through from Beat 1802 at 5:14p.m. stating, "The State Police just called the station and at 700 North Michigan Avenue, there's a male white, 6 feet tall, early 20's, green hat with a spade on it, red beard, red hair, he supposedly has a pistol on him, they can see him on the camera." Shortly after, at 5:20p.m., the Dispatcher transmitted, "Navy Pier. Now I'm getting State Police reporting this, said 'Erie and Michigan near the Friday's'".

A few minutes later, the following transmissions are heard over the radio:

²² Attachment 15.

²³ Attachment 8.

²⁴ *Id.*

²⁵ Attachment 24.

Dispatcher (5:27p.m.): Southbound on Michigan, around the Wrigley building, walking westbound. Grey hat with a tear drop, black sweatshirt, tight jacket, on this update. All right, 6700 said towards Trump Tower and he's heading that way. Alright, he's overlooking the river guys, overlooking the river. Getting near the river.

Dispatcher (5:29p.m.): It's said that people are running in between the Wrigley building, guys. So are there any units at the Trump Tower on Wabash?

1821A²⁶ (5:29p.m.): 21 Adam. We're coming up on the Trump Tower.

Dispatcher (5:29p.m.): 21 Adam says they're coming up on the Trump. All right, 7391 says he has eyes on him, guys. Just passed the store that says 'Retail Space Available'. Alright, 7391 says he's in the river walk, at street level. He's going into the parking garage, he has a periscope on him, going to the parking garage.

Unknown Beat (5:31p.m.): Put a stop on him."²⁷

c. Documentary Evidence

A **Contact Card** for ██████████ completed by Officer Shields states that an Investigatory Stop of ██████████ took place on December 9, 2015, at 5:31p.m. at 31 W. Kinzie. ██████████ is described as a 36-year-old white male with red shaggy hair and beard wearing dark jacket and dark pants. He is listed as 6 feet 1 inch tall, 165 pounds.

The Contact Card states that, "While CPIC broadcasted over Zone 4 and CW5 the location of a person with a gun as viewed on camera, R/Os approached above subject. CPIC confirmed subject to be the correct person. R/Os conducted a field interview and protective pat down of subject. R/Os were advised by CPIC that subject had a pistol in his waistband. As R/Os approached, subject was ordered to show his hands and temporarily detained him until it was determined by R/Os that subject had no weapon. Name check clear."²⁹

A **Chicago Police Department Event Query for Citywide** ⁵³⁰ indicates that on December 9, 2015 at 5:16p.m. a message went out from dispatch stating that a white male with red hair and beard wearing a military style jacket and hat with a black spade was seen on video armed with a revolver near 600 N. Michigan Ave. At 5:17p.m. dispatch alerted that the subject had gone into a Nike store. At 5:19p.m. dispatch updated that the subject had left the Nike store and was heading toward Navy Pier. At 5:26p.m. dispatch communicated that the subject was seen walking northbound on Michigan with a gun in his waistband, and "if someone sees him – put a stop on him." At 5:28p.m. dispatch communicated that the subject was around the Wrigley Building walking westbound toward the Trump Tower. At 5:29p.m. dispatch communicated that the subject was near the river on the north side. At 5:30p.m. dispatch confirmed that a unit "has

²⁶ This corresponds to Officers Shields' and Wagner's beat.

²⁷ Attachment 24.

²⁸ Attachment 28.

²⁹ *Id.*

³⁰ Attachment 26.

eyes" on the subject on the riverwalk at street level and that a Periscope was on the subject. At 5:31p.m. dispatch updated that the subject was stopped at Lower Kinzie and Rush.

A memo from IPRA investigator Dennis Prieto³¹ indicates that he spoke with Sgt. Riley of the Illinois State Police regarding transmissions he made on December 9, 2015. According to the memo, Sgt. Riley stated that between 5:15p.m. and 5:30p.m. he was watching a live video feed being broadcasted on a social media application known as "Periscope". On the feed, a white male with red hair and beard, wearing a green military style jacket and black hat, was seen walking in the 600 block of North Michigan Avenue with a gun tucked into his waistband. Sgt. Riley transmitted the directions of the subject, announcing virtually every move he made down Michigan Avenue, including when the police approached and stopped him. Sgt. Riley stated he did not know the outcome of the stop.

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 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

a. Officers Wagner and Shields Detained ██████████ Without Justification

The Fourth Amendment of the United States Constitution and Article 1, Section 6 of the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Police-citizen encounters are categorized into three tiers: (1) an arrest of a citizen, which must be supported by probable cause; (2) a temporary investigative seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and 725 ILCS 5/102-15, which must be supported by a reasonable, articulable suspicion that a person has committed or is about to commit a crime; and (3) a consensual encounter, which does not implicate any Fourth Amendment interests. *People v. McDonough*, 239 Ill.2d 260, 268 (2010).

COPA must address (1) whether ██████████ was detained (*i.e.* seized); and (2) whether the detention of ██████████ was objectively reasonable under the totality of the circumstances.

1. Officers Wagner and Shields seized ██████████

In this case, Officers Wagner and Shields seized ██████████. A person is seized when his freedom of movement is restrained by physical force or a show of authority. *People v. Almond*, 2015 IL 113817, ¶ 57. The test is whether a reasonable person would conclude, in light of the totality of the circumstances, that he is not free to leave. *Id.* The following factors, outlined in *United States v. Mendenhall*, 446 U.S. 544, 553 (1980), indicate a seizure has occurred: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; and/or (4) using language or tone of voice compelling the individual to comply with the officer's requests. *Almond*, 2015 IL 113817, ¶ 57.

The interaction between Officers Wagner and Shields and ██████████ clearly went beyond a consensual encounter. Multiple officers approached ██████████ with their weapons drawn. They ordered ██████████ to "Drop it!" and raise his hands. The officers proceeded to place him in handcuffs while they patted him down and searched his bag. Under the circumstances, ██████████ or any other reasonable person would conclude that he or she was not free to leave. Thus, Officers Wagner and Shields seized ██████████ and therefore Officers Wagner and Shields were required to have at least reasonable, articulable suspicion that ██████████ had committed or was about to commit a crime as set forth in *Terry*.

2. Officers Wagner and Shields Did Not Possess Reasonable, Articulable Suspicion that ██████████ was Engaged in Criminal Activity.

To conduct an investigatory *Terry* stop, officers must have reasonable, articulable suspicion that the person has committed or is about to commit a crime. *People v. Moore*, 286 Ill. App. 3d 649, 653 (3d Dist. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21, (1968)). Reasonable, articulable suspicion must be based on "specific and articulable facts" and not merely a hunch. *Id.* Reasonable suspicion is a lower threshold than probable cause and considerably less than a preponderance of the evidence. *People v. Harris*, 957 N.E.2d 930, 935 (1st Dist. 2011) (internal quotations and citations omitted). When reviewing an officer's actions in the context of *Terry*, the facts should be considered from the perspective of a reasonable officer confronted with the situation. *People v. Thomas*, 198 Ill.2d 103 (2001).

i. Officers Wagner and Shields Reasonably Mistook ██████ as the Armed Subject

The contact card states that CPIC was broadcasting the location of a subject with a gun as seen on camera. Per the OEMC audio transmission, the description provided for the subject "seen with a gun in his waistband" was "male white, 6 feet tall, early 20s, green hat with spade on it, red beard, red hair".³¹ At that time, ██████ was a 36-year-old, 6 feet 1 inch tall, white, male with red hair and beard.³² ██████ was not wearing a hat. Despite the significant difference in age of the subject's description and the fact that ██████ was not wearing a hat, ██████ largely matches the description provided over the radio.

According to Officers Shields and Wagner, an Illinois State Police Officer was broadcasting over citywide radio the movements of a man with a gun. Officers Shields and Wagner were monitoring the transmissions when they saw ██████ who they thought matched the description. Officers Shields and Wagner stopped ██████ because the Illinois State Trooper, through CPIC, positively identified ██████ as the subject with the gun. According to Shields, "It's kind of like having a policeman right next to you sayin' that's, that is the guy."

Given this explanation, along with the multiple updates of the subject's location heard on the OEMC audio transmission, it was reasonable for Officers Wagner and Shields to believe ██████ could be the armed subject. However, to lawfully stop and seize ██████ *i.e.*, initiate a *Terry* stop, Officers Wagner and Shields were required to have reasonable, articulable suspicion that the armed subject described by CPIC, who they reasonably mistook as ██████ had committed or was about to a commit a crime.

ii. Officers Wagner and Shields Did Not Possess Reasonable, Articulable Suspicion that the Armed Subject Had Committed or was About to Commit a Crime

The Second Amendment of the United States Constitution and Article 1, Section 22 of the Illinois Constitution of 1970 guarantees the right of individuals to bear arms. U.S. Const., amend. II; Ill. Const. 1970, art. I, § 22. *See also District of Columbia v. Heller*, 554 U.S. 570 (2008). On July 9, 2013, Illinois enacted the Firearm Concealed Carry Act (430 ILCS 66), which created a system for the issuance of concealed carry licenses. Subsequently, the Illinois Supreme Court held the section of the Aggravated Unlawful Use of a Weapon (720 ILCS 5/24-1.6) statute that categorically prohibited the possession of use of a firearm outside the home for self-defense violated the right to keep and bear arms as guaranteed by the Second Amendment. *People v. Aguilar*, 2013 IL 112116. On the date of the incident, December 9, 2015, Illinois residents were generally permitted to carry handguns³³ outside the home if they possessed a valid concealed carry license and firearm identification operation card. In other words, on the date of the incident,

³¹ Attachment 24.

³² See Attachment 8.

³³ "Handgun" means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. *See* 430 ILCS 66/5.

contrary to the assertions of the officers, merely possessing a concealed firearm did not necessarily constitute a crime.

Other than their mistaken belief that possession of a firearm constituted a crime, Officers Wagner and Shields did not possess any specific and articulable facts that the armed person committed, was committing, or was about to commit a crime. The CPIC notification was only that a person was carrying a revolver³⁴ in his waistband on Michigan Avenue.³⁵ There were no other facts provided by the CPIC notification that created a reasonable suspicion that this person was carrying the weapon in an illegal way or had otherwise violated the law.

COPA recognizes that the armed subject may have been committing crime if he did not possess a valid concealed carry license and firearm identification card. However, Officer Shields and Wagner were not permitted to stop and detain the armed subject, in the manner in which they did, to check to see if he possessed a concealed carry license and firearm identification card without reasonable, articulable suspicion of a crime or ordinance violation.

COPA is guided by the Seventh Circuit Court of Appeals' decision in *United States v. Watson*, 900 F.3d 892 (2018). There, the Seventh Circuit concluded that a caller's report about the presence of guns did not create a reasonable suspicion of a crime because Indiana law allowed the carrying of a firearm in public with a license. *Id.* at 895. The Seventh Circuit recognized that the presence of a gun could be illegal in some situations, such as when the possessor of the gun lacked the required license. *Id.* at 895-96. However, the Seventh Circuit reasoned that the "mere possibility of unlawful use of a gun is not sufficient to establish reasonable suspicion." *Id.* (Internal quotation marks omitted). The same conclusion must be drawn here, as Illinois law, like Indiana law, now allows a person to legally carry a concealed weapon if he possesses a license to do so.

The mere possibility of unlawful possession of a gun is not sufficient to establish reasonable suspicion and justify a detention. The right to bear arms is specifically protected by Second Amendment of the United States Constitution and Article 1, Section 22 of the Illinois Constitution. To permit officers to detain every individual they reasonably believe to be armed would severely, and unreasonably curtail these constitutional protections.

In the instant case, Officers Shields and Wagner had no information whatsoever that the purportedly armed subject described over the radio had committed or was about to commit any crime.³⁶ The mere possibility that the armed subject unlawfully possessed the firearm was insufficient to justify his detention. Officers Shields and Wagner could not detain ██████████ who they reasonably mistook as the armed subject, to determine if he possessed a concealed carry

³⁴ A revolver is a handgun as defined by the Concealed Carry Act.

³⁵ COPA recognizes that officers may work collectively and that officers may rely on radio transmissions to justify an investigatory stop or an arrest. *People v. Bascom*, 286 Ill. App. 3d 124, 50 (3d Dist. 1981). However, in this case the radio transmissions simply stated that the armed subject had a purported firearm in his waistband and did not provide any other information that would lead a reasonable officer to conclude that criminal activity had occurred or was about to occur.

³⁶ For example, there were no reports over the radio that the armed subject was evading police, brandishing the firearm, or carrying the firearm in an unauthorized location. Officers Shields and Wagner also did not observe ██████████ who they reasonably mistook as the armed subject, acting suspiciously.

license and firearm identification card. Therefore, Officers Shields and Wagner stopped and detained ██████████ without justification.³⁷

b. Officers Wagner and Shields Pointed Guns at ██████████ Without Justification

Rule 38 states that an officer is prohibited from unlawfully or unnecessarily using or displaying a weapon. Determining whether displaying and pointing their firearms was justified is fact dependent.

Officers exercise excessive force when they unreasonably aim their gun at an individual to perform a seizure. *Baird v. Renbarger*, 576 F.3d 340, 344 (7th Cir. 2009) (analyzing plaintiffs' Fourth Amendment excessive force claim for being held at gunpoint by police under a reasonableness test because "[p]laintiffs need not show physical injury in order to sustain an excessive force claim"). Determining the reasonableness of the force "requires an analysis of the facts and circumstances of the case" from the "perspective of a reasonable officer on the scene," including, "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Courts also consider "whether the citizen was under arrest or suspected of committing a crime, was armed, or was interfering or attempting to interfere with the execution of his or her duties." *Jacobs v. City of Chicago*, 215 F.3d 758, 773 (7th Cir. 2000). In sum, the excessive force inquiry in this context "looks to whether the force used to seize the suspect was excessive in relation to the danger he posed—to the community or to the arresting officers—if left unattended." *Id.* (quoting *Wilkins v. May*, 872 F.2d 190, 193 (7th Cir. 1989)).

COPA must determine whether: (1) Officers Wagner and/or Shields pointed their guns at ██████████ and (2) if so, whether Officer Wagner and/or Shields did point their guns at ██████████ was it objectively reasonable under the totality of the circumstances.

1. Officers Wagner and Shields Pointed Their Guns at ██████████

It is undisputed that Officer Shields had his gun unholstered as he approached ██████████. Officer Shields stated he had his gun out for "officer safety." Officer Shields did not recall if he pointed his gun at ██████████ but acknowledged that it was possible, stating "If I did, I certainly would be justified in doing so." Similarly, Officer Wagner indicated that he did not recall if he

³⁷ Alternatively, even assuming *arguendo* Officers Wagner and Shield had reasonable suspicion for a brief *Terry* stop, the detention constituted a de facto arrest which required probable cause. *See People v. Johnson*, 408 Ill. App. 3d 107, 113 (2010) ("A restriction of movement that is brief may amount to an arrest rather than a *Terry* stop if it is accompanied by use of force usually associated with an arrest, *unless such use of force was reasonable in light of the circumstances surrounding the stop*") (emphasis added). It was unreasonable for the officers to approach ██████████ pointing their guns, given the nature of the stop. Additionally, the officers approached ██████████ while running towards him and yelling orders at him. The officers immediately took ██████████ backpack off of him and placed him in handcuffs while they patted him down and searched his belongings. While these factors individually may not be enough to elevate a *Terry* stop to an arrest, taken as a whole, these factors suggest that, more likely than not, ██████████ was de facto arrested. Officers Wagner and Shields clearly did not have probable cause to arrest ██████████

pointed his gun at [REDACTED] as he approached. He also acknowledged it was a possibility, stating, "Given the nature of the call, my training and given the fact that he's viewed live streaming walking around public way with a pistol it's a possibility."

Given [REDACTED] statement that officers approached him with their weapons drawn and with at least one officer pointing a gun directly at him, coupled with Officer Shields and Wagner both stating it was possible they pointed their guns at [REDACTED] the preponderance of the evidence demonstrates that Officers Wagner and Shields did in fact approach [REDACTED] with their guns pointed at him.

2. Officers Wagner and Shields Decision to Point Their Guns at [REDACTED] was Not Reasonable

As previously detailed, Officers Wagner and Shields reasonably mistook [REDACTED] to be the armed subject described in the CPIC notification. However, just because the officers believed that [REDACTED] had a gun in his waistband did not mean they could approach [REDACTED] with their weapons drawn where the officers did not have reasonable suspicion that [REDACTED] was doing anything illegal and [REDACTED] actions did not suggest he was posing any threat. As explained above, Officers Wagner and Shields did not have reasonable basis to detain [REDACTED]

Moreover, even assuming *arguendo* Officers Wagner and Shields were permitted to detain [REDACTED] to determine if he lawfully possessed the firearm, their decision to point their guns at [REDACTED] to effectuate the detention was objectively unreasonable. When the officers approached [REDACTED] he had a cup of tea in one hand and nothing in the other. [REDACTED] obeyed the officers' orders to drop what was in his hand (the tea cup), raise both hands, and keep them in the air. [REDACTED] was not holding anything that could have been mistaken for a gun at the time of his detention. [REDACTED] did not reach in his pockets or near his waistband. [REDACTED] did not run or take an aggressive stance. [REDACTED] did exactly what he was told and posed no reasonable threat to the officers.³⁸ Officers Shields and Wagner did not have any information indicating the armed subject had previously used or threatened to use the firearm, or any other information indicating the armed subject was dangerous (beyond mere possession of the firearm). Officers certainly may not point a firearm at every individual they suspect may possess a firearm especially when possession of a firearm is legal if the person possess a concealed carry license and firearm identification card. The specific circumstances in this incident did not justify Officers Wagner and Shields pointing their firearms at [REDACTED]

For the above reasons, it was unreasonable and unnecessary for Officers Wagner and Shields to point their firearms at [REDACTED]

c. Officers Shields and Wagner Searched [REDACTED] Possessions Without Justification

Even assuming *arguendo* Officers Shields and Wagner could lawfully detain [REDACTED] and conduct a protective pat down of [REDACTED] because they reasonably believed he was armed *and*

³⁸ To be clear, Officers Wagner and Shields could have had their guns unholstered at their side in case [REDACTED] did not comply or made any suspicious movements.

dangerous, the search of [REDACTED] possessions was not justified. Officers Wagner's and Shields' search went well beyond the limits of a protective pat-down which is generally limited to a pat down of the outer clothing of a person.³⁹

In the instant case, Officers Wagner and Shields searched inside [REDACTED] backpack and tore open a package containing audio recording equipment. Generally, police officers need a warrant to search a package or container unless an exception to the warrant requirement applies. *People v. Jones*, 215 Ill. 2d 261, 278 (2005). Officer Shields and Wagner did not have probable cause to arrest⁴⁰ [REDACTED] and did not have lawful authority to conduct a full custodial search of [REDACTED]. No exigent circumstances existed. Therefore, Officers Shields and Wagner searched [REDACTED] possessions without justification.

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³⁹ Special Order S04-13-09(II)(B).

⁴⁰ As explained above, [REDACTED] detention constituted a de facto arrest. However, Officers Wagner and Shields did not actually arrest [REDACTED] and did not have probable cause to arrest him.

VIII. CONCLUSION

| Officer | Allegation | Finding / Recommendation |
|-------------------------|---|---|
| Officer Michael Wagner | 4. It is alleged that on 9 Dec 2015, at 1730 hours, at 65 E. Water Street, you stopped Mr. [REDACTED] without justification, in violation of Rule 6; 5. Pointed your gun at him, in violation of Rule 38; and 6. Searched his possessions without justification, in violation of Rules 1 and 6. | Sustained / Violation Noted and training. Sustained / Violation Noted and training. Sustained / 5 days suspension and training. |
| Officer Michael Shields | 4. It is alleged that on 9 Dec 2015, at 1730 hours, at 65 E. Water Street, you stopped Mr. [REDACTED] without justification, in violation of Rule 6; 5. Pointed your gun at him, in violation of Rule 38; and 6. Searched his possessions without justification, in violation of Rules 1 and 6. | Sustained / Violation Noted and training. Sustained / Violation Noted and training. Sustained / 5 days suspension and training. |

IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Wagner

i. Complimentary and Disciplinary History

Officer Wagner does not have any history of discipline. His complimentary history includes twenty-seven Honorable Mentions, one Superintendent’s Honorable Mention, one Department Commendation, and various other awards. Based upon the foregoing COPA recommends a 5-day suspension for allegation #3, Violation Noted for allegations #1 and #2, and additional 4th Amendment training.

b. Officer Shields

i. Complimentary and Disciplinary History

Officer Shields does not have any history of discipline. His complimentary history includes twenty-two Honorable Mentions, three Department Commendations, and various other awards. Based upon the foregoing COPA recommends a 5-day suspension for allegation #3, Violation Noted for allegations #1 and #2, and additional 4th Amendment training.

Approved:



May 30, 2019

Sydney Roberts
Chief Administrator

Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|----------------|
| Squad#: | 5 |
| Investigator: | Kerri Wyman |
| Supervising Investigator: | Loren Seidner |
| Deputy Chief Administrator: | Andrea Kersten |