

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

| | |
|----------------------------|------------------------------|
| Date of Incident: | August 1, 2018 |
| Time of Incident: | 12:32 AM |
| Location of Incident: | 8301 S. Cottage Grove Avenue |
| Date of COPA Notification: | August 1, 2018 |
| Time of COPA Notification: | 7:56 AM |

It is alleged that on August 1, 2018, Complainant ██████████ (“Mr. ██████████”) was unlawfully stopped and detained by Officer Gabriel Rodriguez (“Officer Rodriguez”) and Officer Renee Gardner (“Officer Gardner”), for failing to signal prior to entering a gas station and driving a stolen vehicle. It was later discovered that the car was reported as recovered several months earlier but the theft alert had not been removed from the system. Mr. ██████████ was given a stop receipt and released.

Mr. ██████████ made a complaint with the Civilian Office of Police Accountability (“COPA”). COPA conducted a thorough investigation of the allegations. A detailed analysis of COPA’s findings is discussed below.

II. INVOLVED PARTIES¹

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|----------------------|---|
| Involved Officer #1: | Officer Gabriel Rodriguez Star No. 12737 Employee No. ██████████ DOA: April 6, 2015 Rank: 9161 UOA: 006 District DOB: ██████████, 1991 Gender: Male Race: Hispanic |
| Involved Officer #2: | Officer Renee Gardner Star No. 16385 Employee No. ██████████ DOA: August 25, 2014 Rank: 9161 UOA: 006 District DOB: ██████████, 1991 Gender: Female Race: Black |

¹ The Complainant’s account of events was consistent with the Officer’s Body Worn Camera and the Investigatory Stop Report. Therefore, there was enough evidence to decide the findings in this case without interviewing the officers.

Involved Individual #1: [REDACTED] DOB: [REDACTED], 1981 Gender: Male Race: Black

III. ALLEGATIONS

| Officer | Allegation | Finding |
|---------------------------|--|------------|
| Officer Gabriel Rodriguez | 1. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez stopped [REDACTED] without justification. | EXONERATED |
| | 2. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez unnecessarily displayed his weapon during the detention of [REDACTED] | EXONERATED |
| | 3. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez handcuffed [REDACTED] without justification. | EXONERATED |
| | 4. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez searched the vehicle being driven by [REDACTED] without justification. | EXONERATED |
| Officer Renee Gardner | 1. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Gardner stopped [REDACTED] without justification. | EXONERATED |
| | 2. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Gardner handcuffed [REDACTED] without justification. | EXONERATED |

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 38: Prohibits the unnecessary display of weapons
 2. Rule 6: Prohibits an officer from violating any rule or ordinance
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General Orders

1. General Order G04-01, Preliminary Investigations
 2. General Order G03-02-01, Force Options
-

Special Orders

1. Special Order S04-13-09, Investigatory Stop System
-

Federal Laws

1. U.S. Constitution Fourth Amendment
-

State Laws

1. 725 ILCS 5/107-14

V. INVESTIGATION²

a. Interviews

██████████³ gave a statement to the Civilian Office of Police Accountability on August 10, 2018. ██████████ told investigators that he stopped for gas on his way home from work at 83rd and Cottage Grove. As he pulled into the gas station, an unmarked police vehicle pulled in front of him. Officer Rodriguez exited the vehicle with his gun drawn and approached the driver's side of his vehicle. ██████████ indicated that the officer did not point his weapon at him. A second officer exited the vehicle and approached the passenger side of the vehicle. Officer Rodriguez instructed him to get out of his vehicle. ██████████ asked why, and Officer Gardner then told him to get out of the vehicle. ██████████ complied.

██████████ was handcuffed and the began to question him about the car. ██████████ explained that the car belonged to his wife, a Chicago Police Officer. They asked ██████████ if he had identification. He answered affirmatively. An officer then went into his pocket and took his wallet, his identification, and ran his name. They also took his FOID card. The officers told him that the vehicle was reported stolen. ██████████ objected to that. They asked ██████████ if he had a gun. He said no. Then the officers began searching the vehicle.

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 8

█████ said that the officer took the lid off of the center console, searched the glove box, then searched a personal bag of his, dumping it out onto the driver seat. They asked him if he had any problems with his wife. He said no. Eventually, they asked for his wife's phone number and he provided it to them. They called his wife and got information from her. The police then told him that the vehicle had previously been reported stolen, but the notice had not been cleared from the system. █████ was later released with no tickets. He was given a stop receipt.

█████ felt that none of the normal procedures were followed. He complained that the police never stopped him, rather he stopped on his own to get gas. He complained that the officers pulled in front of him instead of behind him. █████ said that he was never told about failing to signal and believed that he did signal.

b. Digital Evidence

Officer Rodriguez's Body Worn Camera⁴ captured Officer Rodriguez driving into the gas station where Mr. █████ was stopped. Officer Rodriguez appeared to be holding his weapon at a ready or low ready level pointed sideways and slightly downward. Both Officer Gardner and Officer Rodriguez instructed Mr. █████ to exit his vehicle. Mr. █████ complied. As █████ exited the vehicle, he announced that it was his wife's car. █████ was then handcuffed by both officers. Officer Gardner asked Mr. █████ if it was his wife's car and he repeated that it was.

Officer Rodriguez began searching the vehicle and found a small zipped bag in the back seat that he opened and searched. When Officer Rodriguez emerged from the vehicle a number of other officers were there on scene. Officer Rodriguez told an unidentified officer, "he said it's his wife's vehicle but it's coming back hot." Officer Rodriguez asked Mr. █████ about his relationship with his wife.

Officer Gardner confirmed that the car was showing as stolen in LEADS. Officer Gardner also confirmed that Mr. █████ identification was valid and clear of warrants. After further review, Officer Gardner appeared to question whether the car had been recovered. Officer Rodriguez then asked Mr. █████ whether the car had ever been reported stolen. Mr. █████ shook his head no. After further discussion, it appeared that the vehicle was previously reported as stolen but was never cleared from Hot Desk. The officers then sought to contact the registered owner. █████ provided his wife's phone number. Officer Rodriguez told the person he identified as █████ over the phone that they had a person pulled over in her Camaro that had previously been reported stolen. Officer Rodriguez confirmed that █████ was authorized to drive the vehicle.

Officer Rodriguez explained to Mr. █████ that the vehicle had been reported stolen on April 21, 2018, and recovered on April 22, 2018, but never cleared from the system. Officer Rodriguez then uncuffed Mr. █████. Mr. █████ told Officer Rodriguez that that date was when they thought the vehicle was stolen from the shop, but it was towed instead. Officer Gardner provided Mr. █████ with a stop receipt. Officer Rodriguez radioed in and requested that the plates be cleared from the "hot desk."

⁴ Attachment 31

Officer Gardner's Body Worn Camera⁵ captured Officer Gardner exiting her vehicle and walking to the passenger side of the vehicle driven by Mr. [REDACTED]. Officer Gardner opened the passenger side door, then walked over to the driver side, where Officer Rodriguez had Mr. [REDACTED] standing out of the vehicle. Officer Rodriguez could be seen holstering his weapon. Mr. [REDACTED] volunteered that it was his wife's vehicle. Officer Gardner handcuffed Mr. [REDACTED].

Officer Gardner told Mr. [REDACTED] that his car came back as stolen. Officer Gardner asked Mr. [REDACTED] if he had identification. Mr. [REDACTED] indicated that he had ID in his wallet inside of his pocket. Officer Gardner reached inside of his pocket and retrieved his wallet, then took his driver's license and FOID card. Officer Gardner asked Mr. [REDACTED] if he had a gun in the car. Mr. [REDACTED] denied having a gun.

Officer Gardner searched Mr. [REDACTED] information in her PDT. After some research, Officer Gardner learned that the vehicle was in recovery status but still showed as an active stolen vehicle. The vehicle came up as belonging to [REDACTED]. Officer Gardner looked for a phone number for [REDACTED] but could not find one. At the same time, Officer Gardner spoke with a person he identified as [REDACTED]. He told the person that they had her vehicle and found [REDACTED] in possession of it.

Zone 1 Radio Transmissions⁶ captured OEMC transmissions in Zone 1 between midnight and 1:00 AM. Beat 661E requested a plate check on license plate [REDACTED]. The dispatcher responded that the plate came back as a "hot car" belonging to [REDACTED]. Beat 661E announced that the vehicle was pulled over at a gas station at 83rd and Cottage. 661E radioed in that no additional units were needed. Several minutes later, Beat 661E called and requested that the plate be cleared from the "hot file." The dispatcher responded that both plates were cleared "returned to owner." Beat 661E listed the address as "8301 Cottage" as the address of recovery.

c. Documentary Evidence

PCAD messages for PMDT3268⁷ revealed that the vehicle with license plate # [REDACTED] was reported stolen on April 21, 2018. The messages instructed that the driver and vehicle should be verified. The owner of record was [REDACTED] also known as [REDACTED]. The last status of the vehicle was "Preliminary Recovery." RD # JB232830 and LEADS #V18C8121 were listed as references.

The Original Case Incident Report⁸ for JB232830 pertains to an April 21, 2018 complaint by [REDACTED] that her vehicle had been stolen from the vicinity of 7646 S. Vernon Avenue. Detective Jeremiah Hines was assigned to investigate.

⁵ Attachment 31

⁶ Attachment 7

⁷ Attachment 9

⁸ Attachment 11

On April 22, 2018, Officer Hines filed a **Case Supplementary Report**⁹ suspending the investigation pending receipt of the vehicle recovery report. In the report, Officer Hines indicated that the vehicle had been towed to pound 2. The vehicle was listed as released to the owner.

A **Recovered Vehicle Supplementary Report**¹⁰ was filed on April 22, 2018. [REDACTED] signed a report indicating that she located her vehicle. The report noted that the hot file was cleared at "0125 #8 Ziegler." The report was completed by Officer Toni Shytell. The report was approved by Sergeant David Benitez.

Event Number 1811201094,¹¹ dated April 22, 2018, captured the recovery of [REDACTED] vehicle. The comments on the event noted that [REDACTED] car was in the 3rd District's police lot and that [REDACTED] went to the station to claim her vehicle.

Event Number 1821300331,¹² dated August 1, 2018, captured the traffic stop of a vehicle with license plate # [REDACTED] by beat 661E. The plates were flagged as associated with a stolen vehicle belonging to [REDACTED]. The status of the vehicle was "preliminary recovery."

Event Number 1821300563,¹³ dated August 1, 2018, again captured the recovery of [REDACTED] vehicle.

Investigatory Stop Report # 000598360¹⁴ described the traffic stop of [REDACTED] on August 1, 2018, consistent with the Officers Body Worn Camera.

VI. LEGAL STANDARD

a. Possible findings and burdens of proof

For each allegation COPA must make one of the following findings:

Sustained - where it is determined the allegation is supported by a preponderance of the evidence;

Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

⁹ Attachment 12

¹⁰ Attachment 13

¹¹ Attachment 17

¹² Attachment 24

¹³ Attachment 21

¹⁴ Attachment 20

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed 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 conduct violated 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

- i. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez and Officer Gardner stopped [REDACTED] without justification.**

Officers Rodriguez and Gardner are **EXONERATED** of the allegation that they stopped [REDACTED] without justification. Rule 6 prohibits officers from violating any order or directive. Special Order S04-13-09 says that "probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it." In the Investigative Stop Report, Officers Gardner and Officer Rodriguez wrote that they observed [REDACTED] stop beyond the crosswalk at a red light, fail to use his turn signal as he changed lanes and failed to use his turn signal prior to turning into the gas station. Any of these traffic violations would have been a valid reason to stop [REDACTED]. Further, when Officers Rodriguez and Gardner ran the license plate of [REDACTED] vehicle, the LEADS search results came back with an active alert that the vehicle was stolen.

COPA finds that there is clear and convincing evidence for the Officers to conduct the stop of [REDACTED]. Therefore, this allegation is EXONERATED.

- ii. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez and Officer Gardner handcuffed [REDACTED] without justification.**

Officers Rodriguez and Gardner are **EXONERATED** of the allegation that they handcuffed [REDACTED] without justification. Rule 6 prohibits officers from violating any order or directive. Special Order S04-13-09 says that "probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it." The Officers had reason to believe the car was stolen.

Courts have found that "handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop."

People v. Johnson, 408 Ill. App. 3d 107, 113 (1st Dist. 2010) (citing *People v. Wells*, 403 Ill. App. 3d 849, 857 (1st Dist. 2010); *Delaware*, 314 Ill. App. 3d at 370; *People v. Tortorici*, 205 Ill. App. 3d 625, 628 (3d Dist. 1990)). But handcuffing (and placing an individual into the back of a police vehicle) does not *automatically* convert an investigatory stop into an arrest. See, e.g., *United States v. Stewart*, 388 F.3d 1079, 1084–85 (7th Cir. 2004); *People v. Starks*, 190 Ill. App. 3d 503, 509 (2d Dist. 1989). “There are situations in which concerns for the safety of the police officer or the public justify handcuffing the detainee for the brief duration of an investigatory stop.” *People v. Arnold*, 394 Ill. App. 3d 63, 71 (2009). The critical question is whether “the use of such restraints is [] reasonably necessary for safety under the specific facts of the case.” *People v. Arnold*, 394 Ill. App. 3d 63, 71 (2d Dist. 2009). If not, “their use will indicate that the encounter should be viewed as an arrest.” *Id.*

Here, the video evidence is clear that Officers Rodriguez and Gardner approached the vehicle with the understanding that the vehicle was potentially stolen. Although, the LEADs report also stated that the vehicle was preliminary recovered, the report also advised the officers to conduct an investigation. Officers Rodriguez and Gardner handcuffed [REDACTED] immediately and then began conducting the investigation into whether the vehicle was stolen. Officer Gardner began reviewing LEADs and checking [REDACTED] information in PDT to verify the driver and vehicle. Officer Rodriguez questioned [REDACTED] about his relationship with the vehicle owner, [REDACTED] ([REDACTED]). The Officers went as far as retrieving Ms. [REDACTED] telephone number from [REDACTED] and calling her to verify the status of the vehicle. Immediately after the investigation was complete, [REDACTED] handcuffs were removed and he was provided an investigatory stop receipt. The entire incident lasted approximately 10 minutes. It is reasonable for an officer to handcuff an individual of a potentially stolen vehicle, for a reasonable amount of time, while conducting additional investigation into the status of the vehicle.

We find there is clear and convincing evidence that Officers Rodriguez and Gardner’s conduct was reasonable under these circumstances. Therefore, Officer Rodriguez and Gardner are **EXONERATED** of the allegation that they handcuffed [REDACTED] without justification.

iii. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez unnecessarily displayed his weapon during the detention of [REDACTED]

Officer Rodriguez is **EXONERATED** of the allegation that he unnecessarily displayed his weapon during the detention of [REDACTED]. Rule 38 prohibits the unlawful or unnecessary display of a weapon. Police officers are given wide latitude in determining when the display of their weapon is necessary. Officers are allowed to draw on their experiences, perceptions, and even the nature of the crimes to determine whether the display of a weapon is necessary.

COPA finds Officer Rodriguez’s display of his firearm to be reasonable under the circumstances. Officer Rodriguez was in the process of detaining a driver of a vehicle he reasonably believed to be stolen. Vehicle theft is a felony crime with a potential sentence of more than five years in prison. Officer Rodriguez was on the driver’s side of the vehicle and in front of [REDACTED] vehicle, which could have put him directly in the path of danger. Officer Rodriguez exited

his vehicle with his weapon drawn, but he did not point it at [REDACTED] as [REDACTED] himself admitted. Within thirty to forty seconds after exiting the vehicle, when [REDACTED] willfully complied with orders, Officer Rodriguez de-escalated and holstered his weapon.

We find Officer Rodriguez's conduct reasonable under these circumstances. Therefore, Officer Rodriguez is **EXONERATED** of the allegation that he unnecessarily displayed his weapon.

VIII. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez searched the vehicle being driven by [REDACTED] without justification.

Officer Rodriguez is **EXONERATED** of the allegation that he unlawfully searched the vehicle being driven by [REDACTED]. Rule 6 prohibits an officer from violating any rule or ordinance. Special Order S04-13-09 requires that an officer have probable cause before conducting a vehicle search. There is a litany of case law that supports and elucidates the authority of a police officer to search a vehicle without a warrant. Based on the facts of this stop, COPA finds that multiple exceptions apply; therefore, Officer Rodriguez is **Exonerated**.

Officer Rodriguez stopped [REDACTED] in a vehicle he had a clear reason to believe was stolen at the time of the stop. [REDACTED] was asked to exit the vehicle and detained, then the vehicle was searched. Several minutes later, after the vehicle was searched, it was discovered that the vehicle had previously been reported stolen but was recovered without being cleared from the system. In analyzing whether misconduct occurred, COPA looks at what the officer knew at the time of the alleged misconduct. Here, Officer Rodriguez learned that the vehicle was not stolen after it was searched.

One reason the vehicle could lawfully be searched is the Mobile Conveyance Exception. The *Mobile Conveyance Exception*¹⁵ says that a vehicle can be searched without a warrant when there is probable cause to believe evidence of a crime or contraband is located in the vehicle and the vehicle is readily mobile, given there is a reduced expectation of privacy in a motor vehicle due to the extensive regulation of vehicles. A law enforcement officer may also search locked or unlocked containers located in the vehicle if the object of the search could be concealed inside. Under the Mobile Conveyance Exception, the probable cause to search the vehicle is the alert that the vehicle was stolen, and the mobility of the vehicle is apparent from its operation on the roadways. The vehicle itself is the evidence of the crime as well as any tools that could have been used to perpetrate the crime.

¹⁵ See *Carroll v. United States*, 267 U.S. 132 (1925);

Another reason the vehicle could lawfully be searched is that there is no Fourth Amendment privacy right in a stolen vehicle.¹⁶ While Mr. ██████ should have had an expectation of privacy in the vehicle as an authorized user, Officer Rodriguez made a mistake based on good faith reliance on LEADs search results that indicated that the vehicle was stolen. The issue is what the officers knew at the time the vehicle was searched. At the time the vehicle was searched the officers believed the vehicle was stolen and a then-unidentified Mr. ██████ was in possession of it.

The proper course was further investigation, which was performed on the scene. The officers contacted ██████ to confirm the status of the vehicle. At the time Officer Rodriguez performed the search of the vehicle, there was no reason to believe ██████ had a privacy right in the vehicle that would prevent it from being searched. That would extend to sealed containers within the car if they could have contained evidence of the crime.

For these reasons, Officer Rodriguez is **EXONERATED** of the allegations that he unlawfully searched the vehicle being driven by ██████

IX. CONCLUSION

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

| Officer | Allegation | Finding |
|---------------------------|--|------------|
| Officer Gabriel Rodriguez | 1. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez unnecessarily displayed his weapon during the detention of ██████ in violation of rule 38. | EXONERATED |
| | 2. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez stopped ██████ without justification in violation of rule 6. | EXONERATED |
| | 3. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez searched the vehicle being driven by ██████ without justification in violation of rule 6. | EXONERATED |

¹⁶ See *United States v. Sholola*, 124 F.3d 803, 816 n.14 (7th Cir.1997); See also *Rakas v. Illinois*, 439 U.S. 128, 138, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978); See also *United States v. Salvucci*, 448 U.S. 83, 65 L. Ed. 2d 619, 100 S. Ct. 2547 (1980); See also *Smith v. Maryland*, 442 U.S. 735, 740, 61 L. Ed. 2d 220, 99 S. Ct. 2577 (1979)

| | | |
|-----------------------|--|------------|
| Officer Renee Gardner | 1. It is alleged that on August 1, 2018, in the vicinity of 8301 S. Cottage Grove Avenue, Officer Rodriguez stopped [REDACTED] without justification in violation of rule 6. | EXONERATED |
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Approved:

[REDACTED]

July 18, 2019

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|----------------|
| Squad#: | 6 |
| Investigator: | Adam Burns |
| Supervising Investigator: | Elaine Tarver |
| Deputy Chief Administrator: | Andrea Kersten |
| Attorney: | Scott Crouch |