

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 2, 2018
Time of Incident:	5:52 pm
Location of Incident:	North Avers Avenue & West Iowa Street
Date of COPA Notification:	September 13, 2018
Time of COPA Notification:	10:42 am

Complainant was driving the wrong way on a one-way street when three officers stopped him. After the Complainant stated that there may have been remains of marijuana cigarettes in the car, officers searched the car. Officers did not recover contraband or complete an Investigatory Stop Report despite patting down the Complainant. The officers are exonerated of allegations against them that they searched the Complainant's car and patted him down without justification. COPA sustains the allegations that the officers failed to complete an Investigatory Stop Report.

II. INVOLVED PARTIES

Involved Officer #1:	Nicu Tohatan Employee # [REDACTED] Date of Appointment: October 26, 2015 PO / Unit 011 / Detailed to Unit 376 DOB: [REDACTED], 1984 Male / White
Involved Officer #2:	Khaled Hasan Star #8454 / Employee # [REDACTED] Date of Appointment: August 29, 2016 PO / Unit 011 DOB: [REDACTED], 1993 Male / White
Involved Officer #3:	Ricardo Torres Star #16756 / Employee # [REDACTED] Date of Appointment: May 27, 2014 PO / Unit 011 DOB: [REDACTED], 1989 Male / White Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1975 Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Tohatan	<p>1. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Tohatan searched the Complainant's car without justification, in violation of Rule 6.</p> <p>2. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Tohatan searched Complainant's person without justification, in violation of Rule 6.</p> <p>3. It is further alleged that Officer Tohatan failed to complete an Investigatory Stop Report relating to the incident at the time and place above, in violation of Rule 6 and Special Order S04-13-09.</p>	<p>EXONERATED</p> <p>EXONERATED</p> <p>SUSTAINED / REPRIMAND</p>
Officer Hasan	<p>1. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Hasan searched the Complainant's car without justification, in violation of Rule 6.</p> <p>2. It is further alleged that Officer Hasan failed to complete an Investigatory Stop Report relating to the incident at the time and place above, in violation of Rule 6 and Special Order S04-13-09.</p>	<p>EXONERATED</p> <p>SUSTAINED / REPRIMAND</p>
Officer Torres	<p>1. 1. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Torres searched the Complainant's car without justification, in violation of Rule 6.</p> <p>2. It is further alleged that Officer Torres failed to complete an Investigatory Stop Report relating to the incident at the time and place above, in violation of Rule 6 and Special Order S04-13-09.</p>	<p>EXONERATED</p> <p>SUSATINED / REPRIMAND</p>

IV. APPLICABLE RULES AND LAWS

Rules – The following acts are prohibited:

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 1: Violation of any law or ordinance.

General Orders

G02-01: Human Rights and Human Resources

Special Orders

S04-13-09: Investigatory Stop System

Federal Laws

Fourth Amendment to the United States Constitution

State Laws

Article I, Section 6 of the Constitution of the State of Illinois

V. INVESTIGATION¹

a. Interviews

COPA interviewed the Complainant, Mr. ██████ on two separate occasions.² Mr. ██████ stated that on September 2, 2018, he was driving illegally down a one-way street and was stopped by the police. Officers asked Mr. ██████ to lower his passenger window. After Mr. ██████ insisted that he did not have to lower his window, Officer Tohatan “reached into the car, snatched” Mr. ██████ and pulled him out. After the officers handcuffed Mr. ██████ and moved him behind his car, an officer asked Mr. ██████ for consent to search the car even though, according to the officer, he “could search [the] car if” he wanted to. When Mr. ██████ refused to give consent, the officer said, “Haha, that was a trick question, because I can search your car and I am going to search your car.” The officers searched and ransacked the car, ripping up court documents, messing up clothes, and misplacing articles.

Mr. ██████ did not receive any citations and was not arrested. At his first interview, Mr. ██████ denied having any drugs or weapons in the car; after watching BWC footage during his second interview, he remembered that a passenger had smoked and that the car probably had remains of marijuana cigarettes in it; he also acknowledged that he said as much to the officers.

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Att. 6 (September 13, 2018); Att. 35 (November 23, 2018).

COPA interviewed the three officers separately on November 20, 2018.³ All three officers stated that they stopped Mr. ██████ because he was driving the wrong way on a one-way street. Additionally, they recalled that Mr. ██████ stated that someone had smoked marijuana in the car earlier. Officers Tohatan and Torres recalled a marijuana smell emanating from the car. Additionally, Officer Tohatan indicated that after he asked Mr. ██████ to step out of the vehicle, he noticed a bulge on the right side of Mr. ██████ waistband. After handcuffing Mr. ██████ Officer Tohatan patted Mr. ██████ down at the bulge and moved it to realize it was just a protrusion of Mr. ██████ belt. He then escorted Mr. ██████ to stand between the two cars and proceeded to run Mr. ██████ information. All three officers indicated that the responsibility to complete an Investigatory Stop Report lies with all three of them and that they made a mistake in not completing one, likely because they forgot.

b. Digital Evidence

COPA obtained and reviewed Body-Worn Camera footage⁴. The footage shows Mr. ██████ admitting that he drove the wrong way on a one-way street and refusing to give consent for his vehicle to be searched. In the video, Officer Tohatan instructs Mr. ██████ to lower the passenger side window. After Mr. ██████ refuses, Officer Tohatan instructs him to get out of the vehicle. As Mr. ██████ is exiting the vehicle, a bulge is apparent on his right waistband, covered by his shirt. Officer Tohatan handcuffs Mr. ██████ then looks under the bulge, discovering that the bulge was simply Mr. ██████ belt.

The video also shows the officers and Mr. ██████ talking about the smell of marijuana and shows Mr. ██████ stating that there may have been some marijuana cigarette remains—what he called “ducks”—in the car but that he does not smoke marijuana. The video later shows officers searching the vehicle thoroughly.

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.

³ Att. 36 (Officer Tohatan); Att. 37 (Officer Torres); Att. 38 (Officer Hasan).

⁴ Att. 39.

A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy.⁵ If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense.⁶ 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."⁷

VII. ANALYSIS

This case is a simple one. The Complainant admits that he was driving the wrong way on a one-way street, giving the officers probable cause to stop him. The Complainant admits that someone had been smoking marijuana and told the officers the car may have contained "ducks,"⁸ which gives the officers probable cause to believe that the car contained contraband.⁹ Accordingly, the officers are exonerated of the unjustified search allegations.



Officer Tohatan is also exonerated of the allegation that he searched the Complainant without justification. Officer Tohatan patted down the Complainant because he saw a bulge on the Complainant's right side. The bulge is visible on the BWC footage and Officer Tohatan articulated reasonable suspicion that the Complainant may be armed. The BWC also shows that Officer Tohatan did not expand the scope of his pat-down; instead, he patted down the area of the bulge and lifted the Complainant's shirt on that side but stopped after seeing that it was just the belt.

Officer Tohatan is also exonerated of the allegation that he searched the Complainant without justification. Officer Tohatan patted down the Complainant because he saw a bulge on the Complainant's right side. The bulge is visible on the BWC footage and Officer Tohatan articulated reasonable suspicion that the Complainant may be armed. The BWC also shows that Officer Tohatan did not expand the scope of his pat-down; instead, he patted down the area of the bulge and lifted the Complainant's shirt on that side but stopped after seeing that it was just the belt.

Finally, the allegations against all the officers that they failed to complete an Investigative Stop Report are sustained. CPD directives require that "members who conduct an Investigative Stop, Probable Cause stop when no other document captures the reason for the detention, and, if applicable, a Protective Pat Down or other search in a public place" complete an ISR.¹⁰ The officers completed a Traffic Stop Statistical Study card that listed the reason for the stop as driving the wrong way on a one-way street—the reason for the detention was captured in that document, and the officers were not required to complete an ISR for the stop. However, according to the same order, an ISR is required when a Pat Down or other search is completed in a public place. In fact,

⁵ See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (explaining that a proposition is proved by a preponderance of the evidence when it is found to be more probably true than not).

⁶ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

⁷ *Id.* at ¶ 28.

⁸ A duck, also known as a roach, is the remains of a marijuana cigarette after it has been mostly consumed.

⁹ At multiple times during the interview, Officer Tohatan stated that the mere refusal to give consent to search a car was an indication of contraband being present. Additional training may help rid Officer Tohatan of the notion that insisting on the protection of one's constitutional rights is an indication of guilt.

¹⁰ Special Order S04-13-09.

the examples in the Special Order contemplate a situation very similar to this one. In the example, an officer who stops a vehicle for a traffic violation then develops reasonable articulable suspicion that the driver is armed is required to complete an ISR “[d]ue to the performance of a Protective Pat Down.” The ISR is required even though the officer in the example issues a citation for the traffic violation, which of course captures the reason for the initial detention. Like the citation, the TSSS card captures the reason for the stop; an ISR was nonetheless required because Officer Tohatan performed a pat-down. Officers Tohatan, Hasan, and Torres conceded during their interviews that they should have completed an ISR and explained that the responsibility to fill one out belonged to all three of them.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

i. Complimentary and Disciplinary History

None of the officers have any publishable disciplinary history. Each of the three officers has between 30 and 80 honorable mentions. Officer Hasan also has also received three Department Commendations, while Officer Torres has received two.

ii. Recommended Penalty

All three officers admitted that they shared the responsibility to complete the ISR and took full responsibility for it, which mitigates their actions. Additionally, none of the officers have any publishable disciplinary history. Accordingly, COPA recommends a reprimand for each officer.

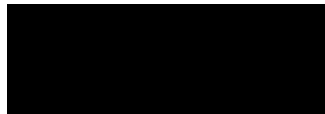
IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Tohatan	1. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Tohatan searched the Complainant’s car without justification, in violation of Rule 6.	EXONERATED
	2. It is alleged that, on September 2, 2018, around 6 pm, near 844 N. Avers Avenue, Officer Tohatan searched Complainant’s person without justification, in violation of Rule 6.	EXONERATED
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Approved:



December 29, 2019

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	IV
Investigator:	Tamer Y. Abouzeid
Supervising Investigator:	James Murphy-Aguilu
Deputy Chief Administrator:	Andrea Kersten