

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	October 16, 2019
Time of Incident:	7:33 pm
Location of Incident:	3655 West Cermak Road Chicago, IL 60623
Date of COPA Notification:	October 18, 2019
Time of COPA Notification:	12:33 pm

On October 16, 2019, Mr. [REDACTED] ([REDACTED]) was driving east bound on Cermak Road when Chicago Police Officers conducted a traffic stop because his headlights were not activated. [REDACTED] provided the officers with his driver’s license and insurance and Officers Trejo and Diaz ran his information which showed [REDACTED] failed to register as a violent youth offender for a crime committed in 1987. The officers requested a supervisor to the scene and after discussion with the supervisor decided [REDACTED] was free to go as they could not confirm whether he was in violation for failing to register.

In his complaint to COPA, [REDACTED] alleged the traffic stop was due to racial profiling and further complained that his detainment was unnecessarily prolonged.

**II. INVOLVED PARTIES**

Involved Officer #1:	Joseph Trejo, Star #17156, Employee ID#[REDACTED] Date of Appointment: July 17, 2017, Police Officer, 10 <sup>th</sup> District, Date of Birth: [REDACTED] 1994, Male, Hispanic
Involved Officer #2:	Moises Diaz, Star #3359, Employee ID#[REDACTED], Date of Appointment: November 16, 2017, Police Officer, 10 <sup>th</sup> District, Date of Birth: [REDACTED], 1994, Male, Hispanic
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED], 1967, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer Trejo	1. It is alleged that on October 16 <sup>th</sup> , 2019 at approximately 7:33 pm at or near 3655 W Cermak Rd you conducted a traffic stop of Mr. [REDACTED] without justification.	Exonerated

	2. It is alleged that on October 16 <sup>th</sup> , 2019 you detained Mr. [REDACTED] for an unreasonable amount of time during a traffic stop.	Exonerated
Officer Diaz	1. It is alleged that on October 16 <sup>th</sup> , 2019 at approximately 7:33 pm at or near 3655 W Cermak Rd you conducted a traffic stop of Mr. [REDACTED] without justification.	Exonerated
	2. It is alleged that on October 16 <sup>th</sup> , 2019 you detained Mr. [REDACTED] for an unreasonable amount of time during a traffic stop.	Exonerated

**IV. APPLICABLE RULES AND LAWS**

Rules

- 1.Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- 2.Rule 11: Incompetency or inefficiency in the performance of duty.

Federal Laws

United States Constitution, Amendment IV: Prohibits unlawful searches and seizures

**V. INVESTIGATION<sup>1</sup>**

**a. Interviews**

[REDACTED]

In an interview with COPA on October 18, 2019 Mr. [REDACTED] ([REDACTED]) provided the following information. [REDACTED] alleged that on October 16, 2019 between 7:00 pm and 7:30 pm he had a bad interaction with Chicago police officers. [REDACTED] was driving his black 2018 Nissan Murano east on Cermak Road when a police vehicle drove along side of him and then got behind him. The police vehicle activated their lights and sirens after a stop sign.

One officer approached his driver’s window and the other officer stood at the passenger side looking through his car windows. [REDACTED] said both officers were in uniform. He described the officer at the driver side window as a Hispanic male, now known as Officer Trejo, and his partner as a white male, now known as Officer Diaz. When asked by Officer Trejo if he knew why

<sup>1</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>2</sup> Att. 9

<sup>3</sup> He had his pet dog with him.

he was pulled over ██████ responded he had no idea. Officer Trejo informed ██████ his lights were off.

██████ apologized because he did not notice and then turned them on. Officer Trejo asked if he was licensed to carry a gun and ██████ replied no. ██████ provided his driver's license and insurance. His insurance was returned to him but the officers took his license with them to their vehicle. The officers were in their vehicle for approximately 10 minutes running the license when two other police vehicles arrived. All of the officers<sup>4</sup>, including a tall male supervisor, exited their vehicles. ██████ complied when Officer Trejo asked him to exit his vehicle.

██████ explained a 1987 murder conviction requires him to register as a criminal youth offender every year, including every time he moves to a new address, for 10 years after being released. ██████ said his release date was September 4, 2009 and his last registration took place September 4, 2019. ██████ said he was provided documentation certifying the completion of his registration requirements but did not have it with him.

██████ said an officer asked when his last registration was and called him a liar when he answered. The officer told ██████ he had a failure to register warning. The officers asked him to turn around, performed a pat down and handcuffed him before placing him into their vehicle. While in the vehicle the officers showed ██████ a recent arrest photo and asked if he knew who it was. ██████ said he did not know the person before realizing, after the lighting conditions improved, that it was him. ██████ said the officers called him a liar once again.

The officers informed him he had an arrest record for failing to register three times and there was a warrant for his arrest in Berwyn. ██████ denied he was ever arrested for failure to register because he never misses his registration. ██████ said the sergeant who arrived on scene, upon review of the circumstances, told the officers to release him and explained to ██████ that because the warrant was issued by Berwyn, they could not arrest him for it in Chicago.

██████ did not allege any misconduct against the sergeant and said no harm was done to his person, dog or property. He said he was disappointed in the traffic stop because he felt labeled and discriminated against for being black because the officers made assumptions and questioned him about why he served time in the first place.

## **b. Digital Evidence**

**Body worn camera (BWC)** footage from Officers Diaz<sup>5</sup> and Trejo<sup>6</sup> are consistent with each other and show the following.<sup>7</sup> Officer Trejo approaches ██████ vehicle as ██████ informs the officers there is a dog in the car. Officer Trejo asks if the car is his to which ██████ replies yes, then Officer Trejo informs ██████ he was pulled over because his headlights are not on. ██████ looks down, turns the dial and says, "Oh shit! That's on me, my bad." Officer Trejo asks

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<sup>4</sup> ██████ said a female officer, now known as Officer Trjerina, on scene went to check on his dog.

<sup>5</sup> Att. 1

<sup>6</sup> Att. 3

<sup>7</sup> Officers Perez and Trjerina are also on the scene and their BWC footage are consistent with Officers Trejo and Diaz.

for his license and insurance and asks if there are any weapons in the vehicle or if he owns a FOID card to which [REDACTED] replies no.

Both Officers Trejo and Diaz return to their vehicle and run [REDACTED] information. Officer Trejo says there is an SRI on him and does not think he has registered since 2014 because his record notes multiple failures to register. Officer Trejo says, "I think he's good to go." The officers then notice [REDACTED] was arrested in 2017 for failure to register as a violent youth offender and verify his identity with his SID number.

The officers<sup>8</sup> can be seen actively investigating [REDACTED] criminal history and determining the next appropriate steps. The officers are discussing what to do with [REDACTED] dog in the event he is taken into custody. [REDACTED] informs the officers of his anti-violence outreach work on behalf of the Lawndale Christian Legal Center and shows them his employee identification. Officers place [REDACTED] into handcuffs and sit him in the rear of the police vehicle until a determination can be made regarding his registration status.

The sergeant then decides [REDACTED] cannot be arrested because he cannot look up [REDACTED] hard card from Dolton to see if [REDACTED] is in compliance with his registration. Officers Diaz and Trejo let [REDACTED] out of the police vehicle and uncuff him. [REDACTED] speaks with the sergeant about his 10-year registration requirement and how he has paperwork proving he no longer has to register. The Sergeant explains to [REDACTED] the system shows [REDACTED] as having an arrest in 2017 for failing to register and similar arrests in 2014. Sergeant Olsen tells [REDACTED] he should carry papers from the state to avoid similar situations in the future.

The sergeant informs Officer Diaz to complete an ISR for their encounter with [REDACTED]

### c. Documentary Evidence

An **Investigatory Stop Report<sup>9</sup> (ISR)** indicates [REDACTED] was traveling eastbound on Cermak Rd without his lights on. The officers stopped him and ran his information which revealed that he has a gang caution file and must register as a violent youth offender yearly. They proceeded with a protective pat down and placed him in the rear of the police vehicle while they continued to investigate. Eventually, he was released as the sergeant on scene could not locate his most recent hard card registry.

The **Criminal History Report<sup>10</sup>** for [REDACTED] indicates he was arrested and convicted in 1987 for murder. The report indicates include one charge from 2017 and three charges from 2014 for failing to register as a violent offender against youth in Berwyn, Maywood, Bellwood and Dolton.

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<sup>8</sup> Officers Trejo, Diaz, Perez, Trjerina, and Sergeant Olsen.

<sup>9</sup> Att. 10

<sup>10</sup> Att. 5

## 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. Applicable Law

Traffic stops are seizures under the Fourth Amendment, and thus subject to the Fourth Amendment reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Traffic stops are analyzed under *Terry* because "the 'usual traffic stop' is more analogous to a so-called *Terry* stop than to a formal arrest." *People v. Cosby*, 231 Ill. 2d 262, 274 (2008) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). The *Terry* test is: "(1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *People v. Bunch*, 207 Ill. 2d 7, 14 (2003) (citing *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)).

A lawful traffic stop requires "at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law," including traffic law. *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663

(1979)). Articulate and reasonable suspicion means that the police “must be able to identify some ‘particularized and objective basis’ for thinking that the person to be stopped is or may be about to engage in unlawful activity,” amounting to more than a hunch. *United States v. Miranda-Sotolongo*, 827 F.3d 663, 666 (7th Cir. 2015) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Police need not meet the higher threshold of probable cause to perform a traffic stop, but if the stop *is* supported by probable cause, its lawfulness is still evaluated under *Terry*. *Rodriguez v. United States*, 135 S. Ct. 1609, 1617-18 (2015). An officer’s subjective intent does not enter into the analysis; even where officers hope to effectuate a goal unrelated to addressing a traffic violation (such as uncovering criminal activity), intent alone does not invalidate a stop that is otherwise objectively justified by reasonable articulable suspicion. *See Whren v. United States*, 517 U.S. 806, 812 (1996).

A traffic stop must last no longer than is required for law enforcement to effectuate its “mission,” which is “to address the [ ] violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). “[O]rdinary inquiries incident to [the] stop” are lawful, falling under the rubric of ‘related safety concerns.’” *Id.*, at 1615. Such inquiries include performing outstanding warrant and criminal history checks, as well as examining driver’s licenses, vehicle registrations, and proof of insurance. *Id.* *See also People v. Cummings*, 2016 IL 115769, ¶ 14 (2016). Inquiries unrelated to the stop’s mission are lawful only if they “do not measurably extend the duration of the stop.” *Id.* at 1614; *Caballes*, 543 U.S. at 410 (holding that it was lawful for an officer to walk a narcotics-detection dog around a vehicle while another officer issued a speeding ticket because it did not prolong the stop). If reasonable, articulable suspicion of criminal activity independent of the original infraction arises during the stop, police may detain vehicle occupants beyond the completion of the original infraction investigation. *See United States v. Walton*, 827 F.3d 682, 687 (7th Cir. 2016); *Rodriguez v. United States*, 135 S. Ct. 1609, 1616-17 (2015).

Even when police stay on-mission throughout the traffic stop, holding a vehicle’s occupants for too long a period of time is unlawful. The Supreme Court has declined to establish a bright-line rule on how long is too long, *United States v. Sharpe*, 470 U.S. 675, 686 (1985), but has stated that “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicions in a short period of time.” *People v. Gonzales*, 204 Ill. 2d 220, 233 (2003) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). If an alternative, less intrusive means of investigation was available at the time of the stop, the determinative factor in the lawfulness of the investigation is “whether the police acted unreasonably in failing to recognize or pursue [the alternative].” *Sharpe*, 470 U.S. at 687 (holding a twenty-minute stop reasonable because the police acted diligently and the suspect’s actions contributed to the added delay).

b. Allegations Against Officer Joseph Trejo

COPA finds Allegation 1, the officers conducted a traffic stop of [REDACTED] without justification, **EXONERATED**.

Although ██████ claimed in his interview with COPA, he felt the traffic stop was due to racial profiling,<sup>11</sup> BWC footage clearly shows Officer Trejo informing ██████ he was pulled over because his headlights were not on and ██████ acknowledging his error, apologizing for it and turning his headlights on. The BWC also clearly shows it was dark outside at the time of the stop. Therefore, ██████ was required to have his headlights on under applicable law.

Because there is clear and convincing evidence, Allegation 1 against Officer Trejo is exonerated.

COPA finds Allegation 2, that ██████ was detained for an unreasonable time during the traffic stop, **EXONERATED**. BWC footage demonstrates the officers' ran ██████ name and then were actively working to determine the status of ██████ registration status as a violent offender against youth. The officers called for a supervisor to the scene for further clarification. The officers also allowed ██████ to view the information on their screens while investigating the matter.

While ██████ may have felt the detainment took longer than necessary, BWC shows officers discussing their interpretation of ██████ criminal history as it showed multiple arrests for failure to register. The officers exercised their due diligence before ultimately concluding ██████ could not be arrested. The officers properly completed an ISR documenting their encounter with ██████ to account for his detainment. The evidence indicates the total length of the stop was reasonable under the circumstances.

Therefore, as a result of clear and convincing evidence, COPA finds Allegation 2 against Officer Trejo exonerated.

**Officer Moises Diaz**

COPA finds Allegations 1 and 2 against Officer Diaz, **EXONERATED** for the reasons explained above regarding Allegations 1 and 2 against Officer Trejo.

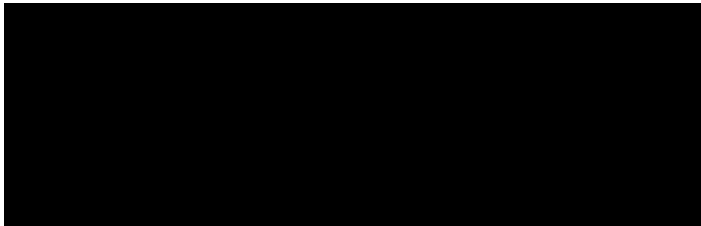
**VIII. CONCLUSION**

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

Officer	Allegation	Finding
Officer Trejo	1. It is alleged that on October 16th, 2019 at 7:33 pm at or near 3655 W Cermak Rd you conducted a traffic stop of Mr. ██████ without justification.	Exonerated

<sup>11</sup> The officers made no statements about ██████ race and ██████ has not provided any other evidence that the officers conducted the traffic stop because of his race.

	2. It is alleged that on October 16th, 2019 you detained Mr. [REDACTED] for an unreasonable amount of time during a traffic stop.	Exonerated
Officer Diaz	1. It is alleged that on October 16th, 2019 at 7:33 pm at or near 3655 W Cermak Rd you conducted a traffic stop of Mr. [REDACTED] without justification.  2. It is alleged that on October 16th, 2019 you detained Mr. [REDACTED] for an unreasonable amount of time during a traffic stop.	Exonerated  Exonerated



11/26/19

\_\_\_\_\_  
 Andrea Kersten  
 Deputy Chief Administrator – Chief Investigator

\_\_\_\_\_  
 Date



Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	6
<b>Investigator:</b>	Orlando Ortiz
<b>Supervising Investigator:</b>	Elaine Tarver
<b>Deputy Chief Administrator:</b>	Andrea Kersten