

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	January 5, 2019
Time of Incident:	19:16
Location of Incident:	3645 W. Thomas Street
Date of COPA Notification:	January 7, 2019
Time of COPA Notification:	17:32

The complainants, [REDACTED] and [REDACTED] allege that the accused officers detained and searched them without probable cause. Mr. [REDACTED] alleges that the accused officers used excessive force when they pointed their guns at him and snatched his cell phone out of his hand. Mr. [REDACTED] alleges that the accused officers called him derogatory names.

II. INVOLVED PARTIES

Involved Officer #1:	Nikola Saric, star #18200, employee ID# [REDACTED], Date of Appointment 08/31/15, PO, Unit 11, DOB [REDACTED]/81, M, WHI
Involved Officer #2:	Alain Aporongao, star #4870, employee ID# [REDACTED], Date of Appointment 11/30/12, PO, Unit 11, DOB [REDACTED]/85, M, API
Involved Officer #3:	Gabriel Cruz, star #2844, employee ID# [REDACTED], Date of Appointment 07/15/13, PO, Unit 11, DOB [REDACTED]/86, M, WWH
Involved Officer #4:	Matthew Pufpaf, star #19220, employee ID# [REDACTED], Date of Appointment 05/01/13, PO, Unit 11, DOB [REDACTED]/86, M, WHI
Involved Individual #1:	[REDACTED] DOB [REDACTED]/79, M, BLK
Involved Individual #2:	[REDACTED] DOB [REDACTED]/82, M, BLK

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Saric	1. The accused detained the complainants without probable cause.	Exonerated
	2. The accused conducted an illegal search of the complainants.	Exonerated

	<ol style="list-style-type: none"> 3. The accused used excessive force when he pointed his gun at [REDACTED] 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge. 6. The accused failed to document the investigatory stop for [REDACTED] 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Unfounded</p>
<p>Officer Aporongao</p>	<ol style="list-style-type: none"> 1. The accused detained the complainants without probable cause. 2. The accused conducted an illegal search of the complainants. 3. The accused used excessive force when he pointed his gun at [REDACTED] 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge. 6. The accused failed to document the investigatory stop for [REDACTED] 	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Unfounded</p> <p>Unfounded</p> <p>Sustained</p>
<p>Officer Cruz</p>	<ol style="list-style-type: none"> 1. The accused detained the complainants without lawful justification. 2. The accused conducted an illegal search of the complainants. 3. The accused used excessive force when he pointed his gun at [REDACTED] 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge. 6. The accused failed to document the investigatory stop for [REDACTED] 	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Unfounded</p>

Officer Pufpaf	7. The accused failed to activate his body-worn camera.	Sustained
	1. The accused detained the complainants without lawful justification.	Exonerated
	2. The accused conducted an illegal search of the complainants.	Exonerated
	3. The accused used excessive force when he pointed his gun at [REDACTED]	Not Sustained
	4. The accused verbally abused [REDACTED] by calling him derogatory names.	Not Sustained
	5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge.	Not Sustained
	6. The accused failed to document the investigatory stop for [REDACTED]	Unfounded

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
2. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
3. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

General Orders

1. G01-01: Mission Statement and Core Values
2. G03-02: Use of Force

Special Orders

1. S03-14: Body Worn Cameras
2. S04-13-09: Investigatory Stop System

Federal Laws

1. United States Constitution: Amendment IV

V. INVESTIGATION

a. Interviews

In his statement to COPA¹ on January 9, 2019, ██████████ stated that he was stopped by the accused officers as he exited the alley near a building at 3645 W. Thomas Street. He explained that he and ██████████ were walking out of the alley after checking the garbage area. Four police officers jumped out of an unmarked truck, with their guns drawn, and flashlights. They told him to stop and asked him what he was doing. One of the accused officers told him to take his hands out of his pockets, asked if anything was in his pockets, and patted him down. He stated that the other three officers detained Mr. ██████████. He said that Mr. ██████████ was very agitated and asked the officers why their guns were drawn. One of the officers told Mr. ██████████ to shut up, grabbed his cell phone from him, and slammed it on the window sill. One of the officers pushed Mr. ██████████ against the building and told him he was going to be arrested. He informed the officer that detained him that he owned the building, to which the officer asked if they could talk inside of the building. They entered the building and talked about the illegal drug sales in the area and the officer asked if he could have access to the building's roof. Mr. ██████████ agreed to give him access to the roof and to the building's security camera system. Mr. ██████████ stated that he questioned the officer regarding why the officers approached with guns drawn. The officer said it was because his first thought was to draw his gun. Mr. ██████████ said the officer took his telephone number and email address to contact him regarding access to the building and that ended their interaction.

In his statement to COPA² on January 9, 2019, ██████████ corroborated Mr. ██████████ version of what they were doing in the alley and how the accused officers approached them, with the exception that he remembers an officer pointing his gun at them. He explained that the shortest of the officers pointed his gun pointed at him and Mr. ██████████. The officers announced that they were police officers and made them turn to the wall and patted them down. Mr. ██████████ then left with one of the officers. He attempted to call someone on his cell phone, because he wanted a witness to the incident and an officer took his phone and slammed it on the ledge. He asked the officer why he had taken his phone and the officer told him to shut the fuck up. Mr. ██████████ stated that the officers were overly aggressive and rude to him. He said the officers verbally abused him by using profanity and calling him derogatory names. He stated that all three of the officers that he spoke to treated him in an aggressive manner.

In his statement to COPA³ on March 19, 2019, Accused Officer Nikola Saric stated that he and his partners were on routine patrol when they saw Mr. ██████████ and Mr. ██████████ in the alley. He explained that one of the men passed a small object, to the other man. This interaction was suspicious because the two men were in an alley and their interaction looked like a hand-to-hand narcotics transaction. It was also suspicious because the area has a high rate of illegal drug sales. Mr. ██████████ ducked down between the garbage cans, got up, and began walking briskly, out of the alley. Officer Saric exited his vehicle, announced his office, and asked Mr. ██████████ to stop and show his hands. He refused and continued to walk away. Officer Saric asked him several times to stop. Mr. ██████████ continued to ignore his commands, so he physically detained him by putting his hands near Mr. ██████████ waist. He had Mr. ██████████ raise his arms and patted him down because he thought that a bulge in his clothing might have been a weapon. Mr. ██████████ did not have a weapon

¹ Att. 4

² Att. 10

³ Att. 6

or narcotics in his possession. He did have a pouch with keys in it. He stated that Mr. [REDACTED] questioned him about being stopped and he explained to him that when an officer gives a lawful command that he must follow the command. Officer Saric explained that he never had any contact with Mr. [REDACTED] and that he never took Mr. [REDACTED] cell phone. He said he asked for Mr. [REDACTED] identification and then went to his vehicle to run his name. Officer Saric denied using profanity or derogatory names when he spoke to Mr. [REDACTED] and denied ever having his gun drawn. Officer Saric denied that any of his partners used profanity or derogatory names or had their guns drawn during the incident. The body worn camera footage captures Officer Saric making a comment about Mr. [REDACTED] and his conviction for murder and gang affiliation. He stated that he was agitated by the tension created when Mr. [REDACTED] refused to follow commands. He acknowledged that he should have used better judgment and not made the remark. When asked why he did not activate his body worn camera at the beginning of the event, Officer Saric stated that his first priority was officer safety and getting the subjects under control. Once they were under control, he activated his body worn camera. Officer Saric stated that he did not see Officer Aporongao conduct a pat down of Mr. [REDACTED] but does recall that Officer Aporongao mentioned that Mr. [REDACTED] was the owner of the building and the he would speak to him in private.

In his statement to COPA⁴ on March 19, 2019, Accused Officer Alain Aporongao stated that he and his partners were on routine patrol in the area when they saw two men engaged in what looked like a hand-to-hand transaction and saw one of the men stoop down between garbage cans. Officer Aporongao explained that he and his partners exited their vehicle and approached the two men. The officers told the men to stop but Mr. [REDACTED] did not follow the command. Officer Aporongao approached Mr. [REDACTED] and spoke to him about why they were in the alley and Mr. [REDACTED] identified himself as the owner of the building. Officer Aporongao asked him if he had any issues with people selling narcotics and Mr. [REDACTED] said that he did. He took Mr. [REDACTED] inside of the building to speak in private because he didn't want anyone in the neighborhood to see Mr. [REDACTED] speaking with the police. Officer Aporongao stated that he asked Mr. [REDACTED] if he could pat him down for his safety because they were in a small space and Mr. [REDACTED] is much larger in stature than him. He said Mr. [REDACTED] consented to the pat down. They talked about the narcotics sales in the area and he took Mr. [REDACTED] telephone number to speak with him at a later date regarding helping him reduce the narcotics sales near his building. Officer Aporongao explained that he had no contact with Mr. [REDACTED]. He did not hear the conversation that took place between Mr. [REDACTED] and his partners because he was inside of the building. He denied that he or any of his partners had their guns drawn at any point in the encounter. He stated the he did not generate an Investigatory Stop Receipt for Mr. [REDACTED] because the interaction was with a citizen. He said that he turned his body worn camera on after the two men had been contained and he and his partners were safe. He turned it off, shortly after activating it, because he considered the interaction to be with a citizen who needed help.

In his statement to COPA⁵ on March 25, 2019, Accused Officer Gabriel Cruz corroborates the reasons stated by Officer Saric and Officer Aporongao for the field investigation. He explained that when he and his partners exited the vehicle, Mr. [REDACTED] immediately had an attitude and asked why he was being detained. He did not have any contact with Mr. [REDACTED] or Mr. [REDACTED]. He does not recall any of his partners conducting a pat down of Mr. [REDACTED].

⁴ Att. 7

⁵ Att. 11

██████████ but assumes that it was done due to the suspicious activity between Mr. ██████████ and Mr. ██████████. Officer Cruz stood in close proximity to Mr. ██████████ but did not actually detain him. He remembered Mr. ██████████ speaking to Officer Pufpaf. He said he never displayed his weapon during the incident and did not see any of his partners draw their weapons. He stated that either he, nor any of his partners, took the cell phone from Mr. ██████████. He explained that he did not use profanity or call Mr. ██████████ derogatory names and did not recall having a conversation with him. He did not recall any of his partners using profanity or derogatory names when talking to Mr. ██████████. Officer Cruz stated that he thought he had turned on his body worn camera, but never checked to make sure it was activated.

In his statement to COPA⁶ on April 9, 2019, Accused Officer Matthew Pufpaf stated the same reasons as the other officers for the field investigation. He stated that when he exited the vehicle, he went to the alley to canvass the area where the men had been standing. He explained that after he canvassed the area, he exited the alley and walked to the front of the building. He saw Officer Aporongao and Mr. ██████████ enter into the building. He did not recall having any contact with Mr. ██████████. He did not display his weapon during the incident, and did not think that any of his partners had their weapons drawn when they exited the vehicle. Officer Pufpaf explained that he did not observe the initial interaction between his partners and Mr. ██████████ because he was in the alley. He said he heard Mr. ██████████ talking loudly and at a rapid pace. He also heard Officer Saric explain the reason for the detainment. He stated that his partners were relaxed during the incident and he did not recall any of them using profanity. Mr. ██████████ seemed agitated and upset. He stated that he did not take Mr. ██████████ cell phone and he never saw any of his partners take the cell phone. He said that he tried to calm Mr. ██████████ down by explaining what he and his partners were doing and assuring him that he would get a receipt for the stop.

COPA spoke to ██████████ on April 18, 2019. Ms. ██████████ is the sister of ██████████. Mr. ██████████ called Ms. ██████████ during the incident. Ms. ██████████ told COPA that she did not hear the conversation between Mr. ██████████ and the accused officers. She said she was trying to get Mr. ██████████ to calm down. She said she thought she heard someone use the term idiot but was not clear in what context it was used.

b. Digital Evidence

The Body Worn Camera footage⁷ for Officer Saric shows him talking to Mr. ██████████ conducting a pat down, and taking his identification. Officer Aporongao's footage⁸ captures him standing near the door of building with Mr. ██████████ and then it is deactivated as they walk into the building. Officer Pufpaf's footage⁹ captures him walking out of the alley and over to the area near Mr. ██████████ and Officer Cruz. It also captures Mr. ██████████ grab his cell phone off the window ledge and slam it back onto the ledge.

⁶ Att. 9

⁷ Att. 39

⁸ Att. 40

⁹ Att. 38

It should be noted that Mr. ██████ building camera allegedly captured the incident and he agreed to give COPA the video. COPA contacted Mr. ██████ on two occasions, to obtain this video. Mr. ██████ did not make the video available to COPA.

c. Documentary Evidence

The Chicago Police Department Investigatory Stop Receipt,¹⁰ for ██████ summarizes the field investigation. It details that the area in question has constant narcotics activity, person with a gun calls, and multiple people shot in the area in recent history. It explains the encounter between the officers and Mr. ██████. It states that the officers tactically positioned themselves around Mr. ██████ when he refused to stop and show his hands. It states that he was carrying what appeared to be a dark object in his right hand.

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 occurred and 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 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. 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

¹⁰ Att. 21

The allegation that the accused officers detained Mr. [REDACTED] and Mr. [REDACTED] without probable cause must be exonerated for all of the officers. The officers observed the men engaging in what appeared to be an illegal narcotics sale. This interaction between the two men gave the officers reasonable suspicion to believe illegal activity had occurred and to detain them and investigate. The allegation that the officers conducted an illegal search of Mr. [REDACTED] and Mr. [REDACTED] must be exonerated for all of the officers. Officer Saric conducted the pat down of Mr. [REDACTED] and Mr. [REDACTED] pat down was conducted by Officer Aporongao. Officer Saric explained that due Mr. [REDACTED] being agitated and non-compliant with his commands, and the bulge in his clothing, he thought Mr. [REDACTED] may have had a gun in his possession. Officer Saric's body worn camera captured him patting Mr. [REDACTED] near his waist and on the outside of his pockets. There is no body worn camera footage that captured Mr. [REDACTED] pat down. It either occurred as alleged by the complainants when they were outside of the building and before the officers activated their body worn cameras or inside of the building as Officer Aporongao alleged. Neither Officer Saric or Officer Cruz recalled Officer Aporongao patting down Mr. [REDACTED] when they were in front of the building. A pat down is justified when an officer believes that a person may be in possession of a weapon and the officer's safety is an issue.

The allegation that the officers pointed their guns at Mr. [REDACTED] cannot be sustained against any of the officers. There is no evidence that this conduct occurred. Mr. [REDACTED] contradicted this allegation when he stated that the officers had their guns drawn but did not aim the weapons at him or Mr. [REDACTED]. All of the accused officers stated that they did not draw their weapons at any time during the incident. There is also no evidence of this allegation on the body worn camera footage. If in fact, the accused officers did draw their guns, it occurred before their body worn cameras were activated.

The allegations that the officers verbally abused Mr. [REDACTED] cannot be sustained against any of the officers. There is no evidence to support this allegation. The accused officers denied using profanity when talking to Mr. [REDACTED] or calling him derogatory names. The interaction between Mr. [REDACTED] and the accused officers, that is captured on the body worn camera footage does not support this allegation. The officers are seen speaking with Mr. [REDACTED] and they seem calm and are not speaking in a derogatory manner.

The allegation that the officers used excessive force by snatching Mr. [REDACTED] cell phone and slamming it down on a concrete ledge also cannot be sustained against any of the officers. There is not enough evidence to prove this allegation. The body worn camera footage showed Mr. [REDACTED] remove his cell phone from the ledge and then slam it back onto the ledge. There is no footage that showed who initially placed the cell phone on the ledge.

The allegation that Officer Aporongao failed to document the investigatory stop of Mr. [REDACTED] must be Sustained. Regardless of Officer Aporongao's explanation that upon learning that Mr. [REDACTED] was the owner of the building, the interaction became one with a citizen and not a subject, and therefore no Investigatory Stop Report (ISR) was mandated, does not negate the need to complete an ISR. Here, Officer Aporongao specifically stated, in his interview with COPA, that he observed what he believed to be a hand-to-hand transaction between Mr. [REDACTED] and Mr. [REDACTED] followed by other suspicious activity. It was upon observing these actions that Officer Aporongao and his partners exited their squad car and he approached Mr. [REDACTED]. This encounter clearly falls under the definition of an Investigatory Stop, as set out in Special Order S04-13-09.¹¹ Therefore, Special Order S04-13-09 requires that Officer Aporongao must complete an ISR detailing his interaction with Mr. [REDACTED].

¹¹ Special Order S04-13-09(II)A

As to Officer Saric’s failure to complete an ISR detailing the field interview of ██████ ██████ in his statement to COPA, Officer Saric related that he did not know why he did not complete an ISR for Mr. ██████. However, he did explain that his area of concern was with Mr. ██████ not Mr. ██████. Officer Saric did complete an ISR for his contact with Mr. ██████. However, he had no affirmative duty to complete an ISR for Mr. ██████ as he had no direct contact with him. His failure to do so is not a violation of S04-13-09.

Officer Cruz and Officer Pufpaf both stated, in their interviews with COPA, that they had no communication with Mr. ██████ during this incident. They informed the COPA investigator that only Officer Aporongao spoke with Mr. ██████. As they had no affirmative duty to complete an ISR for Mr. ██████ having had no direct contact with him, the officers failure to do so is not a violation of S04-13-09.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Gabriel Cruz

- i. Officer Cruz’ Complimentary History includes, among other awards, 1 Special Commendation, 3 Department Commendations, 51 Honorable Mentions, and 1 Life Saving Award. His Disciplinary History includes a Reprimand for Court Appearance Violation.

ii. **Recommended Penalty, by Allegation**

1. Allegation No. 6

The aggravating factor is that Officer Cruz failed to activate his body worn camera. The mitigating factor is that he attempted to activate the camera and was not aware that it was not activated.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Saric	1. The accused detained the complainants without probable cause.	Exonerated
	2. The accused conducted an illegal search of the complainants.	Exonerated
	3. The accused used excessive force when he pointed his gun at ██████ ██████	Not Sustained

	<ol style="list-style-type: none"> 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge. 6. The accused failed to document the investigatory stop for [REDACTED] 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Unfounded</p>
<p>Officer Aporongao</p>	<ol style="list-style-type: none"> 1. The accused detained the complainants without probable cause. 2. The accused conducted an illegal search of the complainants. 3. The accused used excessive force when he pointed his gun at [REDACTED] 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused uses excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge. 6. The accused failed to document the investigatory stop for [REDACTED] 	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Unfounded</p> <p>Unfounded</p> <p>Sustained/Violation Noted</p>
<p>Officer Cruz</p>	<ol style="list-style-type: none"> 1. The accused detained the complainants without probable cause. 2. The accused conducted an illegal search of the complainants. 3. The accused used excessive force when he pointed his gun at [REDACTED] 4. The accused verbally abused [REDACTED] by calling him derogatory names. 5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and 	<p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p>

<p>Officer Pufpaf</p>	<p>slammed it down on a concrete ledge.</p>	
	<p>6. The accused failed to document the investigatory stop for [REDACTED]</p>	<p>Unfounded</p>
	<p>7. The accused failed to activate his body worn camera to capture the event.</p>	<p>Sustained/1 Day</p>
	<p>1. The accused detained the complainants without probable cause.</p>	<p>Exonerated</p>
	<p>2. The accused conducted an illegal search of the complainants.</p>	<p>Exonerated</p>
	<p>3. The accused used excessive force when he pointed his gun at Mr. [REDACTED]</p>	<p>Not Sustained</p>
	<p>4. The accused verbally abused [REDACTED] by calling him derogatory names.</p>	<p>Not Sustained</p>
	<p>5. The accused used excessive force when he grabbed Mr. [REDACTED] cell phone, out of his hand, and slammed it down on a concrete ledge.</p>	<p>Not Sustained</p>
<p>6. The accused failed to document the investigatory stop for [REDACTED]</p>	<p>Unfounded</p>	

Approved:



26 June 2019

Angela Hearts-Glass
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	J. Looper
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angel Hearts-Glass
*Attorney:	David Berland