

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 22, 2018
Time of Incident:	4:48 pm
Location of Incident:	2247 S. Kildare Avenue
Date of COPA Notification:	April 18, 2018
Time of COPA Notification:	5:50 pm

The complainant, Ms. [REDACTED] was conducting business as a property manager at 2247 S. Kildare Avenue when a conflict arose between her and a prospective tenant, Mr. [REDACTED]. A verbal disagreement over an apartment application fee ensued in front of the residence. Ms. [REDACTED] retreated and entered the first floor of the two-story home. Mr. [REDACTED] approached the front door, knocked repeatedly, and then entered the first-floor apartment. At some point during the interaction inside, Ms. [REDACTED] drew her lawfully possessed handgun from her purse and insisted Mr. [REDACTED] leave the building. Mr. [REDACTED] exited the property and called 911 to request police assistance.

Officer Dan Cojocnean and Officer David Kato were dispatched to the residence. Officer Kato took possession of Ms. [REDACTED] firearm and she was detained in handcuffs for just under 5 minutes. Responding officers asked both Ms. [REDACTED] and Mr. [REDACTED] for their version of events but they provided conflicting accounts. The officers requested a supervisor on scene. Sergeant Gonzalo Deluna responded and spoke to both parties again. Sergeant Deluna and the other officers viewed footage from a security camera. Based on the interviews conducted on the scene and a review of the security video, the officers declined to arrest any of the parties. Original Case Incident Report JB196063 was subsequently drafted, listing both Ms. [REDACTED] and Mr. [REDACTED] as victims. Ms. [REDACTED] filed a complaint with COPA alleging that she was handcuffed and detained without justification, and that the officers failed to arrest an individual who was trespassing on the property she managed.

II. INVOLVED PARTIES

Involved Officer #1:	Police Officer Dan Cojocnean, Star #15003, Employee ID# [REDACTED], Appointment Date: February 2, 2015, Unit 010, Male, White, Birth Date: [REDACTED], 1991.
Involved Officer #2:	Police Officer David Kato, Star #17850, Employee ID# [REDACTED], Appointment Date: November 4, 2013, Unit 010, Male, Hispanic, Birth Date: [REDACTED], 1983.
Involved Individual #1:	[REDACTED] Female, Black, Birth Date: [REDACTED], 1972.

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Dan Cojocnean	<p>It is alleged by ██████████ that on or about March 22, 2018, at approximately 4:38 pm at or near 2247 S. Kildare Avenue, Officer Dan Cojocnean committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Detaining ██████████ in handcuffs, without justification, in violation of Rule 6.</li> <li>2. Failing to arrest an offender, without justification, in violation of Rule 10.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p>
Officer David Kato	<p>It is alleged by ██████████ that on or about March 22, 2018, at approximately 4:38 pm at or near 2247 S. Kildare Avenue, Officer David Kato committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Detaining ██████████ in handcuffs, without justification, in violation of Rule 6.</li> <li>2. Failing to arrest an offender, without justification, in violation of Rule 10.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p>

**IV. APPLICABLE RULES AND LAWS**

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Rules

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1. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.
  2. Rule 10: Inattention to duty.
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United States Constitutional Provisions

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1. United States Constitution, Amendment IV: Prohibits search and seizure without probable cause.
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Special Orders

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1. S04-13-09 – Investigatory Stop System, effective July 10, 2017.

## V. INVESTIGATION

### a. Interviews<sup>1</sup>

On April 19, 2018, Ms. [REDACTED] provided a statement to COPA regarding the incident. The following is a summary of her statement.

Ms. [REDACTED] is a property manager who, at the time of the incident, was providing property management services to a client who owned property located at 2247 S. Kildare. Ms. [REDACTED] recounted a conflict between her and two prospective tenants that precipitated the incident. Ms. [REDACTED] related that a married couple<sup>3</sup> applied for an available apartment at 2247 S. Kildare. A week prior to the date of incident, the couple gave Ms. [REDACTED] a \$50 cash money order made out to Ms. [REDACTED] company for the costs of a credit check. However, once Ms. [REDACTED] realized the couple's monthly income did not meet the minimum requirement for tenancy, she decided not to proceed with the credit check. MS. [REDACTED] explained the income disqualification to Ms. [REDACTED] over the phone. Ms. [REDACTED] further informed Ms. [REDACTED] that she and Mr. [REDACTED] could meet her at the apartment on March 22, 2018, at which time Ms. [REDACTED] would return the couple's materials including the money order. Ms. [REDACTED] called Ms. [REDACTED] and requested that Ms. [REDACTED] cash the money order. Ms. [REDACTED] declined to do so and suggested that the couple take the money order back to the issuing currency exchange. On the date of the incident, Ms. [REDACTED] met Ms. [REDACTED] outside of the property and returned the money order. Ms. [REDACTED] related that Mr. [REDACTED] appeared on the property, became argumentative and again requested cash in exchange for the money order. Ms. [REDACTED] recalled arguing with the couple for a short period of time before stating that she had no cash, and then she went into the house.

Ms. [REDACTED] stated that several minutes after she entered the home, she heard a loud knocking at the door. She partially opened the inner door and saw Mr. [REDACTED] and Mrs. [REDACTED]. Mrs. [REDACTED] asked Ms. [REDACTED] to come outside and talk. Mr. [REDACTED] then lunged over Mrs. [REDACTED] grabbing towards Ms. [REDACTED]. Ms. [REDACTED] reached into her pocket and withdrew her black handgun. Ms. [REDACTED] recalled telling Mr. [REDACTED] to leave again and stating she had a gun, as he stepped into the apartment. Ms. [REDACTED] stated that though she pulled the handgun out, she never pointed it at Mr. [REDACTED]. She also estimated that he exited in under a minute and told her he was calling the police.

Ms. [REDACTED] stated she heard Mr. [REDACTED] call 911 from outside the residence. She also heard him provide the dispatcher with her physical description, including her sex, race, and manner of dress. When the officers arrived and knocked on the front door, Ms. [REDACTED] recalled answering and being asked if she was in possession of a firearm. She admitted to the officers that she possessed one. She recalled stating the firearm was in her pocket and then being told not to reach for it. She

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<sup>1</sup> Based on a careful review of the body worn camera footage and other material evidence, COPA concludes that the allegations are clearly exonerated and it is not necessary that the Involved Officers address the allegations in any way.

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

<sup>3</sup> Ms. [REDACTED] refers to Mr. [REDACTED] by the name [REDACTED] and to his wife as "Mrs. [REDACTED]" in her statement to COPA. Both her physical description of the couple and all other relevant evidence indicates she is referring to witnesses identified in the Original Case Incident Report (Att. 4) as [REDACTED] and [REDACTED].

stated that she allowed Officer Kato to remove it from the pocket of her jacket. Ms. ██████ stated that she was placed in handcuffs immediately after the gun was removed. Ms. ██████ admitted the gun was loaded during the altercation with Mr. ██████ but that she had removed the magazine after he exited the residence. Though Ms. ██████ stated that she understood the need to investigate the circumstances, she did not believe that detaining her in handcuffs was necessary. She further took issue with the fact that she was handcuffed but Mr. ██████ was not.

Ms. ██████ recalled that it was cold outside, and she felt it was unreasonable for the officers to make her stand outside in the cold temperature. She stated that the officers explained to her that she was not under arrest but that she was being detained while they determined what happened.

Ms. ██████ said that the officers eventually removed her handcuffs and allowed her to retrieve her firearm credentials from her own purse. She stated she was never handcuffed again and that she ultimately relocated inside the house with the officers. She told the officers there was a security camera in front of the residence and that she would allow them to look at the footage. Once inside, Ms. ██████ called the property owner, and received instructions over the phone on retrieving the video. Ms. ██████ said in her statement to COPA that the security video did not capture the full incident and only depicted Mr. ██████ knocking on the front door and entering the residence.

Ms. ██████ recalled a Sergeant arriving on scene, speaking with her, and reviewing the security camera footage himself. Ms. ██████ stated that the officers told her they would draft a report but that she would have to go to a station later if she wished to have Mr. ██████ arrested. Ms. ██████ stated she went to a station at later time and determined this was a lie. Ms. ██████ stated that she asked the officers why Mr. ██████ was not being arrested on the day of incident and that she felt the officers misled her about the legal procedure.

#### **b. Digital Evidence**

OEMC provided audio of Mr. ██████ 911 call.<sup>4</sup> Mr. ██████ tells the dispatcher, “Ma’am this woman just pulled a gun on me.”<sup>5</sup> He explains that this occurred at a two-story house at 2247 S. Kildare. He tells the dispatcher that he does not know the assailant, but that she has his money. Ms. ██████ can be heard talking in the background, telling Mr. ██████ to leave, as well as agreeing with his physical description of her. Ms. ██████ can also be heard stating that she is a property manager. Mr. ██████ tells the dispatcher that the assailant is a black female with red hair. He also states that she is in blue jeans, a grey jacket, and a black shirt.

OEMC provided audio of the dispatch<sup>6</sup> received by the responding officers on the date of incident. The dispatcher states, “We’re getting a person with a gun at 2-2-4-7 South Kildare, 2-2-4-7 South Kildare. Two-story building, coming in with details to follow. Female black pulled a gun on him, on the caller . . . .”<sup>7</sup> Then Beat 1065B is assigned the call. The dispatcher conveys that

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<sup>4</sup> Att. 24.

<sup>5</sup> Att. 24, at 0:10.

<sup>6</sup> Att. 26.

<sup>7</sup> Att. 26, at 55:50.

there are details to follow and subsequently provides the following description twice: “Female black has red hair, black shirt, grey jacket, blue jeans.”<sup>8</sup>

**Body Worn Camera (BWC) footage**,<sup>9</sup> captured by Officer Cojocnean<sup>10</sup> depicts him approaching the residence and first encountering Mr. [REDACTED] and his wife in front of the home. Mr. [REDACTED] reiterates to Officer Cojocnean that the person he called to report, Ms. [REDACTED] is inside and pointed a gun at him. Officer Cojocnean and Officer Kato proceed up the front stairs. Officer Kato knocks on the door and Ms. [REDACTED] answers. Officer Kato asks her if she has a firearm on her. She affirms that she does and that it is in her pocket. Officer Kato tells her not to reach for the weapon and Ms. [REDACTED] puts her hands in the air. Officer Kato removes the weapon from her jacket pocket. Immediately after Officer Kato removes the gun, Officer Cojocnean applies handcuffs to Ms. [REDACTED].<sup>11</sup> She begins protesting being handcuffed and questioning why they are necessary. Officer Cojocnean explains to her that she is not under arrest but that she is being handcuffed while they determine what happened and whether she will be under arrest.

Officer Cojocnean leads Ms. [REDACTED] down the stairs to the street in front of the residence. He explains that she will not be placed in the squad car and that they are just stepping outside near the car to discuss what happened. Ms. [REDACTED] recounts the conflict over the money order to Officer Cojocnean. She states that Mr. [REDACTED] started banging on the front door of the residence and that she drew her gun from her purse when he began opening the screen door against her wishes. She also states that she never pointed the gun at Mr. [REDACTED]. She tells both officers that her credentials for the weapon (FOID card and Conceal and Carry License<sup>12</sup>) are in her purse. Officer Kato retrieves her purse from the home and presents it to her. She begins to verbally direct the officers to where her credentials are but then asks again if they can remove her handcuffs. Officer Cojocnean then removes her handcuffs and allows her to retrieve the identification from the purse herself.<sup>13</sup> Footage establishes Ms. [REDACTED] was in handcuffs for a total of 4 minutes and 53 seconds.

Officer Cojocnean walks away at this point and speaks to Officer Mark Bronke about the differing accounts: specifically, that Ms. [REDACTED] claims she pulled the weapon because Mr. [REDACTED] forced entry while Mr. [REDACTED] claims he was already inside the home speaking to her for a short time before the gun was drawn. They agree that Officer Bronke will now go talk to Ms. [REDACTED] and Officer Cojocnean will go speak to Mr. [REDACTED]. Mr. [REDACTED] is still on the sidewalk in front of the residence but not within hearing distance of Ms. [REDACTED]. Officer Cojocnean asks Mr. [REDACTED] to tell him what happened again. Mr. [REDACTED] and Mrs. [REDACTED] recount the money order dispute again. Officer Cojocnean makes them clarify where they were when the gun was drawn, and both affirm that they were already inside the residence when she took out the gun. He asks them if Ms. [REDACTED] let them in the residence and Mrs. [REDACTED] affirms that Ms. [REDACTED] did let them in.<sup>14</sup>

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<sup>8</sup> Att. 26, at 56:45.

<sup>9</sup> CPD provided 14 files of Body Worn Camera footage: 4 files related to this incident and 10 files unrelated to this incident. There was no In Car Camera footage provided. See Att. 6 for a list of Evidence.com files.

<sup>10</sup> Att. 14

<sup>11</sup> Att. 14: This occurs at 1:03 in Officer Cojocnean’s BWC footage.

<sup>12</sup> Att. 12.

<sup>13</sup> Att. 14: BWC, Cojocnean, 5:56

<sup>14</sup> Att. 14: BWC, Cojocnean, 10:41

Officer Cojocnean then steps away from the couple and discusses the situation with Officer Bronke again. He states that the couple related to him that he did not force his way into the house. Officer Cojocnean mentions to Officer Bronke that Ms. █████ conceals and carry license still does not allow her to draw her weapon over an argument. Officer Cojocnean then walks over to Ms. █████ and states, "We're going to have a Sergeant come out here and we'll go over it because something is not adding up."<sup>15</sup> Ms. █████ asks what is not adding up. He tells her that Mr. █████ and his wife are claiming they were let in by Ms. █████ and she did not draw the weapon until their discussion escalated inside the residence. Ms. █████ suggests they go look at security camera footage inside the house and he agrees that he would like to see it.

Officer Cojocnean goes into the residence with Ms. █████ to view the security camera footage. Inside the house, Ms. █████ calls the property owner to get instructions on retrieving the security camera footage. She tells him that she was put in handcuffs because the officers listened to Mr. █████ story. Officer Cojocnean then cuts in and states, "No. I . . . Did I tell you . . . Is that why I put you in handcuffs? . . . No, I explained to you why I put you in handcuffs."<sup>16</sup> As they watch the footage, Ms. █████ admits, "Now I opened the door, so he's already in the screen door."<sup>17</sup> Officer Cojocnean is viewing the footage and states, "Well they're both inside right now, right?"<sup>18</sup> Officer Cojocnean appears to be referencing Mr. █████ and his wife entering the property in the security footage. Ms. █████ affirms that this is accurate. Officer Cojocnean asks if there is a camera inside the hallway and Ms. █████ says no. Ms. █████ is heard talking, presumably on her cell phone to the property owner, and states, "The camera doesn't really show, it's no angle showing him forcing his way into the house. Just the screen door opening and them coming in."<sup>19</sup> Officer Cojocnean can be heard stating in a low voice, presumably to another officer, that the video does not show Mr. █████ forcing his way inside.<sup>20</sup> Sgt. Gonzalo Deluna then enters the residence and introduces himself to Ms. █████<sup>21</sup> Ms. █████ does not mention or request Mr. █████ being arrested at any point in Officer Cojocnean's BWC footage.

**Body Worn Camera (BWC) footage** captured by Sergeant DeLuna<sup>22</sup> begins with him speaking to Mr. █████ and Mrs. █████ in front of the residence. Mr. █████ and Mrs. █████ recount their version of events, stating that they both entered the residence and argued with Ms. █████ for several minutes before Ms. █████ pointed a gun at Mr. █████ stomach. Sergeant DeLuna then enters the residence, introduces himself to Ms. █████ and asks for her side of the story. Ms. █████ recounts the money order dispute and states that she drew her weapon because Mr. █████ attempted to force entry. Sergeant DeLuna then looks at the security footage and agrees that it is inconclusive. Body worn camera footage depicts Sergeant DeLuna explaining to Ms. █████ that the officers are hearing two different stories and therefore cannot determine fault in the incident. Sgt. Deluna explains to Ms. █████ that there will be a case report drafted and that she will be supplied with a number.<sup>23</sup> He tells her that she can use that number to request a restraining order

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<sup>15</sup> Att. 14: BWC, Cojocnean, 11:56

<sup>16</sup> Att. 14: BWC, Cojocnean, 23:15.

<sup>17</sup> Att. 14: BWC, Cojocnean, 26:19.

<sup>18</sup> Att. 14: BWC, Cojocnean, 26:46.

<sup>19</sup> Att. 14: BWC, Cojocnean, 28:35.

<sup>20</sup> Att. 14: BWC, Cojocnean, 28:48.

<sup>21</sup> Att. 14: BWC, Cojocnean, 29:19.

<sup>22</sup> Att. 14.

<sup>23</sup> Att. 14: BWC, DeLuna, 12:59.

or order of protection later. The footage does not depict any officer telling Ms. [REDACTED] she must go to a station in person to have Mr. [REDACTED] arrested. Ms. [REDACTED] does not appear discontent with this outcome, nor does she verbally protest it. Ms. [REDACTED] verifies to Sergeant DeLuna that the officers have already taken her personal information down. As the footage ends, Ms. [REDACTED] only inquires as to when her weapon will be returned to her. Ms. [REDACTED] does not request or mention Mr. [REDACTED] being arrested at any point in Officer DeLuna's BWC footage.

**Body Worn Camera (BWC) footage** captured by Officer Kato<sup>24</sup> depicts him arriving at the residence, taking the lead up the stairs, and knocking on the front door. Officer Kato removes Ms. [REDACTED] gun from her pocket after she confirms where it's located. Officer Kato checks the gun and confirms it is unloaded as Officer Cojocnean is placing Ms. [REDACTED] in handcuffs. Officer Kato briefly speaks to another civilian in the front hallway who is an additional applicant for the apartment. Officer Kato then joins Officer Cojocnean in front of the residence where he is speaking to Ms. [REDACTED]. Ms. [REDACTED] recounts the conflict over the money order. When Ms. [REDACTED] mentions her conceal and carry license, Officer Kato asks where her identification is located, and she tells him it is in her purse on the steps in the house. Officer Kato then goes into the house and retrieves her purse. Once back outside, Officer Kato unzips the purse and Ms. [REDACTED] starts directing him to the credentials. She then asks, "Can you take the handcuffs off?"<sup>25</sup> and Officer Cojocnean removes the handcuffs to allow her to retrieve her credentials for the weapon. Officer Cojocnean then moves towards the house. Officer Kato stays with Ms. [REDACTED] until Officer Bronke approaches and asks for her side of the story. Officer Kato then leaves Ms. [REDACTED] with Officer Bronke and goes into the squad car with Ms. [REDACTED] identification cards to confirm their validity. After running the cards, Officer Kato goes back and speaks to Ms. [REDACTED] about the gun. He asks her where the magazine is, and she states it is in her purse. Officer Kato asks her if the gun was loaded when she drew it earlier and she confirms that it was, but that she unloaded it after Mr. [REDACTED] exited the residence to call the police. Officer Cojocnean comes back and explains to Ms. [REDACTED] that a sergeant has been called. Officer Cojocnean and Ms. [REDACTED] then proceed into the house to review the security footage. Officer Kato remains outside and then follow them into the house for the viewing several minutes later. Ms. [REDACTED] does not request or mention Mr. [REDACTED] being arrested at any point in Officer Kato's BWC footage.

**Body Worn Camera (BWC) footage** captured by Officer Bronke<sup>26</sup> depicts him talking to Mr. [REDACTED], Mrs. [REDACTED] and Ms. [REDACTED]. Officer Bronke first speaks to Mr. [REDACTED] and Mrs. [REDACTED] who convey that Ms. [REDACTED] let them in the house and spoke with them about the money order for several minutes prior to drawing her weapon and pointing it at Mr. [REDACTED] stomach. Officer Bronke later speaks to Ms. [REDACTED] who conveys that she opened the inner back door but drew her weapon upon seeing Mr. [REDACTED] attempt to force entry through the screen door. Ms. [REDACTED] does not request or mention Mr. [REDACTED] being arrested at any point in Officer Bronke's BWC footage.

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<sup>24</sup> Att. 14.

<sup>25</sup> Att. 14: This occurs at 5:44 in Officer Kato's BWC footage.

<sup>26</sup> Att. 14.

### c. Documentary Evidence

**Original Case Incident Report JB196063**,<sup>27</sup> details that the responding officers first spoke to Mr. █████ upon arriving on scene and he related that while inside of the residence, Ms. █████ pointed a black handgun in his direction to force him out of the residence. The report states the responding officers also spoke to Ms. █████ who stated that Mr. █████ forcefully entered her building without permission and threatened her. Mr. █████ further related that she feared for her safety and removed a black handgun from her purse. The report notes that Ms. █████ is a valid FOID card and Conceal Carry License holder. The report clarifies that the officers were not at the scene at the time of the altercation and therefore could not make a determination of fault. The report also notes that neither party wanted to sign a complaint against the other. Both Ms. █████ and Mr. █████ are identified as victims in the matter.

A **Domestic Incident Notice**<sup>28</sup> was provided to Ms. █████ by the officers on scene. The notice provides her with the relevant case number, JB196063. There is a handwritten note that reads “No Contact Order” underneath a paragraph with information about Civil Court for an Order of Protection. There is also a handwritten checkmark near a paragraph containing instructions for obtaining a warrant or summons for criminal charges, along with the location and hours for seeking this remedy. This document is a standard issued domestic incident notice containing accurate information regarding legal procedure.

## 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 is 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 been 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.

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<sup>27</sup> Att. 4.

<sup>28</sup> Att. 19.



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 is 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

### 1. Officer Cojocnean and Officer Kato reasonably detained Ms. [REDACTED]

COPA finds that the allegations that Officers Cojocnean and Officer Kato improperly detained Ms. [REDACTED] by placing her in handcuffs are **Exonerated**. A police officer may temporarily detain an individual for an investigatory stop when "the officer's decision is based on specific, articulable facts which warrant the investigatory stop intrusion." *People v. Moore*, 286 Ill. App. 3d 649, 653 (3d Dist. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21, (1968)); *People v. Stewart*, 242 Ill. App. 3d 599, 605 (1993)). "The police officer must have an 'articulable suspicion' that the person has committed or is about to commit a crime. *Moore*, 286 Ill. App. 3d at 653 (citations omitted). According to Special Order S04-13-09, an officer may momentarily restrict a person's freedom of movement, if the officer has articulable reasonable suspicion that the person is committing, is about to commit, or has committed a crime.<sup>29</sup>

Handcuffing 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 (5th 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 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, Officer Cojocnean and Officer Kato were dispatched to the address of incident with knowledge that a subject meeting Ms. [REDACTED] description pulled a gun on a 911 caller. A description of Ms. [REDACTED] sex, race, clothing, and hairstyle was provided to the officers prior to their arrival on scene. Furthermore, Mr. [REDACTED] was waiting in front of the house when they arrived on scene and reiterated to them that the woman inside, Ms. [REDACTED] pointed a gun at him. Ms. [REDACTED] then opened the front door and confirmed she had a firearm in her possession. Information provided to the officers by dispatch, Mr. [REDACTED] and Ms. [REDACTED] herself all supported the reasonable belief that Ms. [REDACTED] may have just committed a crime. Furthermore, body worn camera footage establishes that Ms. [REDACTED] detention via handcuffs lasted four minutes and fifty-three seconds.

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<sup>29</sup> Special Order S04-13-09(III)(B).

The length of the detention was reasonable in conjunction with both the investigation of a possible crime and securing the safety of the scene.

Even though Ms. [REDACTED] was permitted to possess the firearm, the officers were still justified in handcuffing her as they looked into her FOID and CCL credentials. *See Rabin v Flynn*, 725 F.3d 628, 633-34 (7th Cir. 2013) (holding that officers did not need to take documents purportedly allowing a person to carry a firearm at face value and were permitted to briefly handcuff him as they investigated his justification). Ms. [REDACTED] was accurately identified as the individual accused of threatening the [REDACTED] by multiple credible sources, and she admitted to having a firearm. The officers were permitted to detain her for a very brief period of time, and the officers engaged in investigatory activity while she was handcuffed in order to determine if an arrest was warranted in carrying the firearm. Accordingly, because the detention was based on a reasonable suspicion that Ms. [REDACTED] had committed a crime, and because she was briefly handcuffed in conjunction with the lawful detention and the officers' determination if Ms. [REDACTED] was permitted to carry the firearm, COPA finds that clear and convincing evidence exists that Officer Cojocnean and Officer Kato were justified in their actions and are **Exonerated**.

2. Officer Cojocnean and Officer Kato properly investigated the incident and determined that an arrest was not warranted.

COPA finds that Officer Cojocnean and Officer Kato are **Exonerated** with the respect to the allegation that they failed to arrest an offender. Officers have a duty to investigate the allegations of complainants and the totality of the circumstances to determine if an arrest is warranted.

Here, the responding officers were not witnesses to the initial altercation and had no basis of reference other than the narratives provided by the involved parties and the security footage from the front of the house. Digital evidence shows that the officers spent nearly 40 minutes thoroughly investigating the conflict to make a fair determination of fault. Both Ms. [REDACTED] and Mr. [REDACTED] were given an opportunity to recount their version of events and there were several discrepancies in the stories provided. Ms. [REDACTED] stated that she immediately drew her gun when Mr. [REDACTED] began opening the outer screen door to gain entry. However, Mr. [REDACTED] and Mrs. [REDACTED] both stated Ms. [REDACTED] let them into the residence and discussed the money order situation with them before drawing her weapon. There were also differing accounts of the gun's position. Ms. [REDACTED] told Officer Cojocnean she drew her weapon from her purse but never pointed it at Mr. [REDACTED]. However, both Mr. [REDACTED] and Mrs. [REDACTED] stated Ms. [REDACTED] pointed the gun at Mr. [REDACTED] stomach.

Officer Cojocnean and Officer Kato then reviewed footage from the home security camera but still could not conclusively determine fault. Body worn camera footage shows Ms. [REDACTED] watching the security footage with the officers and suggesting herself that it showed Mr. [REDACTED] forcing entry. However, the only thing the officers could conclusively determine was that Mr. [REDACTED] fully entered the front door and remained inside for a period of time longer than that which would have coincided with Ms. [REDACTED] version of events. Neither of the parties' narratives nor the security footage established probable cause to necessitate Mr. [REDACTED] arrest.

Furthermore, Officers Cojocnean and Kato took the additional step of requesting a supervisor respond to the scene to affirm how they should proceed. Sgt. Gonzalo Deluna arrived at the residence and spoke with Ms. [REDACTED] Mr. [REDACTED] and Mrs. [REDACTED]. Sgt. Deluna subsequently agreed that fault could not be determined. He explained this to Ms. [REDACTED] and noted that the officers would generate a case report outlining the differing versions of the incident. Sgt. Deluna further explained to Ms. [REDACTED] that she would be provided with a case number with which she could pursue a restraining order later. Ms. [REDACTED] was also provided with documentation from the officers detailing the case report number and how to obtain a warrant or summons to pursue criminal charges later. All of the information provided to her was accurate, as Original Case Incident Report JB196063 listed both Ms. [REDACTED] and Mr. [REDACTED] as victims and noted that fault could not be determined.

Neither Officer Cojocnean nor Officer Kato misled the complainant about the procedure., The officers also did not disregard Ms. [REDACTED] request for Mr. [REDACTED] arrest because the evidence indicates that Ms. [REDACTED] did not make that request. Furthermore, the officers would not be under any obligation to grant such a request absent probable cause to do so. Ms. [REDACTED] did not appear discontent or make any verbal indication that she disagreed with the outcome of the investigation as the interaction concluded. She only inquired as to when her weapon would be returned. Therefore, COPA finds the allegation that Officer Cojocnean and Officer Kato failed to arrest an offender is **Exonerated**.

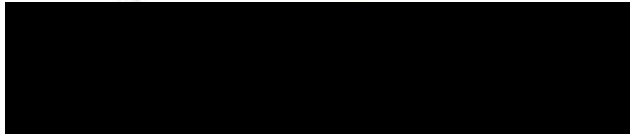
**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Dan Cojocnean	It is alleged by [REDACTED] that on or about March 22, 2018, at approximately 4:38 pm at or near 2247 S. Kildare Avenue, Officer Dan Cojocnean committed misconduct through the following acts or omissions, by: <ol style="list-style-type: none"> <li data-bbox="532 1444 1149 1514">1. Detaining [REDACTED] in handcuffs, without justification, in violation of Rule 6.</li> <li data-bbox="532 1556 1149 1619">2. Failing to arrest an offender, without justification, in violation of Rule 10.</li> </ol>	Exonerated  Exonerated
Officer David Kato	It is alleged by [REDACTED] that on or about March 22, 2018, at approximately 4:38 pm at or near 2247 S. Kildare Avenue, Officer David Kato committed misconduct through the following acts or omissions, by:	

	1. Detaining [REDACTED] in handcuffs, without justification, in violation of Rule 6.	Exonerated
	2. Failing to arrest an offender, without justification, in violation of Rule 10.	Exonerated

Approved:



5-6-2020

\_\_\_\_\_  
 Angela Hearts-Glass  
 Deputy Chief Administrator – Chief Investigator

\_\_\_\_\_  
 Date

**Appendix A**

Assigned Investigative Staff

<b>Squad#:</b>	5
<b>Investigator:</b>	Vanessa McClinton-Jackson
<b>Supervising Investigator:</b>	Loren Seidner
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass