

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 4, 2019
Time of Incident:	12:04 a.m.
Location of Incident:	5369 North Manila Avenue, Chicago, Illinois
Date of COPA Notification:	February 4, 2019
Time of COPA Notification:	3:44 a.m.

On February 4, 2019, Officer Sammy Encarnacion (“Officer Encarnacion”) and Officer Fazan Khan (“Officer Khan”) attempted to stop [REDACTED] ([REDACTED] fled. After a brief foot pursuit, Officer Encarnacion caught up to [REDACTED] and provided verbal commands to get on the ground. [REDACTED] did not comply. Officer Encarnacion deployed his taser. Officer Khan arrived and both officers placed [REDACTED] into handcuffs. [REDACTED] was transported to the hospital.

II. INVOLVED PARTIES

Involved Officer #1:	Sammy Encarnacion, star #11790, employee ID [REDACTED], Date of Appointment: June 29, 2015, PO, Unit 016, DOB: [REDACTED], 1989, Male, Hispanic
Involved Officer #2:	Fazan Khan, star #11553, employee # [REDACTED], Date of Appointment: June 29, 2015, PO, Unit 016, DOB: [REDACTED], 1989, Male, Asian
Involved Individual #1:	[REDACTED] DOB: [REDACTED], Male, White Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Fazan Khan	It is alleged that on February 4, 2019, at approximately 12:05 a.m., in the vicinity of 5369 North Manila Avenue, Chicago, Illinois, you stopped [REDACTED] without justification.	Exonerated
Officer Sammy Encarnacion	It is alleged that on February 4, 2019, at approximately 12:05 a.m., in the vicinity of 5369 North Manila Avenue, Chicago, Illinois, you: 1. stopped [REDACTED] without justification; and 2. used excessive force when you deployed your taser.	Exonerated Sustained/1-day Suspension

IV. APPLICABLE RULES AND LAWS

Rules

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

1. General Order G02-02 The First Amendment and Police Actions
 2. General Order G03-02 Use of Force
 3. General Order G03-02-01 Force Options
 4. General Order G03-02-04 Taser Use Incidents
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Special Orders

1. Special Order S04-13-09 Investigatory Stop System
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Federal Laws

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

V. INVESTIGATION

a. Documentary Evidence

Tactical Response Report (“TRR”) completed by Officer Encarnacion documented that ██████ did not follow verbal direction, made verbal threats, and fled. ██████ possessed a knife/cutting instrument. Officer Encarnacion, in addition to deploying his taser, responded with member presence, verbal direction/control techniques, emergency handcuffing. In his narrative, Officer Encarnacion indicated ██████ was aggressive, yelled “shoot me, shoot me,” and disregarded commands, to get on the ground. Officer Encarnacion told ██████ he would be tased, ██████ continued to disregard commands, and Officer Encarnacion deployed his taser.

Sergeant Candido Lopez (“Sgt. Lopez”) documented, after reviewing BWC, Sgt. Lopez observed ██████ as “an active resister and becoming a passive resister. [Sgt. Lopez] then observed PO Encarnacion deploy his taser inconsistent with General Orders G03-02-04 and G03-02-1, tasing subject who was passively resisting.”² Lieutenant David Haynes (“Lt. Haynes”) marked Officer Encarnacion’s use of force was not in compliance with Department Policy and Directives, indicating “the officer failed to take into account the changed circumstances and the change in the offenders level of resistance in the moments leading up to the officers’ deployment of the taser.”^{3,4}

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

² Attachment 8, page 2.

³ Attachment 8, page 3.

⁴ Attachments 8, 20.

According to **Department Reports**, on February 4, 2019, officers responded to several calls of suspicious persons walking up to pedestrians aggressively, looking into and pulling handles of parked cars. The descriptions provided were: 8 males, black, Hispanic and white, walking the alley and looking into gangways and walking up to pedestrians aggressively; 6 teens walking southbound in the street looking into parked cars and pulling on door handles; and 6 males, black, ages 16-20 years old, headed southbound pulling on doors of parked vehicles, and one of the individuals was wearing a white Nike jacket.⁵ Officers toured the area. Officers Encarnacion and Khan observed ██████ fitting the description of one of the individuals, and ordered him to stop. ██████ fled, and officers pursued on foot. ██████ ignored multiple police commands to stop and held his side with his right hand appearing to have a firearm. ██████ came to a stop. Officer Encarnacion instructed ██████ to get on the ground. ██████ did not comply, aggressively stating “Shoot me, shoot me.”⁶ Officer Encarnacion deployed his taser. ██████ was taken into custody and transported to the hospital. Officers recovered a black small pocket knife from ██████ left pocket. ██████ was released from the hospital in stable condition and transported to District 016. Three other individuals were taken into custody and transported to District 016 for processing.⁷

b. Digital Evidence

Body Worn Camera (BWC) shows Officers Encarnacion and Khan speak with a female about an individual in a white hoodie that was at the residence earlier. Officer Encarnacion states they have three individuals and they are looking for a couple more, males black. Officers search the rear of residences, walk down the street looking for any open gates, and get back into their vehicle to drive around. While driving, Officer Encarnacion calls out to an individual in the street to see if they saw anyone running around in a white hoodie. Eventually, Officers Encarnacion and Khan see an individual, they talk about him looking shady, and Officer Encarnacion repeats the description of 6 males, black, and black hoodie. They say the guy looks shady and keeps looking back. They decide they want to talk to him and see what he says.⁸

Officers Encarnacion and Khan exit their vehicle. Officer Encarnacion tells ██████ to come over. ██████ takes off running. Officers pursue. Officer Encarnacion and Officer Khan call out the foot pursuit over radio with a description, male, Hispanic, red pants and black hoodie.⁹ Officer Encarnacion yells stop multiple times. At some point, Officer Encarnacion unholsters his firearm and runs behind ██████ yelling stop, show your hands, or he will shoot him.¹⁰

██████ eventually, stops on the sidewalk at a fence in front of a house. The house’s porch light is illuminated and there are two street lights behind ██████ at a distance, otherwise, the area around ██████ is dark. Officer Encarnacion catches up to ██████ yelling, “stop, I’ll fucking shoot you. Get on the ground.”¹¹ ██████ tells Officer Encarnacion to shoot him multiple times, takes several steps toward Officer Encarnacion and moves his hands up into the air. Officer Encarnacion raises his taser and extends it outward with his left hand, as he moves right hand, holding his

⁵ Attachment 5. *See also* Attachment 11.

⁶ Attachment 4, page 3.

⁷ Attachments 4-7, 11, 17, 18.

⁸ Attachment 21 at 10:30-11:45.

⁹ Attachment 21 at 11:53-12:12 and Attachment 22 at 14:10-14:27.

¹⁰ *Id.* at 11:48-12:57.

¹¹ *Id.* at 13:00-13:03.

firearm, down toward the right side of his body. Officer Encarnacion orders ██████ to get on the ground three times, while ██████ continues to say, “shoot me” while his hands are in the air. Officer Encarnacion deploys his taser, where the red dots appear to be lined up on ██████ stomach and leg. ██████ takes a step back but is otherwise unaffected by the taser.¹² Officer Encarnacion yells, “taser, taser, taser” and orders ██████ to get on the ground.¹³ At this time, Officer Khan is running towards Officer Encarnacion and ██████. Officer Khan is near the center of the street when Officer Encarnacion is heard yelling taser. Officer Khan slows down and stops.¹⁴ As Officer Encarnacion reports taser deployed over the radio, ██████ looks toward Officer Khan, and with his hands still in the air moves his hands in a “what is going on?” questioning manner.¹⁵ Officer Encarnacion orders ██████ to the ground, as Officer Khan slowly walks up and grabs ██████ arms and places him into handcuffs. Officer Encarnacion searches ██████.¹⁶

Another police unit has arrived on scene and ██████ is placed in the back of the police vehicle. Officer Encarnacion tells officers he wants to check the alley where ██████ ran because he held his waistband and Officer Encarnacion lost sight of him for a second. Officer Encarnacion explains the stop and foot pursuit to Sergeant Lopez on scene, which is consistent with his statement to COPA. Officers search the alley but do not recover anything. ██████ is transported to the hospital in an ambulance.¹⁷

c. Interviews

In an **interview with COPA**, on May 2, 2019, **Officer Sammy Encarnacion, star #11790 (“Officer Encarnacion”)** stated on February 4, 2019, he heard a call over the radio, OEMC, about 6-8 teenagers, males wearing dark clothing, hoodies and dark pants, who were pulling on car doors attempting to break into vehicles. Officer Encarnacion and his partner, Officer Khan, went toward the area to assist. While touring the area, Officer Encarnacion heard Unit 1622 was engaged in a foot pursuit. Officer Encarnacion continued to look for someone who matched the description. Officer Encarnacion observed ██████ who matched the description, male, juvenile, either Hispanic or white, and wore a dark hoodie and dark pants, run across Milwaukee. ██████ appeared to be concealing his identity because he avoided looking directly at the officers, and he appeared to turn his head over his shoulder to see where the officers were headed. Officer Encarnacion wanted to conduct an investigatory stop because ██████ matched OEMC’s description and he was in the proximity of where other individuals fled on foot. Officer Encarnacion stated he was familiar with this area, which he described as quiet and not common to see teenagers around during that hour.

When Officers Encarnacion and Khan approached ██████ to conduct an investigatory stop, ██████ took off running. Officer Encarnacion thought ██████ may have a weapon because ██████ immediately reached over to his waistband, which in his training and experience, indicated ██████ was trying to conceal or hold onto an object that may be used as a weapon, such as a handgun or

¹² *Id.* at 13:03-13:12.

¹³ *Id.* at 13:12-13:18.

¹⁴ Attachment 21 at 13:15-13:20 and Attachment 22 at 14:47-14:54.

¹⁵ Attachment 22 at 14:55-15:56.

¹⁶ Attachment 21 at 13:17-13:24 and Attachment 22 at 14:56-15:06.

¹⁷ Attachments 21-24.

a type of blade. Officer Encarnacion unholstered his handgun and ran after ██████ telling him to stop.

Eventually, Officer Encarnacion caught up to ██████ as he is tried to open a gate. Officer Encarnacion did not know who lived in the house. Officer Encarnacion could see ██████ did not have anything in his hands, but Officer Encarnacion did not know if ██████ was going to run again. Officer Encarnacion holstered his handgun with his right hand while removing his, nonlethal, taser with his left hand. Officer Encarnacion turned on his taser, and ordered ██████ to get on the ground. ██████ did not comply and he started to become verbally aggressive, shouting, cursing, and "...continuing to tell me tase me, tase me, come on. He's like, come on, bitch."¹⁸ Officer Encarnacion deployed his taser after running a couple of blocks, when ██████ was about 10 to 15 feet way, in the dark, with his hands up in the air, pumped his chest and made a small movement. Officer Encarnacion did not know if ██████ was going to advance forward or stay back and he did not see any other officer at the time.¹⁹

Officer Encarnacion could tell the taser did not work because there was no reaction, he did not go to the ground. ██████ said it did not work, aggressively saying it didn't hurt him. At this point, Officer Encarnacion saw Officer Khan come up and grab ██████ Officer Encarnacion holstered his taser, and assisted Officer Khan to handcuff ██████ While ██████ continued to be aggressive with his language, Officer Encarnacion felt with Officer Khan present they were in a safe tactical position without the need of a taser. Officers performed a pat down of ██████ Nothing was recovered. After ██████ was placed in a police vehicle, Officer Encarnacion walked the path he and ██████ ran to see if ██████ tossed a weapon. ██████ was taken to the hospital.

Officer Encarnacion reviewed his TRR, including Sergeant Lopez's and Lt. Haynes' comments classifying ██████ as a passive resister at the time Officer Encarnacion deployed his taser. Officer Encarnacion stated he disagreed with their assessment, saying it all happened so fast, however, he respected their opinions and "if that's what they feel it was, then I definitely will take it and learn from it. And I take full responsibility for that."^{20,21}

In an **interview with COPA**, on June 4, 2019, **Officer Fazan Khan, star #1153 ("Officer Khan")** provided a consistent statement as Officer Encarnacion with the following additional details. Officer Khan stated he when he caught up to Officer Encarnacion and ██████ was being aggressive, pumping his chest out, disobeying verbal commands, saying, "shoot me, bitch, shoot me,"²² he could have moved towards Officer Encarnacion or hop over the fence, and Officer Encarnacion was alone. Officer Khan stated it was dark where Officer Encarnacion and ██████ were standing, but he knew it was the two of them because of the situation. Officer Khan sprinted over and he and Officer Encarnacion handcuffed ██████ Officer Khan rode in the ambulance with ██████ to Community First Hospital.²³

¹⁸ Attachment 39, page 23 lines 8,9.

¹⁹ At this point, according to Officer Encarnacion, ██████ was an active resister because he ran, was not complying with verbal commands, and with his hands up pumped out his chest.

²⁰ Attachment 39, page 42 lines 18-21.

²¹ Attachments 29, 39.

²² Attachment 40, page 12 lines 7,8.

²³ Attachments 35, 40.

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

a. Officer Fazan Khan

COPA finds the allegation that Officer Fazan Khan stopped ██████████ without justification is **Exonerated**. An officer "may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions."²⁴ Officers Khan and Encarnacion stated they stopped ██████████ because he appeared to be concealing his identity, he matched the description, male, juvenile, wearing a dark hoodie and dark pants, and he was in the proximity of where other individuals, who were attempting to break into vehicles, fled on foot. Department Reports and video footage support the officers' account of the incident. Based on the evidence, Officer Khan had reasonable articulable suspicion to stop ██████████ to determine whether he was one of the individuals attempting to break into vehicles. Therefore, this allegation is **Exonerated**.

²⁴ Special Order S04-13-09 V.A.

b. Officer Sammy Encarnacion

As discussed above, COPA finds the allegation that Officer Sammy Encarnacion stopped [REDACTED] without justification is **Exonerated**.

COPA finds the allegation that Officer Sammy Encarnacion used excessive force when he deployed his taser is **Sustained**. An officer's use of a Taser must be objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance presented by the individual.²⁵ An officer is authorized to use a Taser **only against** an active resister, defined as a person who attempts to create distance from the officer with the intent to avoid physical control and/or defeat the arrest, or assailant, defined as a person who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury, and only for the purpose of gaining control of and restraining the subject.²⁶ An individual who fails to comply, non-movement, with verbal commands or other directions is a passive resister.²⁷

Although Officer Encarnacion, in his interview with COPA, stated [REDACTED] was an active resister, in his TRR, Officer Encarnacion described [REDACTED] as a passive resister, indicating [REDACTED] was aggressive, yelling "shoot me, shoot me" and disregarding commands, which describes a passive resister. BWC shows Officer Encarnacion catch up to [REDACTED] puts his hands up and walks toward Officer Encarnacion, baiting Officer Encarnacion to shoot him. [REDACTED] stops several feet away from Officer Encarnacion, hands up, and continues to bait Officer Encarnacion to shoot him while ignoring Officer Encarnacion's commands to get on the ground. Officer Encarnacion deploys his taser. Officer Encarnacion, Sgt. Candido and Lt. Haynes, after reviewing BWC, conclude Officer Encarnacion's taser deployment was not in compliance with Department policy because while [REDACTED] was an active resister during the foot pursuit, he was a passive resister at the time Officer Encarnacion deployed his taser.

Based on the evidence, [REDACTED] was a passive resister at the time Officer Encarnacion deployed his taser. Therefore, Officer Encarnacion did not comply with Department policy when he deployed his taser, and this allegation is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Sammy Encarnacion**

COPA has considered Officer Encarnacion's complimentary, training and disciplinary history when recommending discipline in this case. Officer Encarnacion received a Reprimand on June 29, 2019, for Non-Compliance with Motor Vehicle Pursuit Requirements. COPA recommends Officer Encarnacion receive Use of Force and Taser training and receive a 1-day suspension.

²⁵ General Order G03-02-04 II.C.

²⁶ General Order G03-02-01 IV.B.2; G03-02-01 IV.C; G03-02-04 II.C.

²⁷ G03-02-01 IV.B.1.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Fazan Khan	It is alleged that on February 4, 2019, at approximately 12:05 a.m., in the vicinity of 5369 North Manila Avenue, Chicago, Illinois, you stopped [REDACTED] without justification.	Exonerated
Officer Sammy Encarnacion	It is alleged that on February 4, 2019, at approximately 12:05 a.m., in the vicinity of 5369 North Manila Avenue, Chicago, Illinois, you: 1. stopped [REDACTED] without justification; and 2. used excessive force when you deployed your taser.	Exonerated Sustained/ 1day-Suspension

Approved:

[REDACTED]

1-7-2020

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	6
Investigator:	Elizabeth Brett
Supervising Investigator:	Elaine Tarver
Deputy Chief Administrator:	Angela Hearts-Glass