

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	October 18, 2019/ 3:00 p.m., 9400 S. Halsted St., Chicago, IL
Date/Time of COPA Notification:	October 21, 2019/ 9:25 a.m.
Involved Officer #1:	Christian Herrera , Star #12602, Employee ID # [REDACTED], Date of Appointment: March 16, 2017, Police Officer, 22 nd District, DOB: [REDACTED] 1994, M, Hispanic.
Involved Officer #2:	Daniel Orozco , Star #11757, Employee ID # [REDACTED], Date of Appointment: March 16, 2018, Police Officer, 22 nd District, DOB: [REDACTED], 1985, M, Hispanic.
Involved Individual #1	Complainant-Victim , [REDACTED] 45, M, Black, [REDACTED].
Case Type:	Improper statement(s)/verbal abuse, racial.

I. ALLEGATIONS

Officer	Allegation	Finding
Police Officer Christian Herrera	1. It is alleged that on or about October 18, 2019, the accused officer asked [REDACTED] -- who is black -- words to the effect of: "I wonder why do you people sell drugs?" while processing Mr. [REDACTED] at the district station after his arrest for driving on a suspended license, driving without proof of insurance, and failure to display a current City wheel-tax sticker.	Not Sustained.

II. SUMMARY OF EVIDENCE¹

On October 18, 2019, at or about 3:00 p.m., CPD patrol Officers Christian Herrera and Daniel Orozco curbed [REDACTED] vehicle, purportedly for failure to display a current Chicago wheel-tax sticker. Officers' body-worn cameras ("BWC") showed that after approaching Mr. [REDACTED] vehicle's driver's side window and checking his personal information, Mr. [REDACTED] was asked to exit, and was detained² for driving on a suspended license, driving without proof of insurance, and without a valid City wheel tax sticker. He was then transported to the district station for processing. There were no complaints of injury related to this incident. Recovered BWC depicted most of the initial traffic stop, and a portion of the District processing area activity.

Mr. [REDACTED] subsequently filed a complaint with COPA and provided a sworn statement alleging an officer in the district processing room – since believed to be PO Herrera -- uttered words to the effect of: "I wonder why do you people sell drugs?" to Mr. [REDACTED] Mr. [REDACTED] who is black, complained he believes the officer did so because of his race.

III. ANALYSIS AND CONCLUSION

On October 21, 2019, [REDACTED] registered his complaint regarding officer misconduct. Following Mr. [REDACTED] complaint, COPA began its investigation of the incident that occurred on October 18, 2019. Video footage was requested and reviewed, and additional evidence was requested. The relevant evidence received included reports and records from the Chicago Police Department (CPD) and the Office of Emergency Management and Communications (OEMC). After a thorough review of the evidence, Officers Christian Herrera and Daniel Orozco were identified as involved officers. They were subsequently served with allegation(s) and interviewed regarding this matter.

a. Interviews

1. Complainant-Victim [REDACTED]

In an interview with COPA on November 1, 2019,³ **Complainant-Victim** [REDACTED] related that on or about October 18, 2019, at approximately 3 p.m., he was driving alone, south on Halsted St., in a 2010 burgundy Ford Taurus he had just purchased two hours prior.⁴ He observed

¹ COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

² See Attachment 2, PO Herrera Statement at 20:24. "[Mr. [REDACTED] was not formally arrested, so no central booking number was generated, he was never fingerprinted. After the citations and after the vehicle impound, he was bonded out by our sergeant. [...] There is nothing on this date [in his arrest record] showing either me or my partner as his arresting officer."

³ Attachment 13.

⁴ *Id.*, at 6:34 and 8:06.

a marked CPD vehicle make a U-turn and begin to follow behind him. Within approximately 10-minutes of observing the squad vehicle, officers activated their emergency lights and curbed Mr. █████ sedan.⁵ A stocky male officer in his late 30s, approximately 5'2" approached Mr. █████ driver's side door and requested a license and proof of insurance.⁶ The officer had a younger, Caucasian partner working with him.^{7 8}

The officer(s) then took the license back to the squad vehicle and, thereafter, approximately eight other CPD vehicles arrived at the scene.⁹ The officer who took the license then returned to the driver's door and asked Mr. █████ to exit.¹⁰ Mr. █████ exited, and the officer told him to put his hands behind his back. Mr. █████ asked why, and the officer said his license was suspended.¹¹ Mr. █████ complied, was handcuffed, and placed in the back of the squad vehicle. He was then transported to the district station for processing. Another officer drove Mr. █████ sedan to the station. The arresting officer subsequently told Mr. █████ he was initially stopped because his driver's side taillight was out.¹²

Once at the station, the Caucasian partner of the first officer interviewed Mr. █████ in the processing area and drafted citations against him. During that interaction, the officer asked him words to the effect of: "I wonder why your people sell drugs." Mr. █████ related: "I'm looking at him like, what?"¹³ Mr. █████ then asked the officer why he had to write him so many tickets, because he [Mr. █████ had a CDL [and such tickets so could jeopardize his license].¹⁴ Mr. █████ said he felt the officer acted unduly harshly by writing so many citations. "I'm looking and thinking to myself, like he aint gotta do me like that 'cause I aint give you no hard times then why you are railroading me?"¹⁵

Mr. █████ related he was subsequently released and confronted the white officer about his prior statement. He related telling the officer that he [Mr. █████ "didn't have white privilege" and if he didn't have any other way to live and needed to feed himself, "he [Mr. █████ would [sell drugs]]."¹⁶

⁵ Id. at 7:13 and 7:50.

⁶ Since believed to be Officer Orozco.

⁷ Id. at 9:38. "That's the one that asked me, he wondered why my people sell drugs."

⁸ Since believed to be Officer Herrera.

⁹ Id. at 10:00.

¹⁰ Id. at 10:45.

¹¹ Id. at 10 55.

¹² Id. at 12:14.

¹³ Id. at 15:28.

¹⁴ Commercial Driver's License.

¹⁵ Id. at 16:00.

¹⁶ Id. at 21:26.

2. Accused Officer Christian Herrera

Officer Herrera was interviewed by COPA on January 10, 2020, and related he had no independent recollection of stopping Mr. ██████ nor did a review of the BWC footage refresh his recollection.¹⁷ When presented with records documenting the encounter, he confirmed the basic background facts recorded – that he and PO Orozco were working on the day at issue and did curb Mr. ██████ vehicle. Officer Herrera confirmed he wrote and signed the traffic citations and Officer Orozco drafted the vehicle seizure report.¹⁸ Because his name was on the citations, Officer Herrera related he presumed he was present in the District processing area, as a matter of course.¹⁹ “It’s normal practice for the citations to be written at the station.”²⁰ He also confirmed he was depicted on BWC footage standing across from Mr. ██████ in the station processing area. Officer Herrera did not recall saying the offensive words alleged by Mr. ██████²¹ “Also that’s not something I would say.”²²

3. Witness Officer Daniel Orozco

Officer Orozco was interviewed by COPA on September 14, 2020 and conceded he did not independently recall the incident at issue, but that his viewing the BWC footage partially refreshed his recollection.²³ He related the subject vehicle driver was curbed by Officer Herrera and himself because the vehicle had an expired City sticker.²⁴ The driver was also cited because his driver’s license was expired. The vehicle was impounded because it was uninsured and Mr. ██████ driver’s license was suspended. Officer Orozco related he could not recall exactly how the officers ascertained Mr. ██████ vehicle City sticker had expired, before curbing his vehicle.²⁵ After the officers checked Mr. ██████ license on the LEADS system and found it was suspended, they asked him to exit his vehicle, handcuffed him, and transported him to the station for processing.²⁶ The two officers processed Mr. ██████ at the station, and Officer Orozco drafted the vehicle impoundment report, while Officer Herrera drafted the traffic citations.²⁷ There was a moment where Officer Orozco believed he would have – as a matter of past practice, to get his report approved by a supervisor -- left the vicinity for 1-2 minutes, although he could not definitively recall doing so in this case.²⁸ He further related that based on his usual practices, he would have

¹⁷ Attachment #2 Herrera statement at 4:00.

¹⁸ Id. at 8:24.

¹⁹ Id. at 9:00.

²⁰ Id. at 9:10.

²¹ Id. at 16:00.

²² Id. at 16:39.

²³ Attachment #26 Orozco statement at 4:40.

²⁴ Id. at 10:56.

²⁵ Id. at 12:10.

²⁶ Id. at 13:12.

²⁷ Id. at 15:20.

²⁸ Id. at 15:55.

otherwise remained with Officer Herrera and Mr. ██████ in the processing room until the work was completed.²⁹ Officer Orozco denied hearing any officer in the station, including Officer Herrera, utter the words alleged by Mr. ██████ or make any other improper statement(s) towards him.³⁰ He equally denied hearing about any officer having made such statements to Mr. ██████³¹

b. Digital Evidence

Body-worn camera (“BWC”) video was recovered for this incident³² which depicted Officers Herrera and Orozco’s interactions with Mr. ██████ during the street-stop portion of the incident, and limited portions of the processing area interaction.³³ The video confirmed Officer Orozco approached and asked Mr. ██████ for his license and insurance card. However, contra Mr. ██████ tail-light assertion, the officer(s) stated Mr. ██████ vehicle was stopped because it had an “expired city sticker.”³⁴ The BWC depicted Mr. ██████ exit his vehicle, be handcuffed and placed in the rear of a squad vehicle. It then showed him being transported to and escorted into the station. The video concluded with images of Mr. ██████ being handcuffed to a seat in the station processing area, across from a glass partition, with Officers Orozco and Herrera present. The BWC video footage concluded shortly thereafter.³⁵

IV. 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.

²⁹ Id. at 15:47.

³⁰ Id. at 16:25.

³¹ Id. at 17:00.

³² Attachments BWC 2, 5.

³³ No recovered video depicted the alleged statement made in the district processing area.

³⁴ Attachments BWC 2, 5.

³⁵ CPD SO S03-14: Deactivation of a Recording “is secured in the processing room and the member is only conducting administrative functions of the Department alone or only in the presence of other sworn members”

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.

V. CONCLUSIONS

Police Officer Christian Herrera

COPA finds a finding of **NOT-SUSTAINED** for **Allegation #1** that on the date and time alleged, **Police Officer Christian Herrera**, while on duty, asked ██████ -- who is black -- words to the effect of: "I wonder why do you people sell drugs?" while processing Mr. ██████ at the district station after his arrest for driving on a suspended license, driving without proof of insurance, and failure to display a current City wheel-tax sticker.

Mr. ██████ credibility is, per se, diminished because of his past guilty plea and conviction for perjury,³⁶ and in relation to each of the allegations made in the instant case. In addition, the weight of objective evidence in the instant case shows multiple alleged factual claims did not occur, or did not occur as alleged, further diminishing Mr. ██████ credibility *in toto*.

To wit: Mr. ██████ related in his sworn COPA statement that officers told him he was stopped because of a failed taillight. This was inaccurate. The BWC showed the officers told Mr. ██████ he was stopped because his vehicle city sticker expired. Mr. ██████ in his sworn COPA statement, could not state whether the vehicle's sticker expired or was missing from the windshield of his vehicle. He likewise proffered no evidence his vehicle displayed a valid city sticker at the time of the stop.

There is no objective verifiable evidence recovered in this case to reach a sustained finding supporting Mr. ██████ allegation Officer Herrera or another officer uttered the offensive words claimed. Both officers denied making or hearing the alleged statement and no recovered video captured the claimed utterance. No recovered video captured any officer use language even

³⁶ See Attachment 27.

bordering on that alleged by Mr. [REDACTED] or displaying overt hostility towards him suggestive of racial animus, thus further diminishing the credibility of the claim.³⁷

As a result of each of the multiple foregoing deficiencies, coupled with Mr. [REDACTED] diminished credibility issue, a finding of **NOT-SUSTAINED** is warranted.

Approved:

[REDACTED]

9-11-2023

Angela Hearts Glass
Deputy Chief Investigator

Date

³⁷ CPD SO S03-14: Deactivation of a Recording. Ibid., 5