

INTRODUCTION

On July 18, 2017, Subject 1 was driving in the vicinity of XXXX S. Halsted St., Chicago, IL. As he was driving, an unmarked Chicago Police SUV activated its emergency lights and pulled over Subject 1 for a broken left tail light. Officer A #XXXX and Officer B #XXXXX exited their vehicle and asked Subject 1 for his identification and insurance. During the traffic stop, Subject 1's vehicle was searched and the officers were involved in an altercation with Subject 1. COPA investigates the legality of the search and the interaction with Subject 1.¹

ALLEGATIONS:

It is alleged that on July 18, 2017, at or around 12:25PM in the vicinity of XXXX S. Halsted St., **Police Officer A #XXXX:**

1. Unlawfully seized Subject 1 and unlawfully searched his vehicle.
2. Unnecessarily displayed his Taser to Subject 1.
3. Had an unnecessary verbal altercation with Subject 1 in that Officer A said, "I'll do whatever the fuck I want" and "You want to make a complaint about it? You're more than welcome to, I'll write my paperwork and it's all on camera alright? And guess what, you're not going to win it."
4. Did not complete any paper documentation after conducting a traffic stop involving Subject 1 on the aforementioned date, time and location.

It is alleged that on July 18, 2017, at or around 12:25PM in the vicinity of XXXX S. Halsted St., **Police Officer B #XXXXX:**

1. Failed to promptly report Officer A's unlawful search of Subject 1's vehicle to the Department.
2. Did not complete any paper documentation after conducting a traffic stop involving Subject 1 on the aforementioned date, time and location.

APPLICABLE RULES AND LAW

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

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

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 21: Failure to report promptly to the Department of any information concerning any crime or other unlawful action.

Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

Rule 38: Unlawful or unnecessary use or display of a weapon.

INVESTIGATION

The complainant, Subject 1, gave an **audio recorded interview** with IPRA on July 20, 2017. In his interview, Subject 1 stated that on or about 12:25 PM on July 18th, 2017, near 82nd Street he was driving southbound on Halsted Street, alone. Subject 1 stated he was pulled over by two Chicago Police officers in civilian dress and in an unmarked vehicle. Subject 1 identified the two officers as Officer A and Officer B. Subject 1 stated that after he was pulled over, the officers approached Subject 1 and asked for his license and insurance, to which Subject 1 complied. Subject 1 then stated the officers returned to their vehicle and ran Subject 1's information. Subject 1 stated that after running his information, both officers then approached Subject 1's vehicle on the driver side with Tasers drawn.

Subject 1 stated the officers told him to step out of his car, citing their assertion that he was an alleged gang member and had past arrests. Subject 1 stated that Officer A opened his driver side door and pulled him out of the vehicle forcefully. Subject 1 stated that Officer A had a Taser in one hand and he grabbed Subject 1's left forearm with his other hand. Subject 1 stated his hands were gripped onto the steering wheel. Subject 1 stated that after he was pulled from the vehicle and stepped out of the vehicle, Officer B put his Taser away and handcuffed Subject 1. Subject 1 stated his handcuffs were not too tight nor did they leave any impression.

Subject 1 then stated Officer B walked him to the trunk of his car while Officer A searched his car. Subject 1 stated that Officer A searched the interior of his vehicle. Subject 1 stated he did not know if Officer A opened his glove compartment, but Subject 1 knew Officer A did not search the trunk of his vehicle. Subject 1 stated Officer A did not damage his vehicle. Subject 1 stated he asked questions and asked why he was being searched. Subject 1 relayed that the officers told Subject 1 he was pulled over for a broken tail light, specifically the brake light. Subject 1 stated he told the officers his brake lights worked properly, and always have. Subject 1 also relayed that he did not give the officers any reason to pull him over. Subject 1 stated that after he asked why he was being searched and why his car was being searched for a broken tail light, Officer A responded that "I can do what the fuck I want."

Subject 1 stated that he told the officers that he would initiate a complaint and complete paperwork for harassment. Subject 1 stated that Officer A then told him "You're not going to win the fucking case." Subject 1 stated Officer A used profanity during the traffic stop. Subject 1

relayed that after his car was searched, the officers gave him his license and proof of insurance back. Subject 1 stated that the officers did not give him a citation, and then he drove away. Subject 1 stated he no longer had any gang affiliation, and had renounced his gang membership. Subject 1 stated that Officer A was the aggressor, and Officer B was more of a witness to the misconduct. Subject 1 stated he felt that he was harassed and the officers had no basis to pull him over and search him and his vehicle.

Subject 1 relayed that Officer A arrested him previously for carrying ammunition on May 16, 2017, but those charges were dismissed. Subject 1 stated that during that previous arrest, Officer A and his partner pulled him over for a traffic stop, told Subject 1 they smelled cannabis emitting from the car, and searched his vehicle including his trunk. (Attachment #4)

Officer B gave an **audio recorded interview** with COPA on September 19th, 2017. In his interview, Officer B stated he was on duty, in a tactical unit, and worked with Officer A on July 18th, 2017 at 12:25 PM. Officer B stated that Officer A's usual partner was absent that day, and Officer B and Officer A worked as a pair on July 18th instead. Officer B stated that he normally works Beat XXXX but he could not recall if he worked that Beat on the date of the incident. Officer B stated he recalled pulling over a middle aged black male (now known as Subject 1), but did not recall his name, height, weight nor his exact age. Officer B stated that Subject 1's brake light on the driver side was malfunctioning. Officer B stated that he and his partner then pulled Subject 1 over. Officer B stated he believed he and Officer A reported over the Police Data Terminal ("PDT") that they were performing the traffic stop on Subject 1. Officer B then stated that Officer A exited their vehicle and walked to Subject 1 on the driver side, while he walked up the passenger side. Officer B stated that Subject 1 was confrontational and saying, "Why are you pulling me over, this is 'BS'," or something to that effect. Officer B stated the officers approached without any weapons drawn nor any Tasers drawn. Officer B stated that Subject 1 gave his license to Officer A. Officer B then relayed that he and Officer A ran Subject 1's information and discovered that Subject 1 had prior Unlawful Use of a Weapon arrests and was a convicted felon. Officer B stated that both he and Officer A then exited their vehicle at the same time and approached Subject 1 both on the driver's side door.

Officer B stated neither he nor Officer A had their Tasers drawn or firearms drawn while approaching Subject 1 a second time. Officer B stated that the officers asked Subject 1 to step out of the car, to which he asked "Why?" Officer B then stated that Subject 1 complied and voluntarily exited his vehicle. Officer B relayed that he patted down Subject 1 and Officer A searched Subject 1's vehicle. Officer B stated he could not recall whether he or Officer A placed Subject 1 into handcuffs, but Subject 1 was in handcuffs standing behind his car near the bumper when Officer A searched his car. Officer B stated that no weapons were found on Subject 1's person or in his vehicle and Subject 1 was released. Officer B stated that he did not know Subject 1 prior to this incident, but he believed Officer A arrested Subject 1 prior to July 18th, 2017. Officer B stated he never drew his firearm or his Taser, and he did not see Officer A draw his firearm or Taser during the entirety of traffic stop. Officer B stated he and Officer A were going to complete an Investigatory Stop Report ("ISR") or a Traffic Stop Report, but he and Officer A completed a gun arrest later that day and a report for Subject 1's traffic stop was never completed. Officer B stated he was not sure whether a report for this incident was ever completed, and he did not know how soon a report for an investigatory stop would need to be completed. Officer B stated it is normal

procedure to prioritize reports for an arrest over a traffic stop without a citation being issued. (Attachment 17)

Officer B gave a second **audio recorded interview** with COPA on November 28, 2017 after being served with allegations. In his second interview, Officer B stated he that stood by his previous statement given to COPA on September 19th, 2017. Officer B stated he did not recall if he or Officer A went over the radio to announce they pulled over Subject 1. When asked if there are any forms needed to complete for a traffic stop, Officer B stated that if a traffic citation is not issued, an officer can complete a Traffic Statistical Study (“TSS”) form. Officer B stated that it is in the officer’s discretion to give a traffic citation or not. Officer B stated he did not know if a TSS form is required for every traffic stop. Officer B stated that for a traffic stop, an officer can complete either an ISR or a TSS to document the traffic stop. Officer B further clarified that a TSS can be completed just for stopping a vehicle, while an ISR goes in more depth would be more appropriate if there is a car search or several questions asked during the stop. Officer B stated he planned to complete an ISR but at the end of his tour he had a gun arrest which forced him to work beyond his shift and he forgot to complete the ISR regarding Subject 1’s traffic stop. Officer B also stated officers prioritized their arrestees and a tactical team normally prioritized gun arrests. Officer B further stated he did not complete any forms relative to Subject 1’s traffic stop. Officer B stated he did not know if Officer A completed any forms relative to Subject 1’s traffic stop.

Officer B also stated that he witnessed Officer A search Subject 1’s vehicle and he was standing with Subject 1, who was in handcuffs, at the back bumper of Subject 1’s vehicle while the search was conducted. Officer B stated Subject 1’s hands were secure and Subject 1 could not reach into his car unless he broke away from Officer B’s grasp. Officer B stated he could see where Officer A searched in the car. When asked what areas Officer A searched, Officer B stated Officer A searched just the areas that Subject 1 originally had access to: the driver seat, the passenger seat, and the backseat of the car. Officer B stated he did not know if Officer A searched the center console of Subject 1’s vehicle. Officer B also stated he did not notice if Officer A searched Subject 1’s passenger glove compartment. Officer B relayed that he did not notice the plate frame near Subject 1’s gear stick and he was not aware of Officer A searching under the plate frame near Subject 1’s gear stick. Officer B stated he did not believe he saw Officer A search the trunk of Subject 1’s vehicle.

Officer B further stated that he absolutely did not suspect Officer A of any misconduct, and as such he did not report Officer A’s search or conduct to anyone. Officer B stated he believed the stop and search was legal. Officer B stated he believed the initial stop was legal as Subject 1 had a broken tail light and the search was legal because of Subject 1’s background, which included convictions for weapons charges, and how Subject 1 was confrontational with the officers, that those factors gave the officers “suspicion” that there was possibly a weapon in the car. Officer B stated that Subject 1 was confrontational because he was angry that he was stopped and threatened to make a complaint. Officer B stated the officers would have probable cause to search Subject 1’s vehicle if that person is known to carry weapons via his background and that he was confrontational. (Attachment 19)

Officer A gave an **audio recorded interview** with COPA on November 16, 2017. In his interview, Officer A stated that on July 18th, 2017, at approximately 12:25 PM he was on duty.

Officer A stated his partner that day was Officer B, though his partner was normally Officer C. Officer A stated that Officer C had to appear in court that day. Officer A stated he worked Beat XXXX on July 18th, 2017, which is his normal Beat. Officer A stated he knew Subject 1 prior to July 18th, 2017, because his partner, Officer C, arrested Subject 1 for having ammunition in his trunk. Officer A stated he did not know approximately how long before he and Officer C arrested Subject 1, but he stated it was not too long before. Officer A stated he could not recall his first interaction with Subject 1, but he believed he mirandized Subject 1. Officer A stated during the prior incident, Subject 1 was confrontational and verbally aggressive, but when the ammunition was found in his trunk Subject 1 calmed down. Officer A stated Officer C testified at Subject 1's preliminary hearing regarding the arrest for having ammunition in his trunk but he did not testify in that case. Officer A stated that he did not know what happened to Subject 1's case with Officer C. Officer A stated he did not see Subject 1 any time since the first arrest with Officer C until July 18th, 2017. Officer A stated he did not know if Officer C had seen Subject 1 again since the initial arrest and he also did not know if Officer B had ever met Subject 1 prior to July 18th, 2017. Officer A further stated that the area he and Officer B pulled over Subject 1 was a problematic area with many shootings and homicides. Officer A also stated that there was an ongoing gang conflict in the area on the date of the traffic stop.

Officer A stated that on July 18th, 2017, Subject 1 was pulled over for having a faulty left tail light. Officer A stated he activated his emergency lights behind Subject 1 to pull him over, but Officer A did not remember if he announced his office as a police officer. Officer A stated he was in plain clothes but wore his vest displaying his Chicago Police star on it. Officer A stated he went over the radio after pulling over Subject 1 to announce the traffic stop. Officer A stated that after Subject 1 was pulled over, he approached Subject 1, stated the reason for the traffic stop and asked Subject 1 for his license and insurance. Officer A stated that after Subject 1 gave him his license and proof of insurance, he ran Subject 1's background and checked Subject 1's criminal history over his PDT. Officer A stated that the search revealed that Subject 1 had prior Unlawful Use of a Weapon arrests, was a convicted felon, was a prior parolee, and a documented gang member. Officer A stated that Subject 1 was off parole at time of the stop. Officer A stated that he approached the vehicle and then instructed Subject 1 to exit his vehicle. Officer A stated that he instructed Subject 1 to exit his vehicle for officer safety. Officer A then stated he approached with his hand on his Taser, but he did not draw his Taser from the holster nor did he point the Taser at Subject 1. Officer A stated when he initially approached the vehicle his hand may have been resting on his service pistol, but he did not draw it from the holster. Officer A then stated that he grabbed Subject 1's left arm while Officer B grabbed Subject 1's right arm and Subject 1 then stepped out of his vehicle voluntarily. Officer A then stated he and Officer B detained Subject 1, and both he and Officer B handcuffed Subject 1 for officer safety. Officer A stated Officer B then asked Subject 1 if he could pat him down for weapons to which Subject 1 consented. Officer A stated he then conducted a protective sweep of Subject 1's vehicle.

Officer A stated that in his protective sweep he looked under Subject 1's seats, he looked in the center console arm rest, but he did not recall if he looked in the passenger glove compartment. Officer A stated that he performed the protective sweep because of Subject 1's background, his prior Unlawful Use of Weapon arrests, he was a convicted felon, a prior parolee, a documented gang member, and that his partner Officer C found ammunition in his trunk in a prior incident. When asked if those factors gave Officer A enough authority to conduct a vehicle search, Officer

A responded that he believed Subject 1's history gave him a "certain amount of authority" to conduct a vehicle search. Officer A stated the protective sweep could have been performed up to an area within Subject 1's arms reach.

When asked if Officer A was allowed to conduct a productive sweep while Subject 1 was already outside of the car in handcuffs, Officer A responded that he believed he still had "some sort of authority" to perform the protective sweep and to look for weapons. Officer A stated he lifted the center panel plate frame by Subject 1's gear stick to put Subject 1's car in drive and show Subject 1 that his tail light was malfunctioning. Officer A stated that he tried to show Subject 1 his tail light was malfunctioning because Subject 1 was contesting the reason for the traffic stop. Officer A stated he knew he had to lift the center panel plate frame by the gear stick from the prior arrest with Officer C.

Officer A stated he had a verbal altercation with Subject 1, in which Officer A told Subject 1, "I can do whatever the fuck I want." Officer A stated Subject 1 was being verbally aggressive, but Officer A did not recall why he used profanity and stated, "I can do whatever the fuck I want." Officer A stated that Subject 1 was telling him to hurry up with the traffic stop and trying to rush him. Officer A stated that Subject 1 then told him he would file a complaint, to which he responded he is more than welcome to, told him where he worked, and gave Subject 1 his name and star number. Officer A stated he told Subject 1 he would not win his complaint because at the time he did not believe that Subject 1 would win a complaint against him. Officer A stated that he did not hear Officer B get into a verbal altercation with Subject 1. Officer A stated Subject 1 never complained about any injuries during this incident.

Officer A then stated he did not fill out any documentation about this traffic stop as he had a later weapon arrest which took up most of his shift time. Officer A stated that after the gun arrest, he completely forgot about the traffic stop with Subject 1 and his mind focused on the "stressful" gun arrest. Officer A stated that the documentation normally should be completed by the end of his shift. Officer A also stated that the gun arrest was stressful enough for him to forget completing documentation for Subject 1's traffic stop. Officer A stated that he did not believe Officer B completed a form relative to Subject 1's traffic stop, and that either him or Officer B could have completed a report for Subject 1's traffic stop. Officer A stated that it is at an officer's discretion to complete a traffic citation during a traffic stop, and he was not sure if there were any other reports that need to be completed if a traffic citation is not given. (Attachment 18)

Documentary Evidence

Officer A's **Body Worn Camera** footage captures Officer A and Officer B driving in their vehicle. Officer A then approaches Subject 1 while Subject 1 remains seated in his driver seat as Officer A tells Subject 1 his brake light is not working. Officer A then asks Subject 1 to step out and check out his tail light. Subject 1 provides Officer A with his license and proof of insurance and Officer A enters Subject 1's information into the PDT.

Officer B can be seen grabbing Subject 1's left arm and Subject 1 steps out of his vehicle. When Subject 1 is outside of his car he is handcuffed by Officer B, then begins to search Subject 1's vehicle. The search is captured on Officer A's body worn camera. A verbal interaction between

Officer A and Subject 1 is also captured, and Officer A states, “I can do whatever the fuck I want.” Later in the footage, Subject 1’s tail light is seen flickering on and off. (Attachment 36)

Officer B’s **Body Worn Camera** footage details Subject 1’s traffic stop July 18, 2017, at or around 12:25PM from a different angle than Officer A’s body worn camera. Officer B’s body worn camera footage captures the same information noted in Officer A’s body worn camera footage. In addition to the information captured in Officer A’s body worn camera footage, Officer B’s camera footage captures Officer B exiting the passenger side of Officer A and Officer B’s vehicle. Officer B walks up to Subject 1’s front passenger side door, and Officer A can be seen speaking to Subject 1, while Subject 1 remains sitting in the driver seat of his vehicle. Officer A and Officer B exit their vehicle after running Subject 1’s information over their PDT, and Officer A can be clearly seen with no Taser or weapons in his hands at any time during the video. The footage also captures the verbal interaction between Subject 1 and Officer A. (Attachment 37)

ANALYSIS

Subject 1 alleges that on July 18, 2017, at or around 12:25PM in the vicinity of XXXX S. Halsted St., Chicago, IL, Officer A unlawfully seized him and unlawfully searched his vehicle and unnecessarily displayed his Taser to him. Through the course of the investigation, additional evidence of misconduct was discovered. Therefore, COPA further alleges that Officer A had an unnecessary verbal altercation with Subject 1 in that Officer A said, “I’ll do whatever the fuck I want” and “You want to make a complaint about it? You’re more than welcome to, I’ll write my paperwork and it’s all on camera alright? And guess what, you’re not going to win it.” Furthermore, COPA alleges that Officer A did not complete any paper documentation after conducting a traffic stop involving Subject 1 on the aforementioned date, time and location.

COPA also alleges that that on July 18, 2017, at or around 12:25PM in the vicinity of XXXX S. Halsted St., Chicago, IL, Officer B failed to promptly report Officer A’s unlawful search of Subject 1’s vehicle to the Department. COPA further alleges that Officer B did not complete any paper documentation after conducting a traffic stop involving Subject 1 on the aforementioned date, time and location.

I. The Initial Traffic Stop Was Justified

In his statement to IPRA, Subject 1 alleged that Officer A and Officer B had no reason to pull him over and initiate a traffic stop. COPA is tasked with ensuring the traffic stop performed by Officer A and Officer B abided by the Fourth Amendment, applicable Illinois state law and Chicago Police Department Rules and Regulations.

In *Terry V. Ohio*, the Supreme Court found that a police officer may stop a person if they have a reasonable suspicion that the person has committed or is about to commit a crime. The reasonable suspicion must be based on “specific and articulable facts” and not merely a hunch.

The Illinois legislature has codified this *Terry* standard which provides the following:

“An officer may, after identifying himself as a peace officer, stop any person in a public place for a reasonable period of time when the officer infers from the circumstances that

the person is committing, is about to commit, or has committed an offense...” 725 ILCS 5/107-14 (2008).

Thus, the *Terry* standard allows an officer to conduct a brief investigative stop when there is reasonable, articulable suspicion of criminal activity. *People v. Jackson*, 366 Ill.Dec.164, 170 (1st Dist. 2012). The purpose of a *Terry* stop is to permit police to investigate situations or circumstances that provoke suspicion in order to dispel or confirm those suspicions. Officers initiating an investigatory stop must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, suggest criminal activity. *U.S. v. Ruiz*, 785 F.3d 1134, 1141 (7th Cir. 2015). Context is extremely important in these instances; the reasonable suspicion needed to initiate a *Terry* stop can arise from behavior that may in other circumstances be considered innocent. *Id.* Therefore, the behavior and characteristics of the suspect can be taken into consideration by the officers.

Reasonable suspicion is a lower threshold than probable cause and considerably less than a preponderance of the evidence. *Id.* When reviewing an officer’s actions in the context of *Terry*, the situation confronting the officers must be so far from the ordinary that any competent officer would be expected to act quickly. *People v. Shipp*, 393 Ill. Dec. 301, 309 (Ill. App. Ct. 2d Dist. 2015) quoting *People v. Thomas*, 198 Ill.2d 103 (2001). Therefore, the facts should be considered from the perspective of a reasonable officer confronted with the situation. *Id.*

A *Terry* stop can ripen to the level of an arrest, becoming custodial in nature, and require probable cause. This occurs when the stop becomes too long or unreasonably intrusive. *Id.* at 309. A seizure qualifies as an arrest only if a reasonable person in the suspect's position would not have felt free to leave. *U.S. v. Hill*, 818 F.3d 289, 292 (7th Circuit 2016). Factors to consider include the threatening presence of several officers, the display of a weapon by an officer, the physical touching of the suspect’s person, or the officer's language or tone of voice which indicates that compliance with the officer's request could be compelled. *People v. Santovi*, 2014 Ill. App. 3d 130075 ¶44 (2014).

A relatively brief encounter, such as a routine traffic stop, is more analogous to a so-called *Terry* stop than to a formal arrest. *Knowles v. Iowa*, 525 U.S. 113, 117 (1998), in turn citing *Terry v. Ohio*, 392 U.S. 1 (1968).

A seizure for a traffic violation justifies a police investigation of that violation. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614, 191 (2015). A routine traffic stop is more analogous to a so-called ‘*Terry* stop’ than to a formal arrest. *Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); see also *Arizona v. Johnson*, 555 U.S. 323, 330 (2009)). Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop and attend to related safety concerns, *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); see also, *United States v. Sharpe*, 470 U.S. 675, 685 (1985); *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion) (“The scope of the detention must be carefully tailored to its underlying justification.”). Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. *Caballes*, 543 U.S. at 407.

The Fourth Amendment explicitly addresses the sort of physically intrusive government conduct that constitutes a seizure. *Graham v. Connor*, 490 U.S. 386, 395 (1989). Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment, requires balancing the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interest alleged to justify the intrusion. *Id.* at 396; *Fitzgerald v. Santoro*, 707 F.3d 725, 733 (7th Cir. 2013); *Abbott v. Sangamon County, Illinois*, 705 F.3d 706, 724 (7th Cir. 2013). Such an analysis is inherently fact-dependent, requiring consideration of such factors as the severity of the crime at issue, whether the person posed an immediate threat to the safety of the officers or others, and whether the person was actively resisting the officers. *Graham*, 490 U.S. at 396; *Miller v. Gonzalez*, 761 F.3d 822, 829 (7th Cir. 2014); *Abbott*, 705 F.3d at 724.

Officer A and Officer B stated that Subject 1’s back left tail light did not function properly, and the officers pulled Subject 1 over because of his malfunctioning left tail light. Officer A’s Body Worn Camera captures Subject 1’s left tail light going in and out. The Body Worn Camera footage which displays Subject 1’s malfunctioning left tail light and both Officer A and Officer B stated they observed Subject 1’s left tail light malfunctioning. The initial traffic stop was solely for the malfunctioning back tail light. As both officers stated they witnessed Subject 1’s malfunctioning traffic light and it is captured on Officer A’s body worn camera, the officers likely had reasonable, articulable suspicion of Subject 1 committing a traffic violation, and thus lawfully stopped Subject 1. The situation and analysis changed when Officer A searched Subject 1’s vehicle for weapons.

II. Officer A Did Not Unnecessarily Display His Taser To Subject 1

In his statement to COPA, Subject 1 stated that that after running his information in their vehicle, Officer A and Officer B approached Subject 1’s vehicle on the driver side with Tasers drawn. Chicago Police Department Order U04-02-04 regulates when an officer can deploy their Taser and how an officer must maintain their Taser, but the order does not address when an officer can or cannot draw their Taser from their holster. Rule 38 of the Chicago Police Department Rules of Conduct clarifies when an officer can display their Taser, and Rule 38 states that an officer is prohibited from unlawfully or unnecessarily using or displaying a weapon.

In his statement to COPA, Officer A stated he approached Subject 1 with his hand on his Taser, but he did not draw his Taser from the holster nor did he point the Taser at Subject 1. In Officer B’s statement to COPA, Officer B stated he never drew his firearm or his Taser, and he did not see Officer A draw his firearm or Taser during the entirety of traffic stop. Officer B’s body worn camera footage clearly shows Officer A approaching Subject 1 after they run his information over their PDT, and Officer A does not have his hand on his Taser nor does he draw the Taser at any point during the traffic stop. Neither officers’ body worn camera footage shows Officer B drawing his Taser nor does it show Officer B approaching Subject 1 with his Taser drawn. Officer A’s statement, Officer B’s statement, and both officers’ body worn camera footage suggest that the officers did not approach Subject 1 with their Tasers drawn, nor did they point their Tasers at Subject 1.

III. The Search Of Subject 1's Vehicle Was Not Justified

While Subject 1 was initially stopped lawfully for his malfunctioning back left tail light, the officers still needed to establish separate probable cause to search Subject 1's vehicle. As a preliminary matter, warrantless searches "are *per se* unreasonable under the Fourth Amendment absent only few specifically established and well-delineated exceptions." *United States v. Paige*, 870 F.3d 696, 701-702 (7th Cir. 2017) (quoting *Arizona v. Gant*, 556 U.S. 332, 338 (2009)). Thus, probable cause is required to search a vehicle absent an exception to the warrant requirement.

Traffic stops in general are analyzed as an investigative detention akin to a *Terry* stop. An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *See Florida v. Royer*, 460 U.S. 491 (1983) (officers exceeded limits of *Terry*-stop and required probable cause). For example, if an officer stops a person for a traffic violation, the officer may detain the person only for the purpose of investigating that violation unless the officer develops reasonable suspicion, or probable cause, to investigate other possible violations of the law. Therefore, a traffic stop becomes an unlawful detention if it is prolonged beyond the time reasonably required to complete the purpose of the seizure. *People v. Duran*, 2016 IL App (1st) 152678 (Ill. App. Ct. 1st Dist. 2016).

In certain circumstances, officers may conduct a protective sweep of the passenger compartment of a vehicle in areas where a weapon may be located—in other words, they may conduct a "vehicle frisk" but not a search for evidence—if the officers reasonably believe that the suspect is dangerous and may gain immediate control of a weapon. *See Michigan v. Long*, 463 U.S. 1032 (1983) (stating standard); *see also People v. Smith*, 315 Ill.App.3d 772 (4th Dist. 2000) holding that a general search is not justified where a vehicle is stopped for a minor traffic violation. However, an officer who makes a legitimate traffic stop may conduct a limited search for weapons where he reasonably believes, based on specific and articulable facts, that his safety or the safety of others is in danger. Therefore, the facts must warrant a belief that the suspect was dangerous and could gain control of weapon.

A history of prior criminal conduct, standing alone, will not give rise to probable cause to believe that an individual is currently in possession of contraband or evidence of crime. *United States v. Linn*, 1994 U.S. App. LEXIS 20144 (4th Cir. 1994). To conclude otherwise, would be to hold that anyone with a prior criminal record could be searched at any time. *Id.* citing *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964) which held that knowing an individual had a previous record does not form a sufficient basis for probable cause to arrest the individual and to hold otherwise would be that anyone with a previous criminal record could be arrested at will. Accordingly, the officer's knowledge of the driver's criminal history is insufficient to establish probable cause for the search. The officer did not set forth any objective facts that would have led him to believe, based on the totality of the circumstances, that the driver's car contained contraband or evidence of a crime. None of the "established and well-delineated" exceptions to the warrant requirement justify this particular warrantless search of the vehicle.

Chicago Police Department Special Order S04-13-09 clarifies that probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a

crime has occurred and that the subject has committed it. This differs from reasonable articulable suspicion in that the facts supporting reasonable articulable suspicion do not need to meet probable cause requirements, but they must justify more than a mere hunch. The facts should not be viewed with analytical hindsight but instead should be considered from the perspective of a reasonable officer at the time that situation confronted him or her.

In this instance, Officer A and Officer B articulated that the reason they conducted the search of the vehicle was Subject 1's criminal history, Subject 1's possible past gang membership, and Subject 1's status as a former parolee. Previous criminal history is not a sufficient basis for probable cause to search the vehicle when the original purpose of the stop was because of a broken tail light. The Body Worn Camera footage captures Officer A and Officer B stating they should search Subject 1 as he had prior arrests and was, at some point, in a gang. Officer A stated that he believed that Subject 1's history gave him a "certain amount of authority" to conduct a vehicle search. Officer A further stated that he believed he still had "some sort of authority" to perform the protective sweep and to look for weapons even with Subject 1 in handcuffs standing outside of his vehicle. Subject 1 was handcuffed and outside the vehicle; he could not reach any weapon in the vehicle. There was no legitimate lawful reason to conduct a protective search of Subject 1's vehicle. The evidence suggests that the officers may have believed Subject 1 was armed merely from his criminal history and that he was previously arrested for UUC charges, specifically an arrest two months prior involving Officer A. Conducting an unwarranted search in this manner is an egregious violation of the Fourth Amendment, which shields citizens from this very kind of government intrusion into their lives and property. As such, Officer A's search of Subject 1's vehicle was a violation of Subject 1's Fourth Amendment rights and civil liberties. Furthermore, Officer A's search was a violation of the Chicago Police Department Rules of Conduct.

IV. Officer A Had An Unnecessary Verbal Altercation With Subject 1

According to Rule 8 of the Chicago Police Department Rules of Conduct, members of the Chicago Police Department are prohibited from disrespecting or mistreating any person, while on or off duty. Also, according to Rule 9 of the Chicago Police Department Rules of Conduct, Department members are prohibited from engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Officer A's body worn camera footage captures Officer A telling Subject 1, "...I'll do whatever the fuck I want. Don't tell me how to do my job." In addition, Officer A tells Subject 1 he would not win a complaint against him if Subject 1 made a complaint. Officer A stated, "You want to make a complaint about it, you're more than welcome to. I'm going to write my paperwork and it's all on camera. Alright? And guess what? You're not going to win it."

In his statement with COPA, Officer A admitted he had a verbal altercation with Subject 1. Officer A stated Subject 1 was being verbally aggressive, but Officer A did not recall why he used profanity and stated, "I can do whatever the fuck I want." Officer A stated that Subject 1 was telling him to hurry up with the traffic stop and trying to rush him. The body worn camera does not show Subject 1 acting as verbally aggressive, but he was merely asking questions regarding his detainment and why the officers were searching through his vehicle. Officer A

further stated he told Subject 1 he would not win his complaint because at the time he did not believe that Subject 1 would win a complaint against him.

A Chicago Police Department member, as a representative of the City of Chicago and law enforcement officer, must always act with courtesy and respect towards the public. By escalating the conversation, Officer A had engaged in an unnecessary verbal altercation with Subject 1 in violation of Rule 8 and Rule 9 of the Chicago Police Department Rules of Conduct.

V. Both Officer A and Officer B Failed To Complete Any Documentation Relative To Subject 1's Traffic Stop

According to Chicago Police Department Special Order S04-13-09, Chicago Police Department members must abide by an Investigatory Stop System which ensures compliance with the rights guaranteed to the public under the United States Constitution, the State of Illinois Constitution, and the law. S04-13-09 defines and clarifies an Investigatory Stop as:

The temporary detention and questioning of a person in the vicinity where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a criminal offense. The suspect may be detained only for the length of time necessary to confirm or dispel the suspicion of criminal activity. The temporary detention and questioning of a person for the purpose of enforcement of the Gang and Narcotics-Related Loitering Ordinances is an Investigatory Stop. An Investigatory Stop is not a voluntary contact. A voluntary contact is a consensual encounter between an officer and a person during which the person must feel free to leave the officer's presence. An officer may approach any person at any time for any reason on any basis. However, absent reasonable suspicion or probable cause, that person must be free to walk away at any time. An officer's ability to articulate that no factors existed that would make a reasonable person perceive they were not free to leave is important.

Some factors a court may consider in determining whether or not a consensual encounter has elevated to an Investigatory Stop include: threatening presence of several officers, display of a weapon by an officer, use of language or tone of voice indicating that compliance with the officer's request might be compelled, an officer blocks the person's path, and the choice to end the encounter is not available to the person.

According to S04-13-09, if an Investigatory Stop occurs in a public place and there are no other documents capturing the reason for the detention, an Officer must complete and submit an Investigatory Stop Report ("ISR") into the Investigatory Stop Database. S04-13-09 defines a public place as "any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, parks, and the common areas of schools, hospitals, apartment buildings, office buildings, transport facilities, and stores." In addition to completing the ISR and submitting it to the Investigatory Stop Database, if there is any other search, such as a vehicle search, and no arrest, an officer must provide an Investigatory Stop Receipt to the subject of the stop, which must contain the event number, reason for the stop, and the sworn member's name and star number.

If an officer initiates a traffic stop, and the stop does not rise to the level of an Investigatory Stop or an arrest, an officer must still complete a Traffic and Pedestrian Stop Statistical Study (“TPSSS”) form. Chicago Police Department Special Order S04-14-09 states that Department members must comply with Illinois state statute 625 ILCS 5/11-212, which requires the department member to document the traffic stop and collect state mandated information about the driver, the vehicle, and information regarding the traffic stop itself.

In his statement to COPA, Officer A stated he did not fill out any documentation about this traffic stop as he had a later weapon arrest which took up most of his shift time. Officer A stated that after the gun arrest, he completely forgot about the traffic stop. Officer A stated that the documentation normally should be completed by the end of his shift. Similarly, Officer B stated that he planned to complete an ISR regarding Subject 1’s stop but at the end of his tour he had a gun arrest which forced him to work beyond his shift and he forgot to complete the ISR. As the traffic stop occurred in a public place, on S. Halsted St., coupled with a search being conducted and questions being asked, an ISR would have been appropriate for Subject 1’s traffic stop. An ISR was never completed by Officer A or Officer B. A TPSSS form would have been appropriate if there was no search of Subject 1’s vehicle and if Subject 1 was never detained and questioned, however, a TPSSS form was also never completed by Officer A or Officer B.

As both officers admitted they forgot to complete documentation regarding Subject 1’s traffic stop, both Officer A and Officer B violated Chicago Police Department Special Orders S04-13-09 and S04-14-09.

VI. Officer B Did Not Report Officer A’s Search Of Subject 1’s Vehicle

COPA alleges that Officer B failed to promptly report Officer A’s unlawful search of Subject 1’s vehicle to the Department. According to Rule 21 of the Chicago Police Department Rules of Conduct, an officer must promptly report any information concerning any crime or other unlawful action to the Department. In addition to Rule 21, Rule 22 of the Chicago Police Department Rules of Conduct states that an officer must report any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, order or directives of the Department.

When asked why he did not report Officer A’s unlawful search of Subject 1’s vehicle to the Department, Officer B stated that he absolutely did not suspect Officer A of any misconduct, and as such he did not report Officer A’s search or conduct to anyone. Officer B stated he believed the stop and vehicle search were legal. The Body Worn Camera footage captures Subject 1’s actions with the officers and he does not appear to be confrontational with the officers, but was merely inquiring why he was being detained and why Officer A was unlawfully searching his vehicle. Believing an individual may be armed based on their inquiries regarding an unlawful search is too far a logical gap. Furthermore, an individual telling officers that he will file a complaint against them is not confrontational, and an individual should not feel restrained or inhibited in their ability to file a complaint against a Chicago Police Officer. As such, Officer B was incorrect when he stated an officer would have probable cause to search Subject 1’s vehicle as Subject 1 was not confrontational with the officers, nor does his history give the officers a blank check to search Subject 1 or his property.

Officer B's statement to COPA that he believed there were no issues with the traffic stop or Officer A's search of the vehicle fly in the face of logic. Officer B stated that he believed he and Officer A had probable cause to search Subject 1's vehicle. The evidence, per Officer B's statement, suggests that Officer B did not report Officer A's search of Subject 1's vehicle because he believed it was lawful. A Chicago Police Officer is tasked with knowing the rights afforded citizens that he encounters. Furthermore, Officer B should have known Officer A's "protective sweep" was not warranted and a violation of Subject 1's Fourth Amendment rights and civil liberties afforded to him by the U.S. Constitution. The Chicago Police Department is committed to protecting the lives, property, and *rights of all people*. Moreover, Chicago Police Officers must be well versed in the Fourth Amendment and the protections it provides to citizens. As officers are frequently dealing with members of the public, to not hold a member accountable when he turns a blind eye to a blatant constitutional violation, negates the foundational trust between Chicago police officers and the community they serve. Whether it be a lack of training or memory, Officer B should have known that Officer A's search of Subject 1's vehicle was unlawful, and as such, Officer B was required to report Officer A's misconduct to the Department.

CONCLUSION

Based on the evidence gleaned from the investigation, and COPA's preponderance of the evidence burden, COPA recommends a finding of Sustained for **Allegation #1**, that Officer A unlawfully searched Subject 1's vehicle. COPA recommends a finding of Unfounded for **Allegation #2** against Officer A, that he did not unnecessarily display his Taser to Subject 1. COPA recommends a finding of Sustained for **Allegation #3** against Officer A, that he had an unnecessary verbal altercation with Subject 1. COPA recommends a finding of Sustained for **Allegation #4**, that Officer A failed to complete any paper documentation regarding Subject 1's stop.

COPA further recommends a finding of Sustained for **Allegation #1** against Officer B, that he failed to promptly report Officer A's unlawful search of Subject 1's vehicle to the Department. COPA also recommends a finding of Sustained for **Allegation #2** against Officer B, that he failed to complete any paper documentation regarding Subject 1's stop.

Investigator

Supervising Investigator

Deputy Chief