

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 19, 2017
Time of Incident:	12:00 pm
Location of Incident:	XXXX S. Forrestville Avenue, Chicago, IL XXXXX
Date of COPA Notification:	December 20, 2017
Time of COPA Notification:	10:56 am

The complainant, Subject 1, and two friends, Civilian 1 and Civilian 2¹ (collectively “the Occupants”), were stopped by Chicago Police Officers A, B, and C (collectively “the Officers”) when Subject 1 failed to use a turn signal while parking. When the Officers approached the vehicle, they detected the odor of cannabis and ordered the Occupants to exit. Once the Occupants were out of the vehicle, the Officers detained them in handcuffs. Officer B conducted a search of the passenger compartment of the vehicle for cannabis; however, he did not locate any cannabis. After the search was completed the Officers removed the handcuffs and permitted the Occupants to return to the vehicle. Officer A completed a traffic citation and one Investigatory Stop Receipt (“Receipt”), that he issued to Subject 1.

II. INVOLVED PARTIES

Involved Officer #1:	Police Officer A, Star #XXXX, Employee ID #XXXXXX, Appointment Date XXXXXXXX XX, 2006, Unit XXX, Male, Asian, Birth Date XXXXXXXXXX XX, 1983.
Involved Officer #2:	Police Officer B, Star #XXXX, Employee ID #XXXXXX, Appointment Date XXXXXXXX XX, 2011, Unit XXX, Male, White, Birth Date XXXXXXXX XX, 1983.
Involved Officer #3:	Police Officer C, Star #XXXXX, Employee ID #XXXXXX, Appointment Date XXXXX X, 2013, Unit XXX, Male, Black, Birth Date XXXX X, 1987.
Subject #1:	Subject 1, Male, Black, Birth Date XXXXXX XX, 1997.

¹ Subject 1 was seated in the driver’s seat; Civilian 2 was seated in the front passenger seat; and Civilian 1 was seated in the rear passenger seat behind Subject 1.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded
	2. Failed to provide Civilian 1 and Civilian 2 with an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Sustained
Officer B	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded
	2. Unlawfully searched Subject 1’s vehicle, in violation of Rule 1.	Unfounded
	3. Failed to provide Civilian 1 and Civilian 2 an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Sustained
Officer C	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded
	2. Failed to provide Civilian 1 and Civilian 2 with an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Unfounded

IV. APPLICABLE RULES AND LAWS

Rules

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1. Rule 1: Prohibits violation of any law or ordinance.
 2. Rule 6: Prohibits disobedience of any order or directive, whether written or oral.
 3. Rule 10: Prohibits an inattention to duty.
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Special Orders

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

V. INVESTIGATION²

a. Interviews³

In a **statement to COPA**,⁴ on December 21, 2017, **Subject 1**, stated that Civilian 2, Civilian 3, Civilian 3,⁵ and he were stopped by Officers A, B, and C for his failure to use a turn signal while parking. The Officers explained they detected the odor of cannabis, ordered the Occupants to exit the vehicle, and detained them in handcuffs. Officer B completed a search of the vehicle but did not locate any cannabis. Officer A provided Subject 1 with an Investigatory Stop Receipt and a traffic citation for an improper turn signal.

In a **statement to COPA**,⁶ on April 2, 2018, **Officer A**, stated that he and his partners, Officers B and C, were on routine patrol when they observed a silver vehicle, being operated by Subject 1, fail to use a turn indicator while parallel parking. The Officers conducted a traffic stop on the vehicle. As Officer A spoke with Subject 1, he detected an odor of cannabis coming from the vehicle. Officer A asked if any of the Occupants were in possession of cannabis. None of the Occupants provided a positive response. The Officers ordered the Occupants from the vehicle and detained them in handcuffs.

Once the Occupants were detained Officer A conducted a name check on the Occupants while Officer B searched the vehicle for cannabis. Immediately upon learning that Officer B had not located any cannabis in the vehicle, the Officers removed the handcuffs and instructed the Occupants to return to the vehicle. After providing Subject 1 with a citation and Receipt, the Officers released the Occupants.

Officer A admitted having a discussion with Officers B and C about which of the Occupants should receive a Receipt, and that he determined only Subject 1 was to be given a receipt. Officer A stated this determination was based on Subject 1 being the only occupant subjected to a search, specifically the search of his vehicle. Officer A only inquired if Officers B or C had patted down the Occupants. Additionally, Officer A admitted to remarking to Officer C that he only had one Receipt, however, Officer A explained that had Civilian 1 and Civilian 2 been searched they would have been provided a Receipt.⁷ Finally, Officer A estimated that during his career he has completed made more than 100 cannabis related investigations.

In a **statement to COPA**,⁸ on April 2, 2018, **Officer B**, stated essentially the same information as Officer A. Additionally, Officer B admitted that he searched the passenger

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Civilian 2 and Civilian 1 did not respond to COPA's requests for statements.

⁴ Att. 9.

⁵ Subject 1 identified Civilian 3 as the third occupant of the vehicle; however, COPA learned that the third occupant was Civilian 1 and that Civilian 3 arrived at the location after the stop was completed. Therefore, COPA did not seek to obtain a statement from Civilian 3.

⁶ Atts. 37 and 38.

⁷ Officer A explained that if he did not have multiple blank Receipts, he would have provided the necessary information on a scratch piece of paper.

⁸ Att. 42

compartment of Subject 1' vehicle after smelling cannabis. During his search, Officer B searched two duffle bags in the rear seat. Officer B also admitted that only Subject 1 was provided an Investigatory Stop Receipt because Civilian 1 and Civilian 2 were detained but not subjected to a search.

In a **statement to COPA**,⁹ on April 9, 2018, **Officer C**, stated essentially the same information as Officers A and B. Additionally, Officer C stated that at no time was he aware that Officer B had searched the two duffle bags. Additionally, Officer C stated that his name was not listed on any of the reports, because the ISR system only permits the listing of two officers.

b. Digital Evidence

Body Worn Camera ("BWC") footage,¹⁰ depicts the Officers exiting an unmarked CPD vehicle and approaching Subject 1' vehicle while issuing orders to the Occupants to show their hands. The footage also depicts the Officers remarking they detected an odor of cannabis and inquiring if any of the Occupants were in possession of cannabis. During this interaction, Civilian 2 can be heard telling the Officers they were headed to play basketball at the local Gym.¹¹ The Officers ordered the Occupants to exit the vehicle. Once the Occupants exited the vehicle, the officers handcuffed them and told them that they were conducting a narcotics investigation. Officer B completed a search of the vehicle, during which he searched two duffle bags located in the rear seat. Simultaneously, Officer C stood with the Occupants and monitored their actions, while Officer A completed name checks of the Occupants.

After Officer B completed his search, the Officers unhandcuffed the Occupants and permitted them to return to the vehicle. Once the Occupants returned to the vehicle, the Officers had a conversation to determine who should be issued a Receipt. During this conversation Officer A only inquired if any of the Occupants were subjected to a pat-down. Further, Officer A is heard remarking to Officer C that he is only in possession of one Receipt.¹² Based on the conversation, Officer A concluded that only Subject 1 should receive a Receipt. The footage ends with the Officers issuing Subject 1 a traffic citation and receipt.

c. Documentary Evidence

Investigatory Stop Reports ("ISR") **000402072**,¹³ **000402075**,¹⁴ and **000402076**,¹⁵ detail that on December 19, 2017, Subject 1, Civilian 2, and Civilian 1 were in a vehicle that was stopped for failing to "utilize turn signal while parking." During the traffic stop officers "smelled an odor of cannabis coming from inside the vehicle." A search of the vehicle did not reveal any cannabis.

⁹ Att. 48.

¹⁰ Att. 15. CPD provided COPA with 6 files of BWC, however only 3 files depict the encounter. Officer A's BWC footage is file AXON_Body_2_Video_2017-12-19_1154_CR1087894; Officer B's BWC footage is file AXON_Body_2_Video_2017_12_19_1157_CR1087894; and Officer C' footage is AXON_Body_2_Video_2017-12-19_1154 in Attachment 15

¹¹ The relevant portion is at 1:40 of Officer C' BWC footage in Attachment 15.

¹² The relevant portion is at 10:55 of Officers A's and C' BWC footage in Attachment 15.

¹³ Att. 5.

¹⁴ Att. 17.

¹⁵ Att. 11.

Additionally, the ISRs for Civilian 1 and Civilian 2 indicate they were not provided Receipts. The completed ISRs listed only Officers A and B.¹⁶

Subject 1' Investigatory Stop Receipt,¹⁷ detail that he was stopped by Officers A and B for other reasons. Officer C' information is not listed anywhere on the Receipt.¹⁸

Subject 1' Traffic Citation, TN-445-931,¹⁹ detail that Subject 1 used an improper stop or turn signal.

VI. ANALYSIS

a. Unlawful Detention Allegations

First, as a preliminary matter, a traffic stop is more analogous to a *Terry stop* than a formal arrest and, as a result, is generally analyzed under *Terry* principles. *People v. Daniel*, 2013 IL App (1st) 111876 (2013). A *Terry* analysis involves two steps: first, whether the officer's action was justified at its inception and, second, whether it was reasonably related in scope to the circumstances that justified the interference in the first place.

An officer may initiate a traffic stop based on the observation of minor traffic infractions. In this instance, the accused officers stated that they observed Subject 1 fail to use a turn indicator while parallel parking. Under state statute “the electric turn signal device required in Section 12-208 of this Act... must be used to indicate an intention to turn, change lanes or start from a parallel *parked* position...” 625 ILCS 5/11-804(d) (emphasis added). Further, the Municipal Code Municipal requires that “a turn signal shall be given to indicate an intention to change lanes or start from a parallel *parked* position.” 9-40-200 (emphasis added). Neither the Municipal Code or Illinois statute requires a turn signal *before* a motorist can parallel park. In fact, the statute clearly contemplates that a turn signal is required only when starting from a parked parallel position. Therefore, in the context of parallel parking, the turn signal is only required to “indicate...to start from a parallel parked position.”

It is clear that Accused Officers misunderstood the applicable law on the use of turn signals. The Fourth Amendment is not violated if an officer makes an objectively reasonable mistake of law. *Heien v. North Carolina*, 135 S. Ct. 530, 535-540 (2014). However, the Accused Officers' mistake was not reasonable.²⁰ This case is clearly distinguishable from *Heien*. In *Hein* the Supreme Court held that the North Carolina statute regarding brake lights was ambiguous because it did not clearly specify whether vehicles were required to have one or two working brake lights. In this case, both the Chicago Municipal Code and

¹⁶ The ISR system only permits the listing of two officers.

¹⁷ Att. 4.

¹⁸ The Receipt only contains space to list two officers.

¹⁹ Att. 3. Court records detail that on January 26, 2018, the citation was stricken from the records with leave to reinstate. Att. 19.

²⁰ *Heien* makes clear that the text of the statute itself that must be ambiguous for a mistake of law to be deemed objectively reasonable. The officer's subjective understanding or misunderstanding is irrelevant in this context. Furthermore, while COPA has uncovered no evidence that the Accused Officers were operating in bad faith, this is not relevant to determining whether or not the stop was reasonable under the Fourth Amendment. COPA recognizes that the Accused Officer's good faith may be relevant in the criminal context for determining whether the exclusionary rule applies.

the Illinois statute specifically enumerate exactly when a turn signal is required for parallel parking—when starting from a parked position. Further, beginning to parallel park cannot be considered a lane change because the legislature specifically drew a distinction in the statute between “lane changes” and parallel parking by stating that “the...turn signal device required in Section 12-208 of this Act...must be used to indicate an intention to...change lanes *or* start from a parallel parked position...” 625 ILCS 5/11-804(d) (emphasis added). Therefore, the Accused Officers initially stopped Subject 1’ vehicle without lawful justification.

The question becomes whether the continued detention of Subject 1 and the other occupants was objectively reasonable. The Accused Officers cite to the smell of marijuana as the reason for removing the occupants from the vehicle and placing them in handcuffs. In instances in which an officer smells marijuana, the officer has probable cause to conduct a search of a vehicle if testimony has been elicited that the officer has the training and experience to detect that the odor is cannabis. *People v. Zayed*, 2016 IL App (3d) 140780 (2016). In such instances, it is appropriate to ask the occupants to exit the vehicle. Further, if the smell of marijuana is enough to form the basis of probable cause, it may be reasonable to infer that the officers could detain the occupants of the vehicle during the search.

While the initial reason for the stop was unlawful, the continued detention of Subject 1 and the occupants was appropriate once the Accused Officers smelled marijuana and the broadened detention was objectively reasonable. COPA recommends a finding of **Unfounded** for the allegations that Officer A, B, and C unlawfully detained Subject 1, Civilian 1, and Civilian 2.

b. Unlawful Search Allegation

Typically, without more, an officer conducting a traffic stop lacks the authority to conduct a search of the vehicle or its occupants. Again, in instances in which an officer smells marijuana, the officer has probable cause to conduct a search of a vehicle if testimony has been elicited that the officer has the training and experience to detect that the odor is cannabis. *Id.* Further, this principle has been extended to include searches of the driver and passengers of that vehicle. *Id.* at *22.

In this instance, the Accused Officers stated that he smelled marijuana after they approached the vehicle. This is corroborated by the body worn footage of the incident which depicts the Accused Officers remarking they detected an odor of cannabis and inquiring if any of the Occupants were in possession of cannabis. Therefore, the search of the vehicle because of the smell of cannabis was reasonable.²¹ COPA recommends a finding of **Unfounded** for the allegation that Officer B unlawfully searched Subject 1’ vehicle.

²¹ It is important to note that when reviewing injuries suffered during successive steps of state action -- *e.g.*, search, arrest, interrogation, detention, and trial -- each stage of conduct must be separately judged by the constitutional standard applicable to the particular right violated. The exclusionary remedy does not apply in civil cases and does not operate to characterize all subsequent conduct "unconstitutional" simply because a previous step was defective. *Reich v. Minnicus*, 886 F. Supp. 674, 684-685 (S.D. Ind. 1993).

c. Failure to Provide Investigatory Stop Receipt Allegations

COPA recommends a finding of **Unfounded** for the allegations that Officer C failed to provide Civilian 1 and Civilian 2 with Investigatory Stop Receipts. COPA determined that Officer C was never aware that Officer B had searched the duffle bags. Additionally, COPA determined that Officer A assumed the responsibility of determining which Occupants should receive Receipts, and thus relieved Officer C of the responsibility. Therefore, COPA determined that it was reasonable that Officer C did not issue Receipts to the Occupants.

COPA recommends a finding of **Sustained** for the allegations that Officers A and B failed to provide Civilian 1 and Civilian 2 with Investigatory Stop Receipts. Section II(A) of Special Order S04-13-09 defines, in part, an “Investigatory Stop” as a “temporary detention ... of a person ... whe[n] the person was stopped based on Reasonable Articulable Suspicion that the person is committing, is about to commit, or has committed a criminal offense.” Additionally, section VIII (A)(3) of S04-13-09, requires members “[u]pon the completion of an Investigatory Stop that involves ... any other search ... provide the subject of the stop a completed Investigatory Stop Receipt.”

Here, it is undisputed that while Subject 1, Civilian 1, and Civilian 2 were being investigated for the possession of cannabis, they were subjects of an Investigatory Stop. Therefore, COPA must examine if Civilian 1 and Civilian 2 were subject to a search. While it is unclear who owned the duffle bags Officer B searched, COPA finds it more likely than not that Subject 1 was not the owner of both bags, especially considering that both bags were in the rear seat away from Subject 1, and that the Occupants told the officers they were headed to the local Gym to play basketball. COPA believes that without inquiring who the owners of the duffle bags were, it was unreasonable for Officer B to assume/conclude that Civilian 2 or Civilian 1 were not the owners of the bags. Additionally, COPA believes that Officer A only seeking information about pat-downs to determine if the Occupants were subjected to a search was insufficient to determine which of the Occupants were subject to a search. Had Officer A inquired about the scope of Officer B’s search of Subject 1’ vehicle, it would be more likely than not a reasonable officer would have attempted to determine who owned the duffle bags and/or determined that Civilian 1 and Civilian 2 were subjected to a search. Therefore, COPA finds that it is more likely than not that Subject 1, Civilian 1, and Civilian 2 were subjected to a search during an Investigatory Stop and all three were entitled to an Investigatory Stop Receipt in accordance with S04-13-09 VIII(A)(3).

VII. CONCLUSION

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

Officer	Allegation	Finding
Officer A	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded

	2. Failed to provide Civilian 1 and Civilian 2 with an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Sustained
Officer B	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded
	2. Unlawfully searched Subject 1's vehicle, in violation of Rule 1.	Unfounded
	3. Failed to provide Civilian 1 and Civilian 2 an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Sustained
Officer C	1. Unlawfully detained Subject 1, Civilian 2, and Civilian 1, in violation of Rule 1.	Unfounded
	2. Failed to provide Civilian 1 and Civilian 2 with an Investigatory Stop Receipt, in violation of Rules 6 and 10.	Unfounded

Approved:

 COPA Deputy Chief Administrator
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	X
Investigator:	COPA Investigator
Supervising Investigator:	COPA Supervising Investigator
Deputy Chief Administrator:	COPA Deputy Chief Administrator