

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / time of Incident:	January 27, 2019, approximately 8:08 p.m.
Location of Incident:	8030 S. Ellis Avenue, Chicago, Illinois
Date / time of COPA Notification:	January 29, 2019, 10:28 a.m.

On-duty CPD officers arrested an individual and charged him with possession of cannabis after conducting a non-consensual warrantless search of the individual’s car. The individual alleges misconduct, claiming improper search and seizure. COPA has determined, by clear and convincing, that the officers’ conduct was lawful and proper.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] Star # [REDACTED] Employee ID# [REDACTED] Date of Appointment: [REDACTED] 2012, Rank, Police Officer, Unit of Assignment: [REDACTED] DOB: [REDACTED] 1983, M/W
Involved Officer #2:	[REDACTED] Star # [REDACTED] Employee ID# [REDACTED] Date of Appointment: [REDACTED] 2016, Rank, Police Officer, Unit of Assignment: [REDACTED] DOB: [REDACTED] 1987, M/W
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1987, M/B

III. ALLEGATIONS

Officer	Allegation	Finding
Officer [REDACTED]	1. On January 27, 2019, at approximately 8:08 p.m., at or near 8030 S. Ellis Avenue, Chicago, Illinois. the accused detained and subsequently arrested the Complainant without sufficient legal cause.	EXONERATED
Officer [REDACTED]	1. On January 27, 2019, at approximately 8:08 p.m., at or near 8030 S. Ellis Avenue, Chicago, Illinois. the accused detained and subsequently arrested the Complainant without sufficient legal cause.	EXONERATED

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1, CPD Rules of Conduct (prohibiting legal violations)
 2. Rule 8, CPD Rules of Conduct (prohibiting maltreatment)
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Federal Laws

1. U. S. Constitution, Fourth Amendment
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State Laws

1. 720 ILCS 550/4 (prohibiting the possession of cannabis)
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V. INVESTIGATION¹

a. Interviews

Rashed C. ██████████ (██████████)

██████████ gave audio-video recorded interviews with COPA on February 22, 2019 and April 29, 2019, respectively.² In material summary, ██████████ complained about a January 27, 2019 CPD street stop which led to a search of his person, to a search of his car, and ultimately, to his arrest for possession of more than 500 grams of suspect cannabis. In his February 22, 2019 interview, ██████████ stated that he was confronted by CPD officers on a sidewalk approximately twenty feet from a car that he had recently parked. According to ██████████ one of the officers stood close to him and stated that he smelled marijuana, to which ██████████ responded that he had smoked marijuana in the recent past. ██████████ stated that one of the officers then searched his person and retrieved car keys from ██████████ pocket. According to ██████████ that officer then unlocked ██████████ car, searched its interior, and claimed to have found suspect cannabis. In his April 29, 2019 interview, ██████████ acknowledged that the officers could have indeed smelled burnt cannabis during the encounter, although he denied being the source of that odor.

b. Digital Evidence

Bod Worn Camera (“BWC”)

COPA viewed BWC depicting the stop under investigation.³ In material summary, the footage depicts the officers driving in the 8000 block of South Ellis Avenue on January 27, 2019 at approximately 8:08 p.m. when the officers come to a stop. The footage then depicts the officers

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Attachment 7 is an audio recording of the ██████████ February 22, 2019 interview. Attachments 18 and 19 comprise a recording of his April 29, 2019 interview.

³ Attachment 20.

exit their vehicle and confront ██████ who is standing in the street between the officers' vehicle and a parked car; ██████ is approximately two feet from the parked car's front driver-side tire. The footage shows that the passenger-side window of the officer's vehicle is down. The footage then shows Officer ██████ telling ██████ to open the parked car's driver-side door; ██████ refuses, stating that he is not in possession of drugs. Officer ██████ can then be heard stating, "we can smell it." The footage then shows Officer ██████ handcuffing ██████ and removing car keys from one of ██████ rear pockets. It then shows Officer ██████ unlocking the driver-side door of the car with those keys and partially enter and search the front-seat area of the car over ██████ objection. It then shows Officer ██████ relocate to the car's passenger side, where he opens the passenger-side door. At approximately 8:10 p.m., Officer ██████ can then be seen to close that car door; he then says, "Excellent. Outstanding. You're under arrest, sir."

c. Documentary Evidence

Arrest Report

In the Arrest Report relating to the incident,⁴ Officer ██████ described the circumstances that led to the subject search, in summary, as follows: (1) the officers detected a strong odor of burning cannabis as they drove past the arrest scene; (2) they then reversed past a parked car having a running engine and lights on; (3) they then observed ██████ leave that car from the driver's side after turning off the car's engine and lights; and (4) the officers could then detect a strong odor of cannabis emitting from ██████ and the vehicle.

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.

⁴ Attachment 4.

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

The matter turns upon whether the officers smelled an odor of burnt cannabis in the immediate vicinity of [REDACTED] car, as they claimed in their reports relating to the incident and on camera as captured on video. If so, then the officers had legal justification to search [REDACTED] pocket and his car, because the smell of burnt cannabis provides law enforcement officers with probable cause justifying a search of places where that odor suggests that cannabis could be found.⁵

BWC footage depicting the incident and [REDACTED] admissions clearly and convincingly show that the officers did, in fact, smell the odor of burnt cannabis as they drove by [REDACTED] car and as they stood next to [REDACTED] and his car. That footage shows that the officers’ passenger side vehicle window was open as the officers drove past. It further shows that when the officers stopped and approached [REDACTED] one of the officers stated in [REDACTED] presence that he could smell burnt cannabis. In response, [REDACTED] admitted that he had smoked cannabis in the recent past. In an interview, [REDACTED] admitted that the officers could have indeed smelled burnt cannabis at that point, although he denied being the source of that odor. These facts justify the officers’ search of [REDACTED] pants pocket and his car.

For the above reasons, Officers [REDACTED] and [REDACTED] are exonerated.

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer [REDACTED]	1. On January 27, 2019, at approximately 8:08 p.m., at or near 8030 S. Ellis Avenue, Chicago, Illinois. the accused detained and subsequently arrested the Complainant without sufficient legal cause, in violation of Rules 1 and 8 of the CPD Rules of Conduct.	EXONERATED
Officer [REDACTED]	1. On January 27, 2019, at approximately 8:08 p.m., at or near 8030 S. Ellis Avenue, Chicago, Illinois. the accused detained and subsequently arrested the Complainant without sufficient legal cause, in violation of Rules 1 and 8 of the CPD Rules of Conduct.	EXONERATED

⁵*People v. Stout*, 106 Ill. 2d 77, 87, 477 N.E.2d 498 (1985). See also *People v. Rice*, 2019 IL App (3d) 170134, ¶19 (affirming that the odor of burnt cannabis can provide probable cause for a vehicle search notwithstanding recent legislation decriminalizing the possession of small amounts of cannabis)

Approved:



July 31, 2019

Andrea Kersten
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	██████████
Investigator:	██████████
Supervising Investigator:	██████████████████
Deputy Chief Administrator:	Andrea Kersten