

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	September 14, 2018
Time of Incident:	21:59 Hours
Location of Incident:	5719 S. State Street
Date of COPA Notification:	September 18, 2018
Time of COPA Notification:	13:24 hours

On September 14, 2018, [REDACTED] and five passengers in her vehicle were curbed after she allegedly made a negligent driving decision. The officers ordered all of the vehicle’s occupants out of the car. All the vehicle’s occupants were patted down. Officers recovered marijuana on one of the vehicle’s passengers. Officer [REDACTED] asked [REDACTED] for the key to the vehicle to search it. [REDACTED] gave Officer [REDACTED] the key fob but separated the metal key that unlocked the glove compartment. Officer [REDACTED] saw [REDACTED] hide the metal key and attempted to take it from her hands. After a brief wrestling match over the key, Officer [REDACTED] wrenched the key from her hands and unlocked the glove compartment, where he found several bags of marijuana. [REDACTED] was arrested, and her car was seized, though it was later returned without being impounded. The other passengers were released without charges.

**II. INVOLVED PARTIES**

Involved Officer #1:	[REDACTED] Star No. [REDACTED] Employee No. [REDACTED] DOA: [REDACTED] 2013, Rank: [REDACTED] Unit: [REDACTED] DOB: [REDACTED] 1988, Male, White
Involved Officer #2:	[REDACTED] Star No. [REDACTED] Employee No. [REDACTED] DOA: [REDACTED] 2017, Rank: [REDACTED] Unit: [REDACTED] DOB: 01 Jun 1977, Male, Black
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1998, Male, Race: Black
Involved Individual #2:	[REDACTED] DOB: [REDACTED] 1986, Female, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer [REDACTED] [REDACTED]	It is alleged that on 14 September 2018, at approximately 21:35 hours, in the vicinity of 5710 S. State Street:	

Officer [REDACTED]  
[REDACTED]

<ol style="list-style-type: none"> <li>1. You stopped the vehicle driven by [REDACTED] without justification;</li> <li>2. You searched the vehicle driven by [REDACTED] without justification;</li> <li>3. You handcuffed the vehicle's occupants without justification;</li> <li>4. You pat down the vehicle's occupants without justification;</li> <li>5. You searched the vehicle's occupants without justification;</li> <li>6. You struck [REDACTED] without justification;</li> <li>7. You failed to activate your body worn camera; and</li> <li>8. You failed to properly complete an investigatory stop report, including issuing the stop receipt.</li> </ol>	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>NOT SUSTAINED</p> <p>UNFOUNDED</p> <p>SUSTAINED</p>
<p>It is alleged that on 14 September 2018, at approximately 21:35 hours, in the vicinity of 5710 S. State Street:</p> <ol style="list-style-type: none"> <li>1. You stopped the vehicle driven by [REDACTED] without justification;</li> <li>2. You searched the vehicle driven by [REDACTED] without justification;</li> <li>3. You handcuffed the vehicle's occupants without justification;</li> <li>4. You pat down the vehicle's occupants without justification;</li> <li>5. You searched the vehicle's occupants without justification;</li> <li>6. You failed to activate your body worn camera; and</li> </ol>	<p>EXONERATED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p>

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|  | 7. You failed to properly complete an investigatory stop report, including issuing the stop receipt. | SUSTAINED |
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#### IV. APPLICABLE RULES AND LAWS

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##### Rules

1. Rule 1 requires Department members to comply with all laws and ordinances.
2. Rule 6 requires Department members to comply with all orders and directives.

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##### General Orders

1. Department Notice D16-04, Illinois Alternative Cannabis Enforcement Program
2. General Order G03-02, Use of Force

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##### Special Orders

1. Special Order S04-13-09, Investigatory Stop System
2. Special Order S07-03-06, Seizure and Forfeiture of Vehicles, Vessels, and Aircraft
3. Special Order S04-26-12, Alternative Cannabis Enforcement Program

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##### Federal Laws

1. U.S. Constitution Fourth Amendment

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##### State Laws

1. Municipal Code 7-24-099, Possession of Cannabis
2. 720 ILCS 5.0/31-1-A, Resisting or Obstructing a Police Officer
3. Municipal Code 9-40-140, Negligent Driving

#### V. INVESTIGATION<sup>1</sup>

##### a. Interviews

██████████<sup>2</sup>: ██████████ gave a statement to the Civilian Office of Police Accountability (“COPA”) on September 18, 2018. According to ██████████ she was driving with her friend ██████████ brother ██████████ cousin ██████████ nephew ██████████ and friend ██████████ was preparing to turn left at 57<sup>th</sup> and State, then changed her mind and decided to park instead. She then signaled that she was changing lanes and moving toward the right side of the street to park instead, which she subsequently did. She and her passengers were

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

<sup>2</sup> Attachment 4

in the process of exiting the vehicle when the police pulled up behind them and activated their lights.

The officers ordered them to stay in the car. Officer [REDACTED] approached the driver side of the vehicle. [REDACTED] questioned Officer [REDACTED] about the nature of the stop. Officer [REDACTED] accused them of not having their seatbelts on and scolded her about changing lanes from the left to right in the manner she did. [REDACTED] admitted that she did go from the far left to far right lane but defended herself by saying that there was no traffic. [REDACTED] gave her license and insurance to Officer [REDACTED]. Officer [REDACTED] asked [REDACTED] if she would prefer to talk to him inside or outside of the vehicle. [REDACTED] elected to speak outside of the vehicle. Officer [REDACTED] then instructed [REDACTED] to come to the back of the car. Officer [REDACTED] did not pat her down.

Shortly thereafter, Officer [REDACTED] requested backup and several other officers arrived at the scene. One of the other officers told Officer [REDACTED] that the passengers were moving around a lot in the back seat. [REDACTED] could hear the passengers complaining about the stop. Officer [REDACTED] then opened the car and began escorting the passengers out. [REDACTED] requested a "white shirt" but the officers on the scene ignored her and refused. All of the passengers were handcuffed together. Officer [REDACTED] then asked [REDACTED] to open her fanny pack, so he could make sure she did not have a gun. She opened it up and displayed it for Officer [REDACTED] to check.

At some point, all of the passengers became "excited" about how they were being treated. [REDACTED] remained argumentative throughout the encounter. The officers searched [REDACTED]. The officers recovered two small bags of marijuana on [REDACTED]. Officer [REDACTED] threatened [REDACTED] with arrest over the marijuana because [REDACTED] would not stop being argumentative. [REDACTED] cousin implored her to be quiet. She refused, arguing with him, too. [REDACTED] protested that [REDACTED] could not be arrested for that amount of marijuana. The officers then told them to shut up or they would be arrested.

According to [REDACTED] Officer [REDACTED] hit her with some sort of hard object on her forearm that was in his hands. She believed that it was due to his frustration with her questioning him. [REDACTED] said that it was not a punch or a direct strike but some sort of upward motion. This occurred while she was handcuffed. Officer [REDACTED] then asked for the keys to the car. [REDACTED] took the key from her fanny pack, then clinched it in her fist. She again demanded that Officer [REDACTED] call a sergeant first.

Officer [REDACTED] continued ordering her to turn over the key. Officer [REDACTED] attempted to take the key from her hand. [REDACTED] kept passing the key from hand to hand, trying to keep it from him. [REDACTED] then separated the physical key from the key fob and gave Officer [REDACTED] the key fob. Officer [REDACTED] then demanded the key from [REDACTED] hand. [REDACTED] refused, then Officer [REDACTED] pried the key from her hand as she tried to keep it from him. Officer [REDACTED] took the key and opened the glove compartment, he then began searching the glove compartment. Officer [REDACTED] returned with a pouch from her glove compartment with more marijuana in it.

Officer [REDACTED] then told [REDACTED] that she was being arrested. Some of her passengers offered to drive the vehicle but were denied access to the car. The officers informed them that the car was being impounded. [REDACTED] was put into a police car and taken away. Officer [REDACTED] got

into her vehicle and drove it away. [REDACTED] was the only one arrested. Later, at the station, [REDACTED] was told that the car was not going to be impounded. An evidence technician took photographs of her arm. A sergeant interviewed her about being struck by Officer [REDACTED]. The sergeant told her that she could not file a complaint with them about the misconduct. Later, a different sergeant came to take her complaint about the allegations of misconduct and [REDACTED] refused to speak with her because she was told that she could not give a statement to them about the misconduct.

[REDACTED]<sup>3</sup> gave a statement to COPA on September 18, 2018. In his statement, [REDACTED] told investigators that he was a backseat passenger in the vehicle driven by [REDACTED] his sister. [REDACTED] told investigators that the police officers pulled up behind them in an unmarked SUV after they had parked and were exiting the vehicle. The officers then ordered everyone back into the vehicle. Initially, the officers told them that they were being stopped because the rear seat passengers did not have their seatbelts engaged. Later, the officers switched the reason to the way [REDACTED] switched lanes. [REDACTED] was asked to exit the vehicle and speak with the officers near the back of the car.

Shortly after, the remaining five vehicle occupants were asked out of the vehicle. There were approximately five officers present at the time. The officers handcuffed all of the passengers, arm-to-arm, then searched them. An officer patted down [REDACTED] and discovered two small bags of marijuana on him. The officer seized the marijuana but did not issue him a citation. [REDACTED] had additional marijuana in his pocket that the officer did not discover. The officers inquired about where they were going, what they were doing, and their identities. While this was happening, the police officers also began searching [REDACTED] vehicle.

[REDACTED] told investigators that the officers asked [REDACTED] for her keys and began going through [REDACTED] purse as soon as she opened her purse to look for the key. As soon as [REDACTED] obtained the key from her purse, the officer began trying to wrestle the key from [REDACTED] hand, pulling and yanking at her hand. This went on for approximately five minutes. After the key was wrestled from her hands, [REDACTED] began complaining that the officer had struck her. [REDACTED] told investigators that he did not see the strike but watched as the officer's hand flew backward after the hit and watched as [REDACTED] stumbled into the police car. The other female passenger also reacted to the strike. The officer took the key and went straight to the glovebox. The officer confronted [REDACTED] saying something to the effect of, "this is what you were doing that for? That little bit of weed?" [REDACTED] added that he did not believe the officer could have smelled any marijuana because it was all in sealed baggies.

The police arrested [REDACTED] seized [REDACTED] car, and left the passengers there.

**Officer [REDACTED]**<sup>4</sup> gave a statement to COPA on April 12, 2019. According to Officer [REDACTED] he was driving southbound on State Street when he observed a vehicle make multiple sudden lane changes before pulling into a parking lane, essentially going from the farthest left lane to the farthest right lane, causing other vehicles to slam on their brakes. Officer [REDACTED] considered this maneuver negligent driving. Officer [REDACTED] pulled up behind the vehicle and activate their emergency lights. [REDACTED] then exited the vehicle and attempted to walk away.

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<sup>3</sup> Attachment 19

<sup>4</sup> Attachment 30

Officer ██████ instructed ██████ to return to the vehicle multiple times. ██████ was reluctant to comply but eventually did return to the vehicle.

According to Officer ██████ the other passengers in the car were being belligerent and moving around a lot inside the cabin of the vehicle. Officer ██████ requested backup for officer safety due to the number of individuals in the car. All of the passengers were then asked to exit the vehicle. The passengers were all handcuffed to each other. A protective pat down was conducted on only the male passengers, based on the totality of the circumstances – the motion in the vehicle, his refusal to comply with verbal directions, and the high crime neighborhood, and the clothing he was wearing in that his waistband was covered. During the pat down of ██████ Officer ██████ felt what he knew to be marijuana based on plain touch and seized it.

While this was transpiring, Officer ██████ noticed the smell of cannabis emanating from the vehicle and the smell persisted even after he recovered the cannabis from ██████. Officer ██████ discovered that the smell was originating from the locked glovebox, then asked ██████ for the key. ██████ removed a key from the fob and attempted to conceal it. Officer ██████ considered this to be an act of obstruction. ██████ flailed in an attempt to avoid giving over the key. Eventually, Officer ██████ grabbed ██████ by the wrist and pried the key out of her hand. In the process, ██████ struck him with her forearm, then began yelling that he had struck her. Officer ██████ found it to be so inconsequential that he did not classify her as an assailant. He then used the key to unlock the glovebox, where he discovered nine grams of cannabis.

Officer ██████ told investigators that the vehicle was relocated to the station for multiple reasons, including for liability and to weigh the cannabis because the vehicle could be subject to impound based on the amount of cannabis discovered.<sup>5</sup> At the station, he completed Investigative Stop Reports for the male passengers but not for the female passenger because she was not patted down. Officer ██████ explained that she was just a passenger in the traffic stop. Officer ██████ did not believe that handcuffing on a traffic stop alone was a reason to complete an Investigative Stop Report. Officer ██████ explained that the male passengers were listed as “John Does” because they were only detained as passengers to the traffic stop but were not independently suspected of any wrongdoing. Officer ██████ told investigators that the Summer Mobile Patrol was not assigned body worn cameras.

Officer ██████<sup>6</sup> gave a statement to COPA on April 12, 2019. According to Officer ██████ he did not remember much, if anything, about this particular incident. Officer ██████ maintained throughout his interview that he was simply the security officer on the scene and did not engage with any person in particular or engage in the search of the vehicle.

## **b. Documentary Evidence**

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<sup>5</sup> Special Order S07-03-06, in accordance with 720 ILS 550/4(c) gives officers the authority to seize a vehicle with the owner is found in possession of more than 10 grams of cannabis. Department Notice D16-04, in accordance with 720 ILCS 550/4(a), makes the possession of less than 10 grams of cannabis punishable by a fine. Officer ██████ recovered 9 grams of cannabis from ██████ vehicle was subsequently released without being impounded. ██████ was not charged with the crime of cannabis possession. ██████ was cited with an administrative notice of violation (ANOV) for possession of cannabis.

<sup>6</sup> Attachment 31

**Arrest Report <sup>7</sup>:** The arrest report indicated that [REDACTED] was arrested for resisting or obstructing a police officer and for negligent driving. In the narrative, Officer [REDACTED] wrote that he observed [REDACTED] swerve from lane to lane in a dangerous manner and placed her in custody for the negligent driving. Officer [REDACTED] wrote that [REDACTED] attempted to conceal her car keys. According to the arrest report, [REDACTED] flailed and evaded his attempts to obtain the key. Officer [REDACTED] wrote that he obtained the key and found 9 grams of what he suspected was cannabis.

**Original Case Incident Report <sup>8</sup>:** In the narrative of the Case Incident Report, Officer [REDACTED] wrote the same information that he provided in his interview.

**Tactical Response Report <sup>9</sup>:** Officer [REDACTED] completed a Tactical Response Report regarding this incident. In the report, Officer [REDACTED] indicated that [REDACTED] did not follow verbal directions, pulled away, and flailed her arms. In the narrative section, Officer [REDACTED] wrote that he was forced to take the key from [REDACTED] hand by grabbing her hand and forcing it open with his hand.

At the station, Sergeant [REDACTED] interviewed [REDACTED] about the incident. [REDACTED] told Sergeant [REDACTED] that Officer [REDACTED] ripped the keys from her hand and arrested her for no reason. Sergeant [REDACTED] did not observe any injuries to [REDACTED]. Sergeant [REDACTED] unsuccessfully attempted to obtain third-party video of the incident. A witness to the incident said that [REDACTED] was being belligerent and flailing aggressively.

Lieutenant Michelle [REDACTED] spoke with [REDACTED] did not observe injuries, and found that the use of force was in compliance with policy. Photos were taken of [REDACTED] purported injuries.

**Investigatory Stop Reports <sup>10 11 12</sup>:** The Investigatory Stop Reports were substantially the same for the male passengers all identified as “J. Doe,” with differing physical descriptors. Each report indicated that a nonconsensual protective pat down was performed and that no stop receipts were issued. In the narrative portion of the report, Officer [REDACTED] wrote that each person was detained as a passenger in the traffic stop, that the passengers were belligerent, that the passengers were moving around in the vehicle after being instructed not to, that it was a high crime area, and that the subject’s clothing covered his waistband, and that based on his experience these behaviors could indicate an intent to conceal a weapon. There was no contraband found in any of these searches. Officer [REDACTED] wrote that the passengers did not wait for stop receipts.

**Investigatory Stop Report <sup>13</sup>:** Officer [REDACTED] completed a distinct Investigatory Stop Report for [REDACTED]. In addition to repeating the same information as mentioned in the “J. Doe” stop reports, the report indicated that [REDACTED] was issued a civil citation # [REDACTED].

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<sup>7</sup> Attachment 15

<sup>8</sup> Attachment 5

<sup>9</sup> Attachment 12

<sup>10</sup> Attachment 8

<sup>11</sup> Attachment 9

<sup>12</sup> Attachment 10

<sup>13</sup> Attachment 11

According to Officer [REDACTED] he recovered two grams of cannabis from [REDACTED] person that was discovered in the course of a protective pat down. According to the stop report, Officer [REDACTED] found two small bags of marijuana in [REDACTED] coin pocket and immediately recognized them to be consistent with small bags of cannabis. [REDACTED] was not issued a stop receipt.

**Event Query** [REDACTED]<sup>14</sup> captures the traffic stop of [REDACTED] the search of her name and license plate, and her subsequent arrest.

**Inventory** [REDACTED]<sup>15</sup> shows one zippered bag of a substance suspected of being cannabis seized from [REDACTED]

**Inventory** [REDACTED]<sup>16</sup> shows nine zippered bags of a substance suspected of being cannabis seized from [REDACTED]

### c. Additional Evidence

**Inventory** [REDACTED]<sup>17</sup> shows a fanny pack recovered from [REDACTED]

## VI. LEGAL STANDARD

### a. Possible findings and burdens of proof

For each allegation COPA must make one of the following findings:

Sustained - where it is determined the allegation is supported by a preponderance of the evidence;

Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

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 reviewed 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 conduct violated Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

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<sup>14</sup> Attachment 22

<sup>15</sup> Attachment 14

<sup>16</sup> Attachment 34

<sup>17</sup> Attachment 13

**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

### Allegations against Officer [REDACTED]

#### 1. Officer [REDACTED] stopped [REDACTED] vehicle without justification.

Officer [REDACTED] is EXONERATED of this allegation. Rule 6 requires an officer to comply with all rules and directives. A traffic stop is, in essence, an investigatory stop. Special Order S04-13-09 defines 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." Officer [REDACTED] told investigators that [REDACTED] was stopped for negligent driving after she made a series of lane changes in a short amount of time, going from the left turn lane across multiple driving lanes to the parking lane on the right.

Municipal Code 9-40-140 defines negligent driving as "operat[ing] any vehicle upon a public way negligently, heedlessly and without due caution in a manner which endangers or is likely to endanger any person or property or to swerve within, between or across lanes of traffic in such a manner." COPA is satisfied that Officer [REDACTED] had, at minimum, a reasonable articulable suspicion that [REDACTED] was driving negligently under the Municipal Code's interpretation of negligent driving. [REDACTED] acknowledged that she drove from the left turn lane to the right parking lane in fairly quick succession, though she maintained that traffic was clear and she used her turn signals. Conversely, Officer [REDACTED] told investigators that traffic was moderate and the nearby cars had to slam on their brakes to avoid colliding with [REDACTED]. Regardless of this discrepancy, the Municipal Code does not require other cars be affected by the driving for it to be negligent, just that it be "likely to endanger any person or property."

[REDACTED] told investigators that Officer [REDACTED] scolded her about her driving maneuvers as well as other driving infractions. Based on [REDACTED] own admissions, COPA finds that the manner in which she executed her lane change was questionable enough to raise suspicion that she was driving negligently and that Officer [REDACTED] perceived the same. For these reasons, Officer [REDACTED] was acting lawfully when he detained [REDACTED]. It does not matter that she had recently exited the vehicle and was not driving at the time, given only seconds passed between the stop and her exiting the vehicle. Additionally, Officer [REDACTED] also would have been justified in stopping [REDACTED] for having six passengers in her five-passenger vehicle as Illinois law only permits as many passengers in the front and rear seats as there are seat belts, which [REDACTED] also told investigators Officer [REDACTED] reprimanded her about. There is clear and convincing evidence that the stop would have been justified for one or more traffic violations. Officer [REDACTED] is EXONERATED of this allegation.

**2. Officer ██████ handcuffed the vehicle's occupants without justification.**

Officer ██████ is EXONERATED of this allegation. Rule 1 requires that officers comply with all laws and ordinances. The Fourth Amendment prohibits unreasonable seizures. Generally, a person is seized when a police officer takes some action that communicates to a reasonable person that they are not free to leave. A police officer handcuffing a subject is a clear indication that a person has been seized, though not necessarily an indication that the person has been arrested.<sup>18</sup> Outside of an arrest, “there are situations in which concerns for the safety of the police officer or the public justify handcuffing the detainee for the brief duration of an investigatory stop... The critical question is whether “the use of such restraints is reasonably necessary for safety under the specific facts of the case.”<sup>19</sup>

According to Officer ██████ from the inception of the traffic stop through the arrest, the vehicle's occupants, including ██████ refused to comply with orders, moved around in the vehicle, were belligerent, and would not keep their hands in sight after multiple instructions to do so. There were also six vehicle occupants to two police officers. Based on these facts, Officer ██████ felt it was necessary to call for back up. Officer ██████ also felt a protective pat down was necessary to dispel his concerns that the occupants were concealing weapons. Based on ██████ statements, COPA finds that she tried to walk away from the vehicle and had to be ordered back in by the officers. To a reasonable officer, this could be an indicator that ██████ would flee if presented the opportunity. Based on ██████ and Officer ██████ statement COPA finds that ██████ and her passengers were likely hostile to the officers, which when outnumbered, could pose a threat to the officers' safety if they were allowed to move freely.

Based on the totality of the circumstances it was reasonably necessary for officer safety to handcuff each of the vehicle's occupants. Officer ██████ is EXONERATED of this allegation.

**3. Officer ██████ performed a pat down the vehicle's occupants without justification.**

Officer ██████ is EXONERATED of this allegation. Rule 6 requires Department members to comply with all orders and directives. Special Order S04-13-09 says, “a sworn member must possess specific and articulable facts, combined with rational inferences from these facts, that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area” to conduct a protective pat down. Similar to the previous analysis, it is clear from ██████ statements that vehicle occupants were hostile toward the officers. Again, the passengers of the vehicle were also shifting and moving around in the vehicle,

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<sup>18</sup> Courts have found that “handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop.” *See id.* (citing *People v. Wells*, 403 Ill. App. 3d 849, 857 (1st Dist. 2010); *Delaware*, 314 Ill. App. 3d at 370; *People v. Tortorici*, 205 Ill. App. 3d 625, 628 (3d Dist. 1990)). But handcuffing (and placing an individual into the back of a police vehicle) does not *automatically* convert an investigatory stop into an arrest. *See, e.g., United States v. Stewart*, 388 F.3d 1079, 1084–85 (7th Cir. 2004); *People v. Starks*, 190 Ill. App. 3d 503, 509 (2d Dist. 1989).

<sup>19</sup> *People v. Arnold*, 394 Ill. App. 3d 63, 71 (2d Dist. 2009).

which would have made it difficult for the officers to see everyone's hands. Combining hostile and moving subjects with the officer's experience that is clear and convincing evidence that a reasonable officer would suspect that any one of the rear seat passengers presented a threat of attack and would conduct a protective pat down based on these facts.

Further, Officer ██████ did not pat down ██████ COPA finds that he likely did not pat down the other female passenger either, per Department policy. For these reasons, COPA finds that Officer ██████ pat downs were within policy and he is EXONERATED of this allegation.

#### 4. Officer ██████ unlawfully searched the vehicle and its' passengers.

Officer ██████ is EXONERATED of the allegation that he unlawfully searched the vehicle and its' passengers. Rule 1 requires that officers comply with all laws. The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures. A search that is based on probable cause is reasonable. Special Order S04-13-09 states 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." COPA is satisfied that Officer ██████ had probable cause to search the vehicle.

Officer ██████ told investigators that while he was asking passengers out of the vehicle, he smelled the strong odor of fresh, as opposed to burnt, cannabis. Officer ██████ articulated that there is a difference in the smell of fresh and burnt cannabis, though he admitted that he was not trained specifically in that distinction. In *Boyd*,<sup>20</sup> the court found that once the officer detects the odor of burnt marijuana emanating from the vehicle, the officer has sufficient reasonable suspicion to conduct an investigatory stop into the crime of marijuana possession.

Officer ██████ told investigators that while searching the vehicle he determined that the cannabis smell was emanating from the locked glovebox and went about obtaining the key. He subsequently recovered nine bags of cannabis. The United States Supreme Court, in *United States v. Ross*,<sup>21</sup> found that if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search," which has been interpreted to include locked containers within the vehicle. Similar to this case, in *People v. Clark*,<sup>22</sup> the Illinois Supreme Court found that it was not unreasonable for an officer to take the keys from the ignition and use them to open a locked glovebox when items suspected of being cannabis were identified within the passenger cabin following a traffic stop for erratic driving.

Officer ██████ also conducted a search of ██████ person while conducting his protective pat down. Officer ██████ wrote in his investigatory stop report of ██████ that he felt two items in ██████ jean coin pocket and immediately recognized them to be consistent with cannabis, which he then seized. In short, Officer ██████ is stating that he recognized the contraband by the "plain touch" of the item. The Plain Touch Doctrine states that "when a sworn member is conducting a

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<sup>20</sup> *People v. Boyd*, 298 Ill. App. 3d 1118 (4th Dist. 1998))

<sup>21</sup> *United States v. Ross*, 456 US 798 (1982)

<sup>22</sup> *People v. Clark*, 440 NE 2d 869; 92 Ill.2d 96 (1982) Opinion No. 55591

lawful Protective Pat Down of a suspect's outer clothing for weapons and encounters an object that, based upon their training and experience, the sworn member believes that the object is contraband, the sworn member may seize the item without a warrant.”

Under this doctrine, if an officer lawfully pats down a suspect's outer clothing and feels an object whose mass or contour makes its identity immediately apparent, there is no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons, and the item may be seized.<sup>23</sup> The Mitchell court reasoned: "When objects have a distinctive and consistent shape that an officer has been trained to detect and that officer has had previous experience in detecting such objects, his tactile perceptions can provide him with the same recognition that his sight would have provided."<sup>24</sup> However, this doctrine does not permit a search to exceed the initial intrusion; as soon as the officer is satisfied that the object is not a weapon, a further search to determine the nature or identity of the object, such as through manipulation of the object, is impermissible.<sup>25</sup>

However, *In People v. Neuberger*,<sup>26</sup> citing a progression of case law, the court found that probable cause to search a vehicle based on the smell of cannabis was sufficient probable cause to search the occupants of the vehicle as well.<sup>27</sup> As discussed earlier, Officer ██████ detected the smell of fresh cannabis upon removing the passengers from the vehicle. The smell of cannabis gave Officer ██████ probable cause to search the vehicle, which also gave him probable cause to search the passengers of the vehicle, including ██████. What would have been an impermissible search of ██████ based on Officer ██████ alleged plain feel recognition of cannabis does not amount to a violation of ██████ Fourth Amendment rights where there is probable cause to search for another reason.

For the aforementioned reasons, Officer ██████ did not violate ██████ Fourth Amendment rights by using the key to enter ██████ locked glovebox,<sup>28</sup> nor did he violate ██████ Fourth Amendment rights when he seized cannabis from his pockets. Officer ██████ is EXONERATED of the allegations that he improperly searched the vehicle and its occupants.

**5. There is insufficient evidence to conclude whether Officer ██████ struck ██████ without justification.**

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<sup>23</sup> *People v. Mitchell*, 165 Ill.2d 211, 225, 209 Ill.Dec. 41, 650 N.E.2d 1014 (1995).

<sup>24</sup> *Mitchell*, 165 Ill.2d at 227, 209 Ill.Dec. 41, 650 N.E.2d 1014.

<sup>25</sup> *Mitchell*, 165 Ill.2d at 228-29, 209 Ill.Dec. 41, 650 N.E.2d 1014.

<sup>26</sup> *People v. Neuberger*, 2011 IL App (2d) 100379, ¶ 9, 959 N.E.2d 195

<sup>27</sup> “However, in *People v. Stout*, 106 Ill. 2d 77, 477 N.E.2d 498, 87 Ill. Dec. 521 (1985), our supreme court held that the odor of burning cannabis emanating from a lawfully stopped automobile supplied probable cause to conduct a warrantless search of the driver's person. The Fourth District extended *Stout* to passengers in *People v. Boyd*, 298 Ill. App. 3d 1118, 1127, 700 N.E.2d 444, 233 Ill. Dec. 139 (1998). The *Boyd* court concluded that there was no logical basis for treating the passengers differently from the driver in such circumstances. The *Boyd* court also noted authority from other jurisdictions that an officer who detects burning cannabis in an automobile may arrest and search all the occupants. *Id.* at 1127-28.

<sup>28</sup> For the same reasons, Officer ██████ was also allowed to search ██████ fanny pack, which he had her empty.

This allegation is NOT SUSTAINED. Rule 6 requires Department members to comply with all orders and directives. General Order G03-02 states that “department members may only use force that is objectively reasonable, necessary, and proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.” The use of force for punishment is expressly prohibited. This assumes that the force was used intentionally. [REDACTED] and Officer [REDACTED] all acknowledge that there was some sort of physical contact between [REDACTED] and Officer [REDACTED] that led to [REDACTED] maintain that she was struck by Officer [REDACTED]. The issue is the nature of the contact.

[REDACTED] indicated that Officer [REDACTED] hit her on the forearm. [REDACTED] clarified that it was not a punch, but that he hit her with some sort of upward motion. [REDACTED] told investigators that he did not see the strike but watched as the officer’s hand flew backward after the hit and watched as [REDACTED] stumbled into the police car. [REDACTED] noted that [REDACTED] also reacted to the strike. [REDACTED] maintained that Officer [REDACTED] was being clever about the strike and did not hit her directly. Conversely, Officer [REDACTED] told investigators that [REDACTED] struck him, unintentionally, with her forearm, then began complaining that he struck her. According to Officer [REDACTED] this occurred while he was trying to get the key from [REDACTED]. Officer [REDACTED] told investigators that he did not include this contact in his tactical response report because it was so minor that he did not consider her an assailant based on the contact.

While COPA acknowledges that there was physical contact between [REDACTED] and Officer [REDACTED] there is insufficient evidence to conclude that the contact was deliberate. [REDACTED] was argumentative and hostile. At the time of the incident, [REDACTED] and Officer [REDACTED] were likely grappling over the key in her hand. COPA finds it more likely than not the contact was incidental or accidental, however, COPA does not find there to be clear and convincing evidence. For this reason, this allegation is NOT SUSTAINED.

**6. Officer [REDACTED] did not activate his body worn camera.**

This allegation is UNFOUNDED. Officer [REDACTED] was assigned to the Summer Mobile Patrol at the time of the incident. The Department members assigned to the Summer Mobile Patrol were not required to wear body worn cameras. Officer [REDACTED] could not fail to activate something he did not possess.

**7. Officer [REDACTED] failed to complete an investigatory stop report for all passengers detained.**

This allegation is SUSTAINED. Rule 6 requires Department members to comply with all orders and directives. Special Order S04-13-09 requires officers to complete investigatory stop reports whenever there is a detention that is not otherwise captured by another report. Here, Officer [REDACTED] acknowledged that there was a sixth person in the vehicle, though there were only five passengers documented. There was a female passenger, [REDACTED] in the front passenger seat who was not pat down or searched but was handcuffed to the other passengers who were the subjects of investigatory stop reports. Officer [REDACTED] told investigators that he did not believe an investigatory stop report was required for the sixth passenger because she was not pat down.

Courts have found that “handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop.” Therefore, it should be documented. Under Special Order S04-13-09, investigative stop reports should be completed whenever there is a detention, even if there is no other enforcement action taken because no other report would capture the interaction. Because Officer [REDACTED] detained the sixth passenger and placed her in handcuffs and did not complete an Investigatory Stop Report, this allegation is SUSTAINED.

### **Allegations Against Officer [REDACTED]**

**It is alleged that on 14 September 2018, at approximately 21:35 hours, in the vicinity of 5710 S. State Street:**

**1. Officer [REDACTED] stopped [REDACTED] without justification.**

Officer [REDACTED] is EXONERATED of this allegation. See the above analysis related to the stop by Officer [REDACTED]. All officers engaged in a traffic stop are equally responsible for making the stop, unless there are clear facts to the alternative.

**2. Officer [REDACTED] searched the vehicle without justification.**

This allegation is UNFOUNDED. There is no evidence that Officer [REDACTED] engaged in the search of the vehicle. Officer [REDACTED] however, admitted to engaging in the search of the vehicle. Officer [REDACTED] denied searching the vehicle, stating that his primary role in the stop was as the business officer, who was responsible for monitoring the detainees and surroundings. This is further supported by the [REDACTED] and [REDACTED] statements focusing on Officer [REDACTED] as the one responsible for their complaints.

**3. Officer [REDACTED] handcuffed the vehicle's occupants without justification.**

This allegation is UNFOUNDED. There is no evidence that Officer [REDACTED] handcuffed the vehicle's occupants. Officer [REDACTED] admitted that he handcuffed the subjects to each other. Officer [REDACTED] denied interacting with the passengers, stating that his primary role in the stop was as the business officer, who was responsible for monitoring the detainees and surroundings. This is further supported by the [REDACTED] and [REDACTED] statements focusing on Officer [REDACTED] as the one responsible for their complaints. Further, even if Officer [REDACTED] assisted with handcuffing the subjects, his actions would have been justified based on the reasons Officer [REDACTED] articulated above.

**4. Officer [REDACTED] conducted a pat down the vehicle's occupants without justification.**

This allegation is UNFOUNDED. There is no evidence that Officer [REDACTED] pat down the vehicle's occupants. Officer [REDACTED] also admitted that he patted down all of the male passengers. Officer [REDACTED] denied interacting with the passengers, stating that his primary role in the stop was as the business officer, who was responsible for monitoring the detainees and surroundings. This is further supported by the complainant and witness' statements focusing on Officer [REDACTED] as the

one responsible for their complaints. Further, even if Officer ██████ assisted with the pat downs, his actions would have been justified based on the reasons discussed above with regard to the same allegations against Officer ██████

**5. Officer ██████ searched the vehicle's occupants without justification.**

This allegation is UNFOUNDED. There is no evidence that Officer ██████ searched the vehicle's occupants. Officer ██████ also admitted that he conducted the pat down of ██████ that evolved into a search. Officer ██████ denied interacting with the passengers, stating that his primary role in the stop was as the business officer, who was responsible for watching Officer ██████ back and monitoring the detainees. This is further supported by the complainant and witness' statements focusing on Officer ██████ as the one responsible for their complaints. Further, even if Officer ██████ assisted with the pat downs, his actions would have been justified based on the analysis above for Officer ██████

**6. Officer ██████ failed to activate his body worn camera.**

This allegation is UNFOUNDED. Officer ██████ was assigned to the Summer Mobile Patrol at the time of the incident. The Department members assigned to the Summer Mobile Patrol were not required to wear body worn cameras. Officer ██████ could not fail to activate something he did not possess.

**7. Officer ██████ failed to complete an investigatory stop report for all detained passengers.**

This allegation is SUSTAINED. Rule 6 requires Department members to comply with all orders and directives. Special Order S04-13-09 requires officers to complete investigatory stop reports whenever there is a detention that is not otherwise captured in a report. As discussed above, there was a sixth passenger who was not documented in an Investigatory Stop Report. While Officer ██████ assumed responsibility for completing the ISRs, all officers involved in the stop are responsible for making sure that the proper reports are completed, particularly, where like here, Officer ██████ name is reflected in each of the reports that were completed.

**VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

a. Officer ██████

COPA considered Officer ██████ complimentary, training and disciplinary history in this matter. Officer ██████ took responsibility for his actions and does not have a history of discipline. COPA recommends a penalty of Violation- Noted.

b. Officer ██████

COPA considered Officer ██████ complimentary, training and disciplinary history in this matter. Officer ██████ does not have a history of discipline. COPA recommends a penalty of Violation- Noted.

**IX. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer [REDACTED] [REDACTED]	<p>It is alleged that on 14 September 2018, at approximately 21:35 hours, in the vicinity of 5710 S. State Street:</p> <ul style="list-style-type: none"> <li>9. You stopped the vehicle driven by [REDACTED] without justification;</li> <li>10. You searched the vehicle driven by [REDACTED] without justification;</li> <li>11. You handcuffed the vehicle's occupants without justification;</li> <li>12. You pat down the vehicle's occupants without justification;</li> <li>13. You searched the vehicle's occupants without justification;</li> <li>14. You struck [REDACTED] without justification;</li> <li>15. You failed to activate your body worn camera; and</li> <li>16. You failed to properly complete an investigatory stop report, including issuing the stop receipt.</li> </ul>	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>NOT SUSTAINED</p> <p>UNFOUNDED</p> <p>SUSTAINED</p>
Officer [REDACTED] [REDACTED]	<p>It is alleged that on 14 September 2018, at approximately 21:35 hours, in the vicinity of 5710 S. State Street:</p> <ul style="list-style-type: none"> <li>8. You stopped the vehicle driven by [REDACTED] without justification;</li> <li>9. You searched the vehicle driven by [REDACTED] without justification;</li> <li>10. You handcuffed the vehicle's occupants without justification;</li> </ul>	<p>EXONERATED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p>

11. You pat down the vehicle's occupants without justification;	UNFOUNDED
12. You searched the vehicle's occupants without justification;	UNFOUNDED
13. You failed to activate your body worn camera; and	UNFOUNDED
14. You failed to properly complete an investigatory stop report, including issuing the stop receipt.	SUSTAINED

Approved:



\_\_\_\_\_  
Andrea Kersten  
*Deputy Chief Administrator – Chief Investigator*

July 30, 2019

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	█
<b>Investigator:</b>	██████████
<b>Supervising Investigator:</b>	██████████
<b>Deputy Chief Administrator:</b>	Andrea Kersten