

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	October 12, 2018
Time of Incident:	8:25 p.m.
Location of Incident:	8158 South Racine Avenue, Chicago, Illinois
Date of COPA Notification:	October 13, 2018
Time of COPA Notification:	6:48 p.m.

On October 12, 2018, Officer [REDACTED] (“Officer [REDACTED] and Officer [REDACTED] (“Officer [REDACTED] stopped [REDACTED] ([REDACTED] for urinating in an alley. [REDACTED] denied urinating in the alley, and alleged Officer [REDACTED] patted him down and searched him. The Civilian Office of Police Accountability (“COPA”) conducted a thorough investigation of the allegations.

COPA determined that Officers [REDACTED] and [REDACTED] had reasonable articulable suspicion that [REDACTED] violated the city ordinance prohibiting public urination, and therefore, could lawfully conduct an investigatory stop of [REDACTED]. However, during the stop, COPA found that Officer [REDACTED] did not comply with Department directives when he conducted both a pat down and search of [REDACTED] and failed to properly activate his body worn camera. A detailed analysis of COPA’s findings are discussed below.

**II. INVOLVED PARTIES**

Involved Officer #1:	[REDACTED] star # [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2016, PO, Unit [REDACTED] DOB: [REDACTED] 1992, Male, White
Involved Officer #2:	[REDACTED] star # [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2013, PO, Unit [REDACTED] DOB: [REDACTED] 1984, Male, White
Involved Individual #1:	[REDACTED], DOB: [REDACTED] 1978, Male, Black

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer [REDACTED]	It is alleged that on October 12, 2018, in the vicinity of 8158 S Racine Ave, at approximately 8:25 p.m., you: 1. performed a pat down of [REDACTED] without justification; 2. performed a search of [REDACTED] without justification; and	Sustained  Sustained

3. failed to record the incident in its entirety on body worn camera.

Sustained

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#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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1. Rule 1: Violation of any law or ordinance.
  2. Rule 6: Disobedience of an order or directive, whether written or oral.
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##### Special Orders

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1. S03-14 Body Worn Cameras
  2. S04-13-09 Investigatory Stop System
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##### Federal Laws

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1. United States Constitution, Amendment IV: Prohibits search and seizure without probable cause.<sup>1</sup>

#### V. INVESTIGATION<sup>2</sup>

##### a. Interviews

In an **interview with COPA**, on October 18, 2018, ██████████ (██████████) stated, on October 12, 2018, he was driving with ██████████ (██████████) could not remember why, but they stopped their vehicle around 80th Street and May Street. ██████████ exited the vehicle and walked down a nearby alley to continue a heated exchange with his girlfriend over the phone. ██████████ was on his phone and did not follow ██████████ into the alley, remaining in the car. When ██████████ saw the police, a marked SUV, he got off the phone and placed it in his pocket.

The officers approached ██████████ telling him to take his hands out of his pocket and asked why he was urinating in the alley. ██████████ denied urinating in the alley. Officer ██████████ grabbed his left arm and placed it behind his back without saying a word. Officer ██████████ grabbed his other arm and asked if he had any weapons. Officer ██████████ performed a pat down on ██████████ which Officer ██████████ stated was for safety purposes. Officer ██████████ asked for ██████████ identification ('ID'), walked ██████████ to the police vehicle, and told ██████████ to place his hands on the car. Officers could not find ██████████ ID. When ██████████ started to reach for his ID, the officers yelled at him to keep his hands on the car. Officer ██████████ asked ██████████ if he had any narcotics on his person. ██████████ denied having anything illegal. Officer ██████████ took ██████████ ID and ran his name, which took about 5-6 minutes. Officer ██████████ searched ██████████ and ██████████ told him he

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<sup>1</sup> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>2</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>3</sup> ██████████ read Officer ██████████ name on his vest that evening, and indicated Officer ██████████ was the passenger in the vehicle.

<sup>4</sup> ██████████ stated Officer ██████████ told ██████████ his name during the incident.

was illegally searching him because he already preformed a *Terry* search. ██████ stated he did not provide consent to either officer to search his person. He did not receive a citation, receipt or any paperwork from this stop.

In an **interview with COPA**, on January 28, 2019, **Officer ██████** (“Officer ██████” stated, on October 12, 2018, he and his partner, Officer ██████ observed ██████ down an alley urinating between a garage and fence. Officers ██████ and ██████ approached ██████ providing verbal commands to place his hands on the vehicle for officer safety. ██████ was uncooperative because he did not immediately comply with verbal commands and questioned everything officers said, but he did not do anything physically uncooperative.

Officer ██████ performed a pat down, not a search, of ██████ for officer safety. Officer ██████ believed ██████ may have possessed a weapon because his hands were around his waist where Officer ██████ observed a bulge. The bulge turned out to be a large wallet. Officer ██████ ran a name check. Officers ██████ and ██████ told ██████ he was free to go and did not issue a citation for urinating in an alley because there was no injury or harm done.<sup>5</sup>

In an **interview with COPA**, on February 13, 2019, **Officer ██████** (“Officer ██████” stated he was told he did not record the incident on his camera. He stated he hit the camera to record. He did not realize it was not recording because his attention was focused on ██████ who was being verbally combative. Officer ██████ later clarified that he was more concerned for his safety, Officer ██████ safety and the safety of any civilian who may come into the alley rather than worrying about whether his camera turned on. Officer ██████ did not know when he first received his BWC to use on duty.<sup>6</sup> Officer ██████ stated, he did not have any recollection of the incident because it occurred four months ago and he would not answer questions without reviewing body worn camera of his partner, Officer ██████

After reviewing Officer ██████ body worn camera, Officer ██████ stated that he and Officer ██████ drove up to conduct an investigatory stop after observing ██████ urinating in the alley. As officers approached, ██████ was backing away, his hands went toward his waist, he was not complying with officer commands to put his hands up and telling officers they cannot stop him. “After a brief second, [█████] was able to be talked into complying with the stop.”<sup>7</sup> ██████ eventually, put his hands on the car, but throughout the incident officers had to tell ██████ to put his hands back on the car.

Officer ██████ explained, “I approach everybody thinking everybody has a weapon until I’m deemed satisfied that nobody has a weapon for the safety of everybody that’s involved.”<sup>8</sup> However, he does not perform a pat down on everyone. Officer ██████ stated he conducted a pat down of ██████ because he observed bulges in two of ██████ coat pockets and in the back of his pants, which in his experience are areas weapons are kept. Officer ██████ stated he conducted a pat down of outer garments, then he would go inside pockets where he felt something he reasonably believed was a weapon or was capable of being used as a weapon. Officer ██████ stated he went inside one pocket to retrieve ██████ wallet for his identification, and deemed the wallet was

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<sup>5</sup> Attachment 17.

<sup>6</sup> BWC were rolled out to District ██████ on August 4, 2016. In his interview, Officer ██████ stated he had worked in District ██████ for approximately 4 years.

<sup>7</sup> Attachment 22 at 14:49-14:54.

<sup>8</sup> *Id.* at 17:14-17:22.

not a folding firearm or folding weapon. Then, Officer ██████ went inside ██████ pants' pocket, after feeling an object he believed to be a balled narcotic. Officer ██████ could not recall what the item was, but once he determined it was not a balled narcotic, he stated that he showed it to the camera and placed the item back inside ██████ pocket.

Officer ██████ denied conducting a search beyond a pat down. When asked why it appeared in the video that he was manipulating ██████ pants' pocket and searching inside pockets, Officer ██████ stated he only went inside pockets where he had reasonable suspicion regarding the object, as explained above. Officer ██████ stated he was not manipulating the pocket, he explained when he conducts a pat down, he starts at the lowest point of the pocket and works his way upward. Officer ██████ explained he does not know if ██████ is a “bum. I don't know if he's a narcotics user. I don't know if he is a drunkard. I'm not going to just slap his pockets, because in my experience, generally speaking, some people who are urinating in an alley, do use narcotics, narcotics go with needles, needles come with STD/AIDs and things that can physically hurt me and I don't want to get poked by that and/or broken crack pipes or anything that's a possibility to do me harm by just slapping at his leg.”<sup>9</sup> Officer ██████ demonstrated how he performs a pat down, and described his actions as using a slight pat and a slight nudge of his finger as he works his way up, because in his experience the pointed end of needle is always facing the top of pocket. Officer ██████ attorney further described, for the record, that Officer ██████ grabbed at the lower part of pocket and with a combination of a slight “grab and pinch”, worked his way up the pocket.<sup>10</sup> Officer ██████ added the pat down was prolonged because ██████ was wearing two pairs of pants, which in his experience individual's conceal weapons in the inner pant, and the pants' pockets were in different locations.<sup>11</sup>

## **b. Digital Evidence**

**Body Worn Camera (“BWC”)** obtained from Officer ██████ shows Officers ██████ and ██████ stop ██████ in the alley for urinating in the alley. On approach, Officer ██████ asks if ██████ has any weapons. ██████ asks why. Officer ██████ responds, “because you were pissing.”<sup>12</sup> ██████ backs up while telling Officer ██████ not to touch him and denies doing anything illegal. Officer ██████ tells him to put his hands up and walk over to the car. Although at one point, it appears ██████ moves to pull up his pants, ██████ complies. At the car, Officer ██████ tells ██████ to put his hands on the vehicle while he confirms ██████ does not have a weapon. ██████ asks if this is a *Terry* stop, says he does not have a weapon, and says he does not give permission to be searched. Officers ask for ██████ identification (“ID”). ██████ states it is in his pocket, back right pocket, and asked to retrieve it himself. Officer ██████ does not allow ██████ to get his ID, stating he would get it for him because he is not complying. ██████ states he is complying, he knows his rights and he did not do anything illegal, he was just talking on the phone. Officer ██████ removes a paper, looks at it, and continues to search his right side. Officer ██████ cannot locate ██████ wallet with his ID, but eventually, finds the wallet in the back pocket of ██████ “inside pants.”<sup>13</sup> Officers allow ██████ to search through a thick

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<sup>9</sup> *Id.* at 25:24-27:57.

<sup>10</sup> *Id.* at 26:44-27:33

<sup>11</sup> Attachment 22.

<sup>12</sup> Attachment 23 at 0:33-0:34.

<sup>13</sup> *Id.* at 1:53. Officer ██████ in his interview, indicated ██████ was wearing two pairs of pants and the wallet was located in the inner pant layer. *See* Attachment 22.

wallet to retrieve his ID, which Officer ██████ takes. Officer ██████ goes into the passenger side of the police vehicle and runs ██████ information.

When Officer ██████ exits the vehicle, Officer ██████ right hand is inside ██████ left coat pocket moving around, as his left- hand pinches and moves in a circular motion on the outside of the pocket. Officer ██████ holds the coat out of the way with his right hand, as he reaches down, grabs and squeezes, multiple times, the bottom of ██████ left pant pocket. Officer ██████ then pulls the pocket outward, and places his thumb and pointer finger inside the pocket and moves around the top of the pocket trim, in what appears to be a pinching motion. Officer ██████ then, with the same pinching motion moves up and down the side seam of ██████ outside pants, near the top of his pocket. When ██████ asks what type of search Officer ██████ is doing now because he already did a *Terry* search, Officer ██████ says he feels something and it feels like balled narcotics.<sup>14</sup> ██████ tells Officer ██████ he does not have anything on him. Officer ██████ recovers a small unknown object from inside ██████ pants, holds it up to the flashlight, then appears to place it back inside ██████ pants. Officer ██████ moves to the other side of ██████ where his actions cannot be seen on camera, but he continues to talk to ██████ about who's car he has, details of his parole, and where his phone is. ██████ asks why he wants his phone, which Officer ██████ replies he did not find one and ██████ is lying about talking on the phone. ██████ said he was not lying and his phone is in his pocket. Officer ██████ tells ██████ to get his things and not to urinate in the alley. Officer ██████ hands ██████ his ID. As ██████ walks away, he looks back and says what the officers did was illegal. Officer ██████ replies it was not and asks ██████ if he wants a receipt for the stop.<sup>15</sup>

### c. Documentary Evidence

**Investigatory Stop Report (“ISR”)**, completed by Officer ██████ documented, on October 12, 2018, officers observed ██████ urinating in an alley. On approach, officers observed a bulge at ██████ waistband. Officers conducted a protective pat down because, based on experience, weapons are commonly stored in that location. Nothing was recovered. ██████ walked away before a receipt could be provided.<sup>16</sup>

## 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

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<sup>14</sup> Attachment 23 at 3:38-3:42.

<sup>15</sup> Attachment 23.

<sup>16</sup> Attachment 9.

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 been found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

### a. Officer ██████ Performed a Pat Down on ██████ Without Justification

Officers are not permitted to conduct a limited search for weapons during every valid investigatory stop. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). "The officer may subject the person to a limited search for weapons . . . only if the officer reasonably believes that the person is armed and dangerous." *Id.* (citation omitted). An officer's subjective belief is not determinative but is probative in determining the validity of the frisk. *Id.* . *See Creagh*, 214 Ill. App. 3d at 747 (discussing that the nature of the suspected crime can factor into evaluation of whether it is reasonable to believe the subject is armed and presently dangerous). Similarly, Special Order S-04-13-09 provides that an officer may conduct a protective pat down of an individual, when the officer has "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"<sup>17</sup>

The nature of the non-violent crime in which ██████ was stopped would not lead to a reasonable belief that he was armed and dangerous. Officer ██████ stated he was concerned about his and Officer ██████ safety because initially ██████ backed away, put his hands toward his waist, refused to comply with officer commands to put his hands up, and questioned why he was being stopped. However, Officer ██████ stated that "after a brief second," ██████ cooperated with officer commands. BWC confirms that ██████ took a step back from officers while immediately putting his hands up, where they remained except for briefly attempting to pull up his pants with his right hand. ██████ complied with officer commands to keep his hands up and then to place his hands on the car. There is no evidence that ██████ was not complying with officer commands. Although, Officer ██████ stated he was concerned, at no point was ██████ placed in handcuffs.

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<sup>17</sup> Special Order S04-13-09 II.C.2.

Officer ██████ also stated he conducted a pat down of ██████ after observing bulges in two of ██████ coat pockets and in the back of his pants, which, in his experience, are areas where weapons are kept. Officer ██████ was unable to specifically articulate what weapon(s) the bulges resembled or why he believed the bulges were not a wallet or cell phone, which are items also commonly carried in these areas. The BWC footage is inconclusive as to whether there were bulges, however, it shows Officer ██████ could not readily locate ██████ wallet which purportedly consisted at least of one of the bulges that prompted the protective down. However, the ISR and Officer ██████ only address one bulge and Officer ██████ stated in his statement he believed that bulge was ██████ wallet.

Based on the foregoing, Officer ██████ did not have specific and articulable facts to believe ██████ was armed and dangerous or presented a danger of attack. Officer ██████ provided a mere hunch that ██████ was armed which is insufficient to justify a protective pat down.

Officer ██████ also did not conduct a proper pat down search. Special Order S04-13-09 provides that a Protective Pat Down is “a limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve.”<sup>18</sup> Similarly, “[i]f an officer, while conducting a lawful pat-down search, feels an object which he believes is not a weapon but whose shape or weight makes its identity apparent, he may seize it if he has probable cause to believe that the object is contraband. This is known as the plain feel or plain touch doctrine.”<sup>19</sup>

Officer ██████ stated he conducted a pat down of ██████ outer garments, and only went inside pockets, where he felt something he reasonably believed was a weapon or was capable of being used as a weapon. Officer ██████ described his pat down as a combination of “grab and pinch” technique instead of a “slap” to the outer garments. Officer ██████ used this manipulating technique up the side of ██████ pants pocket and purportedly felt an object he believed to be a balled narcotic. While he could not recall the item, Officer ██████ stated it was not narcotics. The video, also, showed Officer ██████ retrieved a piece of paper from somewhere on ██████ right side and appears to examine it. Officer ██████ did not articulate nor is it reasonable to believe that a piece of paper would be a weapon or contraband. Additionally, BWC captures Officer ██████ with his right hand inside ██████ left coat pocket while he uses his left hand to manipulate the outside of the same pocket. Officer ██████ did not retrieve any items from this pocket and did not explain what he felt that would lead him to believe ██████ had a weapon or contraband in this pocket.

Although Officer ██████ denied manipulating ██████ pockets and stated he only went inside pockets he reasonably believed contained a weapon or a balled narcotic, it is clear from video and his statement that Officer ██████ manipulated ██████ pockets and went inside pockets that he did not have reasonable articulable suspicion contained a weapon or probable cause to

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<sup>18</sup> S04-13-09 II.B.

<sup>19</sup> *People v. Deluna*, 334 Ill. App. 3d 1, 13 (1st Dist. 2002).

believe contained contraband. Therefore, Officer ██████ did not comply with Department policy when he conducted a pat down of ██████ and this allegation is **Sustained**.<sup>20</sup>

**b. Officer ██████ Searched ██████ Without Justification**

In order for an officer to perform a search of an individual, the officer must have probable cause to support such search, including particularly describing the place to be searched and the things to be seized.<sup>21</sup> The Supreme Court has described “reasonable suspicion as ‘a particularized and objective basis’ for suspecting the person stopped of criminal activity, *United States v. Cortez*, 449 U. S. 411, 417-418 (1981), and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found,” see *Brinegar v. United States*, 338 U. S. 160, 175-176 (1949); *Illinois v. Gates*, 462 U. S. 213, 238 (1983).<sup>22</sup>

Officer ██████ searched ██████ beyond a protective pat down. While COPA finds it reasonable for Officer ██████ to go inside ██████ pocket to retrieve his wallet,<sup>23</sup> Officer ██████ did not provide any probable cause to believe ██████ possessed contraband or any evidence of a crime in any other pocket. Therefore, Officer ██████ violated Department Directives by searching ██████ without probable cause and this allegation is **Sustained**.<sup>24</sup>

**c. Officer ██████ Failed to Activate his BWC**

An officer will start recording, on BWC, “at the beginning of an incident and will record the entire incident for all law-enforcement-related activities, including traffic stops and investigatory stops. If circumstances prevent activating the BWC at the beginning of the incident, the member will activate the BWC as soon as practical.”<sup>25</sup> Officer ██████ stated he believed he turned on his BWC at the beginning of the stop, and he did not realize it was not recording because his focus was on ██████ who he described as verbally combative. However, Officer ██████ admitted ██████ complied with the stop “after a brief second.”<sup>26</sup> Officer ██████ also, indicated ██████ was uncooperative, however, Officer ██████ activated his BWC. Officer ██████ BWC video shows that while ██████ questioned the officers’ actions, he complied with officer commands. There is no evidence ██████ made any threats to the officers, and neither Officer ██████ nor Officer ██████ placed ██████ in handcuffs.

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<sup>20</sup> Officer ██████ had no knowledge that ██████ was on parole prior to conducting the pat down. Therefore, ██████ parole status is irrelevant to the analysis. See *People v. Coleman*, 2013 IL App (1st) 130030 ¶19.

<sup>21</sup> General Order G02-02.

<sup>22</sup> *Ornelas et al. v. United States*, 517 U.S. 690, 696 (1996).

<sup>23</sup> This was not proper. While police may demand identification from a subject during a *Terry* stop, a civilian is not required to provide identification unless they are a driver of a vehicle. *People v. Walker*, 2013 IL App (4th) 120118 ¶ 14.

<sup>24</sup> While COPA finds that Officers ██████ and ██████ had reasonable, articulable suspicion to investigate whether ██████ urinated in the alley it is unclear from the record whether they had probable cause. Indeed, Officers ██████ and ██████ did not write ██████ a ticket for public urination. Regardless, Officers ██████ and ██████ did not arrest ██████. Therefore, the search incident to arrest doctrine does not justify the search. See *People v. Taylor*, 210 Ill. App. 3d 833, 840 (5th Dist. 1991).

<sup>25</sup> Special Order S03-14 III.A.2.

<sup>26</sup> Attachment 22 at 14:49-14:54.



**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