

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	July 25, 2017
Time of Incident:	5:45 p.m.
Location of Incident:	4848 S Hoyne Ave, Chicago IL 60609
Date of COPA Notification:	July 26, 2017
Time of COPA Notification:	6:47 p.m.

On July 25, 2017, 09th District officers responded to a gang disturbance call on the 4800 block of Hoyne Avenue. While patrolling, Officers Saldana, Coughlin, and Lombard were approached on foot by a male and female couple identified as Mr. and Mrs. ██████████² who expressed concerns that an unfamiliar Hispanic male had been sitting in his parked white SUV on the street for an extended period of time. The three officers promptly located the subject, later identified as ██████████ based on the description of the vehicle provided by Mr. and Mrs. ██████████. Mr. ██████████ did not comply with the officers' instructions to exit his vehicle. The investigatory stop led to a full search of the vehicle and an arrest of Mr. ██████████ for possession of a small amount of cocaine. While being processed at the station, Mr. ██████████ complained of pain to his foot and accused the arresting officers of breaking his toe while removing him from the vehicle. He was then transported to ██████████ Hospital where he was later released without charges. The footage from the officers' Body Worn Cameras captured the majority of the incident and also prompted additional allegations against them.

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

² These two individuals were not interviewed by COPA.

II. INVOLVED PARTIES

Involved Officer #1: <i>(Accused / On Duty)</i>	Luis H. Saldana , Star #10315, Employee # [REDACTED], Appointed October 28, 2002; Police Officer, Unit 009, DOB [REDACTED], 1973; Hispanic Male
Involved Officer #2: <i>(Accused / On Duty)</i>	Kevin M. Lombard , Star #12379, Employee # [REDACTED] Appointed April 6, 2015; Police Officer, Unit 009, DOB [REDACTED] 1988; White Male
Involved Officer #3: <i>(Accused / On Duty)</i>	Craig E. Coughlin , Star #3818, Employee # [REDACTED], Appointed May 6, 1996; Police Officer, Unit 009, DOB [REDACTED], 1971; White Male
Involved Officer #4: <i>(Accused / On Duty)</i>	Zachary T. Pattenaude , Star #16075, Employee # [REDACTED], Appointed September 29, 2014; Police Officer, Unit 009, DOB [REDACTED] 1990; White Male
Subject #1: <i>(Reporting Party Victim)</i>	[REDACTED] DOB [REDACTED] 1983; White Hispanic Male

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Luis H. Saldana	1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6.	SUSTAINED / 1 Day
	2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8.	UNFOUNDED
	3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana conducted an unlawful search of the vehicle that [REDACTED] [REDACTED] was occupying, in violation of the 4 th Amendment.	UNFOUNDED
	4. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana failed	SUSTAINED / Violation Noted

	to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.	
Officer Kevin M. Lombard	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p> <p>3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8.</p>	<p>NOT SUSTAINED</p> <p>SUSTAINED / Violation Noted</p> <p>UNFOUNDED</p>
Officer Craig E. Coughlin	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Coughlin conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Coughlin failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p>	<p>NOT SUSTAINED</p> <p>SUSTAINED / Violation Noted</p>
Officer Zachary T. Pattenaude	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p>	<p>SUSTAINED / 3 Days</p> <p>SUSTAINED / Violation Noted</p>

3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6.

SUSTAINED / 1
Day

IV. APPLICABLE RULES AND LAWS

RULES

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

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

GENERAL ORDERS

General Order G03-02, Use of Force³

SPECIAL ORDERS

Special Order S03-14, Body Worn Cameras⁴

“The Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. The Department member will not deactivate event mode unless the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity.”

Special Order S04-13-09, Investigatory Stop System⁵

“Sworn members who conduct an Investigatory Stop are required to complete an Investigatory Stop Report.”

FEDERAL LAW

4th Amendment of the Constitution of the State of Illinois, Article I, Section 6

³ Att 54.

⁴ Att 52.

⁵ Att 53.

“The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.”

V. INVESTIGATION⁶

a. Interviews

Complainant ██████████ ██████████

In his interview with COPA on September 29, 2017, Mr. ██████████ explained that he had been sitting in the passenger’s side of his parked Suburban SUV because he was waiting for someone. He observed a gray police SUV drive down the street past his vehicle, turn around, and come back. An officer, later identified as Officer Saldana, got out and approached Mr. ██████████ window, which was partially opened, and another officer, later identified as Officer Coughlin, approached the driver’s side window. Mr. ██████████ stated that while sitting, the keys were in his pocket. When he saw the officers coming up, Mr. ██████████ put the keys in the ignition to activate the power of the vehicle, rolled the windows down, then removed the keys and put them back in his pocket.⁸ The officers questioned Mr. ██████████ then instructed him to exit the car. He refused, telling the officers that he did not consent to any searches and that he wanted to speak to a Sergeant. The officers then asked Mr. ██████████ to put his hands on the dashboard, and he complied. When he turned his head to speak to Officer Coughlin on the driver’s side of the car, Officer Saldana reached through the open window on the passenger’s side and unlocked the car door from inside.

Mr. ██████████ stated that immediately after unlocking and opening the door, Officer Saldana grabbed his right arm and pulled him out of the car.⁹ When Mr. ██████████ stepped out, his arm and body were twisted in a way that made his big toe double-back on itself, resulting in an injury. Due to adrenaline, he did not realize at the time that there was something seriously wrong; he only thought his foot hurt. He was handcuffed, and the officers proceeded to search his vehicle. Four or five squad cars arrived shortly afterward, and several other officers joined in the search.

⁶ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁷ Atts 15-17.

⁸ The officers later stated that Mr. ██████████ was making furtive movements at this time, which was the reason for them asking him to get out and searching the vehicle. From the position that Mr. ██████████ was sitting, he would have had to reach across the vehicle to the driver’s side in order to insert the keys into the ignition. This would have involved moving his body across the vehicle toward the driver’s seat, then moving it back to remove the keys.

⁹ Mr. ██████████ was describing the officer that opened his door (Saldana) as the same officer that grabbed his arm; however, the Body Worn Camera footage showed that Officer Saldana did not grab Mr. ██████████ arm; rather, Officer Lombard did.

Later at the 09th District station, Mr. ██████ was asked to take off his socks, and he noticed that the big toe on his right foot was swollen with popped blood vessels. He informed Officer Saldana that he was in pain and asked for medical attention.¹⁰ An ambulance was called to transport Mr. ██████ to ██████ Hospital, where X-Rays confirmed approximately one hour later that his right toe was fractured in two places. He was given a medical boot and prescribed ibuprofen.

Approximately two hours after being admitted to ██████ Mr. ██████ was given his car keys and an impound slip from Officer Saldana and was told he was free to go. When his girlfriend ██████ picked him up from ██████ about midnight, he rode straight over to ██████ Hospital on his own volition and admitted himself for psychiatric evaluation due to emotional distress.¹² ██████ documented in their records that Mr. ██████ toe was broken, and while he was there, Mr. ██████ took photos of his toe himself.¹³ His girlfriend called IPRA at his request from this hospital.

At some point after the arrest, Mr. ██████ called the 09th District police station and asked what he was charged with, and this is when he learned that he had been released without charges. He was never photographed or fingerprinted while at the police station. He was not aware of whether the officers had found anything in the car on scene, but he did note to COPA that some money was missing.¹⁴

Accused Officer Saldana¹⁵

In his interview to COPA on April 5, 2018, Officer Saldana was shown the Body Worn Camera footage prior to giving his statement. He explained that while patrolling the area, which was classified as a Violent Zone 1, his car was approached by two civilians near 50th and Hoyne. These civilians explained to him in Spanish that there was a white truck with a male Hispanic in it who had been sitting for about an hour and looked suspicious because they did not recognize him. Soon afterwards, Officer Saldana and his partners spotted the SUV and subject matching the description, and they approached him for questioning. Mr. ██████ was seated in the passenger's seat of the car and was leaning over and moving his upper body and torso downward toward the driver's side floor. From these movements, Officer Saldana suspected that he might be concealing a firearm.¹⁶ When Mr. ██████ saw the officers approaching, he sat upright. When the officers started to question him, he was argumentative and did not open the locked doors when instructed.

¹⁰ Mr. ██████ claimed that when he complained of his injury to Officer Saldana at the station, Officer Saldana made inappropriate comments about his complaining. No allegations were brought against Officer Saldana for these comments.

¹¹ According to Mr. ██████ Ms. ██████ was also the owner of the vehicle that he had been waiting in. It was not reported stolen.

¹² Mr. ██████ stated had not been treated at ██████ before, he simply chose it because it was a hospital that he knew of and ██████ would not treat him psychologically.

¹³ These photos were not recovered by COPA. The photographs of Mr. ██████ were recovered from the CPD Evidence Technician.

¹⁴ Mr. ██████ did not elaborate on the details of the money missing. He was given his car keys after being released from Lockup, and the vehicle was impounded, placing it in the custody of outside parties before he regained control. The Body Camera Footage also directly captured Officer Lombard removing cash from Mr. ██████ center console briefly while he was searching the console, then showed him putting it back.

¹⁵ Atts 40-41 & 50.

¹⁶ No firearm was recovered.

Officer Saldana could not recall whether the officers identified themselves as police to Mr. [REDACTED] but noted that they were wearing visible Department attire. When Mr. [REDACTED] continued to be non-compliant, Officer Saldana reached into the partially-opened window and unlocked the door from the inside. While being handcuffed shortly afterward, Mr. [REDACTED] was agitated and bothered but compliant.

When COPA asked Officer Saldana how he extracted Mr. [REDACTED] from the car, he noted that Mr. [REDACTED] did not stumble or trip in any way getting out and that no injuries were observed on him. Officer Saldana explained that Mr. [REDACTED] exited the car without assistance and was handcuffed when he was outside the car. It was not until much later at the station that Mr. [REDACTED] complained of pain to his foot and accused the officers of breaking his toe. Officer Saldana did not recall seeing [REDACTED] feet when his shoes were removed at the station.

Officer Saldana did not deny failing to complete an Investigatory Stop Report (ISR). When asked why he did not complete one, he explained that this policy was brand new at the time and that he did not believe officers were required to complete an ISR for a traffic stop that led to an arrest. He was unclear about when an ISR was required to be completed, even though he did receive Department training on these reports in the past.

Officer Saldana confirmed that his Body Worn Camera was functional that day. He had activated it during his shift at some point earlier in the day, and he believed that he had activated it during this incident.¹⁷

When asked about the vehicle search, Officer Saldana stated that he was questioning Mr. [REDACTED] and running his name in the system while Officer Lombard was searching. He may have peeked into the car at some point, but did not search inside the vehicle. He admitted that to his knowledge, when a subject is suspected to be hiding an item, only that immediate area within reach of the subject can be searched; however, in this case, the entire car was searched because of the drugs recovered. The hood was searched because the VIN on the dash appeared as if it had been tampered with and Officer Coughlin has extensive training on this type of case, so he knew to search. Additionally, the vehicle was impounded per protocol.¹⁸

Officer Saldana said that Officer Pattenaude found the drugs in the driver's side door. He was busy in the squad car running Mr. [REDACTED] information, so he did not see when the drugs were found. Officer Saldana remembered that at some point, one of the other officers told him that they had found drugs.

In summary, Officer Saldana provided the following factors as reasonable suspicion/probable cause for the officers stopping Mr. [REDACTED] and searching the vehicle:

- 1) The area being a violent Zone 1;
- 2) The information received from Mr. and Mrs. [REDACTED]

¹⁷ Officer Saldana thought he remembered saying "investigation complete" at the end of the footage. On the BWC video, he is heard saying "19 King." (Att #30, 11:52).

¹⁸ Special Order 07-03-05.

- 3) Furtive movements made by Mr. [REDACTED] specifically, moving left and downward toward the driver's seat as if to conceal something; and
- 4) Mr. [REDACTED] demeanor being nervous and fidgety.

Officer Saldana noted that Mr. [REDACTED] had appeared to be fidgety, sweaty and nervous and that he may have been under the influence. He was arrested for Possession of Cocaine, which had been found in the driver's side door by Assisting Officer Pattenaude. Mr. [REDACTED] was patted down immediately after exiting the car, but no drugs or weapons were found on his person.¹⁹

Accused Officer Coughlin²⁰

In his interview to COPA on April 5, 2018, Officer Coughlin stated that he had already reviewed the Body Worn Camera footage of this incident. He reiterated that he was present in the area with Officers Saldana and Lombard because it was classified as a Violent Zone 1, which indicated gang presence and conflict. Their car was assigned to a gang disturbance call when they were flagged down by a male and female on foot. The couple spoke to Officer Saldana and told him there was a male Hispanic sitting in an SUV, and they were concerned about what he was doing because of gang violence in the area. The three officers canvassed the area and came upon a subject and car matching the description they were just given. They pulled up their vehicle in close proximity (within 50 feet) and while approaching, Officer Coughlin observed Mr. [REDACTED] seated in the front passenger's seat. Mr. [REDACTED] looked in his direction and bent his torso, head and shoulders downward. He also reached down to where he was out of view and continued moving about the cabin of the vehicle. Officer Coughlin activated his Body Worn Camera at that time and approached the driver's side of the car, calling out verbal directions to Mr. [REDACTED] and indicating that his camera was recording. He instructed Mr. [REDACTED] to stop moving his hands and asked what he was doing in the car. He instructed Mr. [REDACTED] to exit the vehicle, but Mr. [REDACTED] did not comply.

When questioned about how Mr. [REDACTED] ultimately exited the car, Officer Coughlin stated he was not sure whether Mr. [REDACTED] opened the door himself or if an officer did it for him. He did not observe Mr. [REDACTED] stumble or trip upon exiting the vehicle, and it was only at the station later on that Mr. [REDACTED] complained of pain to his toe and asked for the phone number to IPRA. An ambulance was called to the station, and Mr. [REDACTED] was transported to the hospital. Officer Coughlin observed no signs of injury on Mr. [REDACTED] on-scene, and Mr. [REDACTED] had no cast or brace on his foot. Officer Coughlin did not recall seeing Mr. [REDACTED] feet without shoes, and he was not aware of what transpired at the hospital because he did not transport him there.

One clear plastic bag of white powder was recovered by Officer Pattenaude in the driver's side door pocket during the search. Officer Coughlin stated that Mr. [REDACTED] car was searched only after these narcotics were recovered and after a protective sweep of the immediate area was conducted; however, he could not pinpoint how much time had passed between when the search began and when the drugs were recovered. Officer Pattenaude gave Officer Coughlin the white powder he found, and he also observed other white powder strewn about the car.

¹⁹ Officer Saldana conducted the pat-down to search for a weapon and noted the difference between that and a custodial search, which would be a complete search of the pockets. He lifted Mr. [REDACTED] shirt only to check his waistline.

²⁰ Atts 42-43 & 48.

Officer Coughlin admitted that none of the officers completed an Investigatory Stop Report to his knowledge, including him. He had received training on when to complete such a report but did not believe this particular incident warranted filling one out because the narcotics were found in plain view and the Arrest Report documented the probable cause.

When inspecting the VIN, Officer Coughlin stated that it appeared to have been tampered with, suggesting a “retag” of that VIN to someone else’s vehicle. He followed up on this by looking for a secondary VIN underneath the hood of the car and on the driver’s side door. The car did not come back stolen, but it was impounded because of the narcotics found. Based on his training, these factors allowed for a full search of the vehicle on scene.

In summary, Officer Coughlin noted the following factors as the basis for his reasonable suspicion/probable cause for detaining Mr. [REDACTED] and searching his car:

- 1) This type of vehicle was frequently used in drive-by shootings and “rammings”;
- 2) Mr. [REDACTED] was reported as sitting in the passenger’s seat for 45 minutes, indicating he may have been a gang spotter;
- 3) The area had high gang activity;
- 4) Mr. [REDACTED] was moving around and reaching downward, suggesting hiding a weapon;
- 5) Mr. [REDACTED] failed to comply in exiting the vehicle;
- 6) There was a perceived discrepancy with the name and date of birth Mr. [REDACTED] had provided.

Accused Officer Lombard²¹

In his interview to COPA on April 5, 2018, Officer Lombard also stated he had viewed the Body Worn Camera footage from both his own camera and Officer Coughlin’s camera. He and his partners were present in the area for a gang disturbance near 50th and Hoyne, and while touring the area, they were flagged down by a male and female and told there was a suspicious individual parked near 48th and Hoyne. When the vehicle was discovered, the license plate was run in their system and it was confirmed that the vehicle was not from that area. As the officers exited their vehicle and approached the SUV, Officer Lombard observed Mr. [REDACTED] – who was sitting in the passenger’s side of the car – turn to his left toward the driver’s side, drop downward towards the floorboard of the driver’s side, which led Officer Lombard to believe that he may have been attempting to conceal something. Officer Lombard could not confirm if Mr. [REDACTED] had seen the officers approaching. The officers surrounded the vehicle and gave Mr. [REDACTED] multiple verbal commands to exit; they also advised him he was being recorded. Officer Lombard could see into the vehicle, but did not see any drugs or weapons at the time.

When he did not comply, Mr. [REDACTED] door was opened by Officer Saldana, and Officer Lombard assisted him out of the car by placing his hand on his arm. Mr. [REDACTED] was not resisting at this time. But since they believed he had placed a weapon in the car, and the car was open, they had to handcuff him for safety while they detained him to investigate so he would not go back into the vehicle.

²¹ Atts 44-45 & 51.

Officer Lombard stated that Mr. ██████ did not trip or stumble when exiting the car, and no indication of injuries were observed. Mr. ██████ did not mention being in any pain until later when he was in the processing area of the lockup. At that time, he asked for the phone number to IPRA and stated that his foot was broken. An ambulance was called shortly after. Officer Lombard stated that Mr. ██████ had initially been hostile while seated in the car but was cooperative once he exited and throughout the investigation; he then became hostile again once he had been read his *Miranda* warnings while being arrested for cocaine possession.

Officer Lombard confirmed that the drugs in the vehicle were found by Officer Pattenaude, either on the driver's side door or the floorboard. Officer Lombard did not recall when Officer Pattenaude found the drugs because he was concerned with the powder which turned out to be baking soda in the rear. Officer Lombard initiated the search of the vehicle because of Mr. ██████ furtive movements (toward both the drivers area and passenger area) which were consistent with concealing items and because Mr. ██████ failed to comply with a lawful order. He also searched the backseat because it is where he saw the white substance. He only paid attention to what he was doing, but not what Officer Pattenaude was doing. He states that Officer Pattenaude found the drugs "maybe in the middle" of the timeframe while he was searching.

Officer Lombard summarized his reasons to search the vehicle as follows:

- 1) Officer Coughlin lifted the hood because the VIN appeared to be tampered with, and Officer Coughlin had the experience that cars sometimes had a VIN in other locations, which was what he was looking for.
- 2) He looked in the trunk because Mr. ██████ was moving, and a small bag could have been thrown there. He believed that finding the drugs in the front, included with his movements, gave justification to search the whole car.
- 3) He looked in the back seat because there was white powder on the floor.

Officer Lombard later clarified that he first searched the front seat and back seat of the vehicle based on his observation of the powder. He then went to his squad vehicle to run Mr. ██████ name, and he believed it was while he was running the name that Officer Pattenaude found the bag of cocaine. Officer Lombard then believed he searched the trunk of the vehicle only after drugs had been discovered by Officer Pattenaude.²²

Officer Lombard stated that he believes Mr. ██████ resisted/obstructed in two regards. The latter is when Mr. ██████ appeared to give the wrong birthdate.²³ The first time was when Mr. ██████ ignored a lawful order to exit the vehicle so the officers could see if he had hid a weapon, which Officer Lombard believed to be a Municipal Code violation. The vehicle was impounded due to the narcotics being found.

According to Officer Lombard, Mr. ██████ was released without charges at the hospital. Officer Lombard did not go to the hospital with Mr. ██████ to the hospital. He learned that a nurse reported that Mr. ██████ had an apparent prior injury to the same toe that he pointed out as being

²² Officer Lombard's body camera shows other officer(s) searching the trunk prior to Officer Lombard running Mr. ██████ name in CLEAR, however, there is no video of Officer Lombard personally searching the trunk at any time.

²³ BWC clearly shows that Officer Saldana was mistaken, and that Mr. ██████ gave the right birth date.

in pain. The Watch Commander made the determination to release Mr. [REDACTED] because Mr. [REDACTED] needed to be kept at the hospital to be treated for his toe, and it likely was not worth having an officer stay with him.

Officer Lombard did not complete an Investigatory Stop Report because the Case Report and Arrest Reports detailed the probable cause for the search, and therefore he was not aware that an ISR was required. He did receive training on when to complete an ISR but decided that the other case reports sufficed.

Accused Officer Pattenaude²⁴

In his interview to COPA on April 6, 2018, Officer Pattenaude confirmed that he arrived at the scene with Officers Moyer and Bernson to assist with a non-compliant subject. He could not recall how much time had transpired between his arrival and that of the arresting officers but believed it to be within five minutes. He confirmed that his unit was assigned Body Worn Cameras at the time.

When Officer Pattenaude arrived, Mr. [REDACTED] was in handcuffs standing next to a large white SUV and speaking to Officers Saldana, Coughlin and Lombard. The officers had already begun searching the SUV, the doors were open and they were looking. He could not recall if it was more than one officer or, or if he opened the rear hatch or if someone else did. He also saw the hood opened but could not recall who opened it. Officer Pattenaude assisted with the search and did not question the other officers about their probable cause for searching for contraband. He searched because he saw fellow officers searching and assumed that since the subject was in handcuffs he was being arrested. Even though he was called to assist with an uncooperative subject, once he saw the subject was detained, he determined that he should assist in the search instead. He overheard comments from them that Mr. [REDACTED] had been making suspicious movements inside the vehicle when they approached. Prior to personally searching the vehicle, Officer Pattenaude also observed tin foil and other items associated with using narcotics inside the vehicle. He later clarified that he believed that after he saw the tin foil, he had reasonable suspicion to search for narcotics.

Officer Pattenaude found a small bag (he cannot recall the size) of white powder inside the driver's door, which he believed this to be cocaine. He did not recall the exact amount of time after he began searching that he found the cocaine but believed that it was fairly quickly; he could not recall if the driver's door was the first place he searched. He looked in the driver's side door because he was helping other officers and no one else was searching there, but there was no other reason for searching there. Officer Pattenaude found pieces of tin foil *prior to* finding the bag of cocaine, and he believed the piece of foil further justified his search. He also saw baking soda on the floor in the back.

After he found the drugs, Officer Pattenaude alerted the arresting officers (the Sergeant had arrived on scene at this time). He did not recall who he gave the bag of drugs to. He asked one of the officers if there was a bag or something, he could put the cocaine into. He then gave the

²⁴ Atts 46-47 & 49. Officer Moyer was not interviewed by COPA since he arrived after the search was already underway. Officer Pattenaude was interviewed because he was the officer that recovered the narcotics.

drugs to one of the other officers. He did not recall what he did after he gave the drugs to the officer, but believed he left shortly after. He also believed that Mr. [REDACTED] was “under arrest” at the time he found the drugs. Officer Pattenaude left the scene when other officers called for transport. He knew that Mr. [REDACTED] was arrested, but he never saw him again.

Based on his training, Officer Pattenaude did not believe that “furtive movements” gave probable cause to search an entire vehicle. He believed that “furtive movements” give an officer cause to search the area where the individual was making furtive movements.

Officer Pattenaude noted that the order for Investigatory Stop Reports was fluid and had changed several times. His understanding was that when a subject is arrested, an ISR was not needed if there was an Arrest Report. He did not complete an ISR for this incident because he was simply assisting the other officers with their search.

As with Officer Saldana, Officer Pattenaude stated that he thought he had activated his Body Worn Camera during the incident, but he did not recall when. He noted that these cameras were relatively new to the district and confirmed that an incident of this type would warrant activation of the cameras.

Officer Pattenaude did not observe any indication of injury to Mr. [REDACTED] and did not hear him mention anything about being in pain. He did not observe Mr. [REDACTED] feet.

a. Documentary Evidence

The **Case Report** and **Arrest Report**²⁵ confirmed that Mr. [REDACTED] was arrested for Felony Possession of Controlled Substance but was released without charges, and his vehicle was impounded. The narratives detailed that the officers were responding to a gang disturbance on 5000 S. Hoyne when they were approached by Mr. and Mrs. [REDACTED] and told about a suspicious male Hispanic sitting in his car. The reports did not elaborate on how/why Mr. [REDACTED] looked suspicious. The officers saw Mr. [REDACTED] making “sudden” movements upon their approach, and he was argumentative once they began questioning him. The officers suspected that Mr. [REDACTED] might be hiding a weapon and that the area was high in gang conflict. Mr. [REDACTED] willingly stepped out of his vehicle without stumbling, and Officer Pattenaude recovered a baggie of white powder (suspect cocaine).²⁶ Upon being booked at the station, Mr. [REDACTED] complained of pain to his toe. In the Case Report, Watch Commander Joseph Mark noted that Mr. [REDACTED] required a cast to his right foot for the reported injury and that he was released without charges.

The **OEMC Event Queries**²⁷ showed that beat 962D, a tactical unit, responded to a 911 call about a gang disturbance at 7:46 p.m. (event # [REDACTED]). The officers ran the license plate number ([REDACTED] while on-scene. The officers then cleared themselves from this event and a new event was created for the encounter with Mr. [REDACTED] (event # [REDACTED]). Beat 932 was called to the scene to transport Mr. [REDACTED] to lockup, after which he was taken to [REDACTED] Hospital (event # [REDACTED]) and photographed by a CPD Evidence Technician (event # [REDACTED]).

²⁵ Atts 5 & 6.

²⁶ The Inventory Sheet (Att #7) listed the one clear bag with white powder found by Officer Pattenaude.

²⁷ Atts 9-12.

The **Medical Records** from ██████ Hospital²⁸ documented that Mr. ██████ was admitted at 9:58 p.m. and tested positive for cannabis and cocaine. The records also documented two fractures in the right big toe.²⁹

After being released from police custody at ██████ Hospital, Mr. ██████ voluntarily admitted himself to ██████ Hospital³⁰ that morning at approximately 4:30 a.m. The records from this hospital also reflected two fractures of the right toe and positive test results for cannabis, cocaine and alcohol.

Additional narrative from ██████ documented that this was Mr. ██████ first visit to that hospital and that he had been feeling depressed recently. He had been living in the vehicle for a few days and fractured his great toe when police showed up and dragged him from the vehicle.

The narrative also stated that Mr. ██████ tried to strangle himself with a shoelace while at ██████ Hospital. He was admitted to ██████ due to feelings of depression and suicidality, but denied having those feelings once he was admitted. Mr. ██████ did have a history of mental illness, specifically suicidality, depression, and schizophrenia. He was not taking his medication or following up with outpatient care. He was not admitted to a psychiatric hospital after leaving ██████

The **Crime Scene Processing Report**³¹ documented the photographs taken by the Evidence Technician at ██████ Hospital on July 26th (report ██████) at 8:20 p.m.

The **Photographs**³² of Mr. ██████ taken by the ET showed mild redness on both wrists where the handcuffs were placed. They also depicted significant redness, swelling and dark bruising on his right big toe. No injuries were noted on any other parts of his body.

The **LEADS Report**³³ generated by CPD on-scene showed only that Mr. ██████ was affiliated with the Two-Six gang. No indication was on this report that the vehicle Mr. ██████ occupied. was stolen.

The **Ambulance Report**³⁴ documented that when EMTs arrived at the 09th District police station, Mr. ██████ reported pain to his great toe as a result of being arrested. EMTs observed discoloration to Mr. ██████ toe.

b. Digital Evidence

COPA obtained **Body Worn Camera Footage**³⁵ from Officers Lombard and Coughlin. The footage began when Officers Coughlin, Saldana and Lombard were already speaking to Mr.

²⁸ Att 23.

²⁹ The records did not indicate how old the injury appeared to be. COPA unsuccessfully attempted to reach the attending physician.

³⁰ Att 24. As with the records from ██████ these records did not show the age of injury.

³¹ Att 20.

³² Atts 18-19.

³³ Att 37.

³⁴ Att 55.

³⁵ Atts 25-36.

██████████ from outside of his car while he was still seated inside. Below is a diagram of where the officers were initially standing.



In the video, Officers Coughlin and Lombard were both shown with their firearms withdrawn in low-ready position, and Mr. ██████████ was speaking to Officer Saldana from inside the vehicle on the passenger's side with his window partially opened. Mr. ██████████ told Officer Saldana, "I don't consent to any search or seizure" and Officer Saldana responded to him with, "You don't have to consent, buddy."³⁶ Officer Coughlin then asked Mr. ██████████ for his ID and explained that they had received calls of concern, instructing him to exit the vehicle. Officer Saldana was heard saying, "We're not searching you. We need to talk to you. I'm not searching you, no one's searching you."³⁷ Mr. ██████████ was also advised that he was being recorded and that he was obstructing their investigation.³⁸ Mr. ██████████ replied that he would exit on his own volition but still did not. At the same time, Officer Saldana was shown reaching through the window and opening Mr. ██████████ door, gesturing for Mr. ██████████ to get out.³⁹ Mr. ██████████ stepped out of the car willingly with his hands over his head. By this time, Officer Lombard had walked around the back of the vehicle to where Mr. ██████████ was exiting and placed his hand on Mr. ██████████ right arm while he was stepping out. Neither Officer Saldana or Officer Lombard were seen pulling or dragging Mr. ██████████ from the car in any way. Officer Coughlin remained on his side of the vehicle until Mr. ██████████ was stepping out of the car.

Both body worn cameras showed a clear view of Mr. ██████████ exiting the car. Although his feet were not directly in view, his legs were, and he did not stumble, trip, or fall in any way upon

³⁶ Att 29, 00:37.

³⁷ *Id.* 00:57.

³⁸ Per IL State Statute 720 ILCS 5/31-4, Obstructing Justice occurs when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly destroys, alters, conceals or disguises physical evidence.

³⁹ *Id.* 01:22.

stepping out. He was also shown in clear view walking to Officer Saldana's SUV without limping or favoring either leg, and he remained standing for the entirety of the footage which lasted approximately twelve minutes. His feet were also briefly shown sporadically throughout the video, and there was no cast or medical boot shown. He also was not heard stating he was in pain or discomfort at any time.

When exiting the car, Mr. ██████ was immediately handcuffed while still standing. Officer Saldana stated to Mr. ██████ that he seemed worried and nervous, and assisted Officer Lombard in cuffing him. Officer Coughlin then asked Mr. ██████ for the vehicle owner's information, which Mr. ██████ provided. He was patted down by Officers Saldana and Lombard, and Officer Saldana was shown lifting Mr. ██████ shirt to get a view of the waistline of his pants. Officer Lombard also searched inside his pockets after he was handcuffed. Once he was fully detained and being questioned by Officer Saldana, Officer Lombard pointed inside the opened car door and asked Mr. ██████ "There's nothing illegal in this car?"⁴⁰ He then proceeded to start searching the car. Mr. ██████ reiterated that he did not consent to a search. At the same time, assisting officers were shown arriving to the scene, and Officer Lombard continued his search of the car's interior beginning with the glove box and middle console.⁴¹ He searched the car by himself for a few seconds, and then Officer Pattenaude was shown opening the driver's side door across from him.⁴² Meanwhile, Mr. ██████ was escorted to the police SUV where he was advised that he was being detained for an investigation. Officer Coughlin assured him that they were allowed to search the vehicle based on the constitution and that they would issue an ISR card and release him.

Officer Lombard was shown in the footage opening the rear passenger's side door and looked inside the back but did not disturb any items. A box of what appeared to be baking soda was observed on the rear floor as well as pieces of crumpled tin foil, and Officer Lombard noted that there was something white around it. One of the officers was heard saying, "It's got to be baking soda."⁴³ The box and tin foil were not removed from the car. Officer Lombard approached Mr. ██████ where was being questioned by Officer Saldana and asked him what he was smoking in there, to which Mr. ██████ did not give an answer. Officer Lombard returned to the vehicle and was heard telling the Sergeant that Mr. ██████ was moving around when they walked up. He asked again, "What's this white stuff?"⁴⁴ when viewing the back of the vehicle, and the officers agreed that it appeared to be baking soda. A box of aluminum foil was visible in the camera's view, and the officers again were heard saying there was tin foil as well as cash.⁴⁵ The officers handle the money and then put it back.

Officer Lombard continued to look inside the vehicle but was not shown removing anything. At this time, the rear hatch of the SUV was also open with Officer Pattenaude looking in the back. Officer Coughlin was shown inside the vehicle kneeling on the rear seats and looking in the front.⁴⁶ He was shown throwing some folded boxes to the rear of the car and searching in the middle console area. Officer Lombard then moved to his own vehicle, where he ran Mr.

⁴⁰ Att 29, 02:29.

⁴¹ The middle console was locked, but a key was easily accessible to Officer Lombard, which he used to open it.

⁴² Att 29, 03:33.

⁴³ *Id.*, 04:20.

⁴⁴ *Id.*, 05:26. There was no white substance clearly visible from the camera's view in the footage.

⁴⁵ *Id.*, 06:06.

⁴⁶ *Id.*, 06:30.

██████████ license plate information in the computer. Officer Saldana was heard noting the a Two-Six gang affiliation retrieved from the Law Enforcement Agencies Data System (LEADS).⁴⁷ Officer Saldana was sitting in the passenger's side of the car and was heard explaining to Mr. ██████████ that the citizens living in that area were concerned about his suspicious behavior. Officer Coughlin inspected the VIN on the car's hood, then opened the driver's side door and looked inside the car but did not enter. He was not shown recovering anything. He later noted that the VIN stickers appeared to have been tampered with.

It should be noted that the camera footage did not show Officer Pattenau de recover the narcotics or verbally state that he recovered any narcotics. However, he was shown in the footage opening the driver's side door very shortly after Officer Lombard had initiated the search to begin his own search of the vehicle, concluding that this was the very first area he searched. The first mention of narcotics was when Officer Coughlin was heard telling the Sergeant that they had a "2022," which is code for cocaine.⁴⁸ Shortly after, Mr. ██████████ was read his Miranda rights by Officer Coughlin and told he was being placed under arrest for Constructive Possession. The footage then concluded.

Separate footage from another assisting officer showed that Mr. ██████████ was transported to lockup by Officer Fasan, who also activated his Body Worn Camera and In Car Camera. The transport lasted about eleven minutes, and Officer Fasan asked if Mr. ██████████ was okay during the ride. Mr. ██████████ was handcuffed in the back seat, and the transport concluded without incident.⁴⁹

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

⁴⁷ *Id.* 07:21.

⁴⁸ *Id.* 09:20; Chicago Police Department ClearMap Crime Classification Code.

⁴⁹ Although it was observed on the ICC that the subject was not placed in a seatbelt while being transported, no allegations were brought against Officer Fasan.

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. LEGAL ANALYSIS OF VEHICLE SEARCH

1. Findings of Fact

COPA finds, that the evidence summarized above demonstrates that the following occurred during the encounter.

Initial Encounter:

Officers Saldana, Coughlin, and Lombard were in the area of 50th and Hoyne investigating gang activity when they were flagged down by a couple and informed that an unfamiliar man had been sitting in a parked white truck for a long time, and that they found him to be suspicious. Based upon this description, they traveled to the area of 4848 S. Hoyne where they found Mr. ██████ seated in the passenger seat of a parked white SUV. As the officers exited their vehicle and approached the SUV, Mr. ██████ leaned over towards the driver's side. On approach Officers Coughlin and Lombard each held their weapons at "low ready position," but it is unclear from video or testimony whether Officer Saldana also drew his weapon.

The officers then spoke to Mr. ██████ for approximately 1 min 30 seconds⁵⁰ before Mr. ██████ exited the vehicle. There is no recording of the first twenty or so seconds of this encounter and then there is thirty seconds of audio-free video recording of the encounter due to the fact that Officer Saldana never activated his body worn camera and Officers Lombard and Coughlin started their cameras late. During this time the officers ordered Mr. ██████ to exit but he refused because he wished to speak with a Sergeant.

Despite the claims of the officers that Mr. ██████ was argumentative and non-compliant while inside the vehicle, COPA does not find this to be the case. While Mr. ██████ may not have been the paradigm of obedience, he was not as non-compliant as the officers claim.⁵¹ While in the vehicle, he was merely asserting what he believed to be his right to refuse search and asking to

⁵⁰ Because the officers did not activate their BWC at the beginning of the law enforcement related activity, it is not perfectly clear how long the officers were speaking to Mr. ██████. However, the OEMC Event Query from the incident, Att. 10, shows that the officers called in the Traffic Stop at 20:06:13. Both Officer Coughlin and Lombard's video recording begin at 8:06:34 pm, thus there is at least 21 seconds of the traffic stop which are unaccounted for.

⁵¹ Indeed, Mr. ██████ appeared calm and reasonable throughout the video-recorded encounter. It was only the officers, and especially Officer Saldana, who were in any way belligerent or combative.

speak with a Sergeant, as he testified and as was corroborated by the audio that we do eventually hear. He is seen (but not heard, due to the officer's failure to timely start their body cameras) calmly speaking with Officer Saldana. When audio begins, he is still calmly attempting to assert that he does not consent to a search. Additionally, he complied with other directives: 11 seconds into video recording, thus approximately 30 seconds into the encounter, Officer Saldana is seen pointing to the dashboard and Mr. [REDACTED] immediately puts his hands on the dashboard.

Indeed Mr. [REDACTED] eventually exited the car on his own. After Officer Coughlin explained that they were ordering him out of the car, which they are allowed to do, Officer Saldana assured him that they just wanted to talk and would not search the car, and Officer Coughlin explained that what he was doing was "resisting" which is arrestable, Mr. [REDACTED] agreed to get out of the car. Officer Saldana opened the door and waved Mr. [REDACTED] out. He did so, mostly on his own volition, but with a slight assist from Officer Lombard lifting his arm.

Moreover, COPA finds that Mr. [REDACTED] did not suffer his foot injury at this time (or at any time during the encounter). His medical records indicate that his toe was previously broken, not broken during the encounter. Moreover, he stands for the whole incident without any indication that he just broke his foot.

Seizure and Questioning:

Immediately after Mr. [REDACTED] exited the vehicle, Officer Saldana patted down Mr. [REDACTED] belt area as Officer Lombard handcuffed him. Officer Lombard then patted down Mr. [REDACTED] pockets. He appears to squeeze at least one pocket and may have reached into the very top of one pant pocket. The entirety of cuffing and pat down took approximately thirty seconds.

As the officers were handcuffing and patting down Mr. [REDACTED] they began to question him about what he was doing in the vehicle and who the vehicle belonged to. They also took down his name and birthdate.⁵² Additionally, Mr. [REDACTED] reiterated that he did not consent to any search. At this point, the second vehicle with Officer Pattenaude, Moyer, and Bernson arrived. As soon as the second vehicle arrived, Officer Lombard begins searching the front passenger compartment (over Mr. [REDACTED] objection) and Officers Saldana and Coughlin walked Mr. [REDACTED] over to their squad car, informed him he's merely being detained, and ran his information. For approximately nine minutes Mr. [REDACTED] stood calmly alongside the squad car while the officers ran his information, asked him questions, and searched his vehicle, prior to finally "formally arresting him" and informing him of his *Miranda* rights.

Search:

As Mr. [REDACTED] was being questioned alongside the squad car, Officer Lombard remained at Mr. [REDACTED] vehicle. He searched, beginning in and around the front seats, including taking the keys out of the ignition to unlock and open the center console. He then moved to the back seat where he searched the floor under piles of clothes. He saw powder on the floor, next to a baking soda box, which he immediately determined to not be coke, and which Officer Patenaude immediately suggested was baking soda, as well as pieces of tin foil. COPA finds that at no time

⁵² Mr. [REDACTED] clearly identifies his birthdate as "[REDACTED]" Att. 30, Off. Coughlin BWC at 2:20.

did any officer believe that the powder strewn throughout the car was cocaine. Officer Lombard then asked Mr. █████ what he was smoking in the car, to which Mr. █████ did not give a serious reply. After about two and a half minutes of searching, Officer Lombard walked to the squad car to help Officer Saldana check Mr. █████ information in the officers' Clear computer system.

Officer Pattenaude also searched the car, beginning about 45 seconds after Officer Lombard. He worked from the driver's side of the vehicle, starting in the front and moving to the back. He took a brief break to talk with Officers Lombard and Moyer, then opened up the trunk, approximately two minutes after Officer Lombard had initiated the search. After about thirty seconds he completed his search of the trunk.⁵³ Then about three minutes later, at which point cocaine still had not been found, Officer Pattenaude resumed his search, by entering the driver's door.

Officer Moyer also searched, all in areas which had already been searched by Officers Lombard and/or Pattenaude. He leaned in from the rear passenger door and looked at items in the back seat. This included re-opening the locked center console. He also searched a bit inside the front passenger section including looking inside the glove box extensively.

COPA finds that Officer Lombard and Officer Pattenaude had completed their search of the entire interior of the vehicle and located no weapons (or other readily-apparent contraband) by about 8:13:12⁵⁴. Any search that Officer Moyer did was redundant and repetitive of Officers Lombard and Pattenaude's searches.

Officer Coughlin conducted an additional search of his own aimed at finding information about what he believed to be a tampered with VIN sticker.⁵⁵ He first looked through the front windshield to read the VIN and opening the front door to look along the door. He then opened up the hood to look for what he claims to be the secondary VIN, which is located under hood or engine. He later then asked Officer Moyer to look in the glove box for the registration to see if the registration matched the VIN on the windshield. After looking in the glove box, he learned from Officer Saldana that the registration matched the VIN on the car in the Secretary of State system, and informed Officer Saldana that he did not want to climb under the car to determine if the secondary VIN matched.

COPA further finds that the preponderance of the evidence shows that Officer Pattenaude found the suspect bag of cocaine at approximately 8:15 (T01:15:12 on the Axon timestamp in the BWC videos),⁵⁶ a finding supported by the following: The only officer who had any temporal memory of when the drugs were found was Officer Lombard, who stated that they were found while he was sitting in the squad car running Mr. █████ information.⁵⁷ Officer Patenaude remembers only that he found the bag on the driver's door and almost immediately notified another officer. Officer Pattenaude can be seen searching the driver's door at 8:15:08⁵⁸ (while Officer

⁵³ Att. 29 at 7:05.

⁵⁴ Att. 30 at 6:39.

⁵⁵ At points throughout the recording he tells other officers that the VIN stickers have been removed and the front VIN number on the dashboard had been tampered with. Officer Lombard informed COPA during his interview that Officer Coughlin has training related to suspicious VIN numbers.

⁵⁶ See Att. 30 at 8:38.

⁵⁷ His body camera shows that he was in the car between 8:13:25 and 8:16:48. Att. 29 6:50 to 10:13.

⁵⁸ Att. 30, at 8:34.

Lombard is inside the squad car) and at 8:16:55 he showed Officer Lombard where he found the cocaine in the door.⁵⁹ Additionally, Officer Coughlin briefed the Sergeant at about 8:13 as to what putative offenses Mr. ██████ allegedly committed, but did not include any drug charges.⁶⁰ Officer Coughlin then conducted his entire search related to the VIN before announcing for the first time on audio at 8:15:56 that there was “2022, small”, the CPD code for cocaine.⁶¹ The officers then quickly moved to formally arrest Mr. ██████ discussed amongst each other that they were taking him in, and Officer Coughlin informed him of his *Miranda* rights and that they were charging him. This evidence establishes, by a preponderance, that it was approximately 8:15 when Officer Pattenaude found drugs in the driver’s console.

2. Analysis

a. Approaching Mr. ██████ Car and Ordering Him to Exit.

The initial approach from the first three officers went beyond a mere consensual encounter. The officers approached with at least two having weapons out, and they immediately asked questions and gave commands. It was not voluntary on Mr. ██████ part. Therefore, the officers were only justified in initiating the encounter if “the totality of the circumstances reasonably lead [them] to conclude that criminal activity may be afoot and [Mr. ██████ is armed and dangerous.” *People v. Colyar*, 1013 IL 111835 (2013)(citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

The officers had such suspicion in this case: they were in the area investigating a separate gang-related incident and the neighborhood had been classified as a “Violent Zone 1” indicating gang presence and conflict, at which point two citizens informed them that an unfamiliar man had been sitting in an unfamiliar car (matching the white SUV) for a long time, which the citizens believed was suspicious because they did not recognize him. It was reasonable for the officers to believe in these circumstances that Mr. ██████ may be surveilling the neighborhood related to the gang conflict and they were justified in approaching him to question him. Moreover, because they had a lawful basis to speak with Mr. ██████ they also were justified to ask him to step out of the car, in the interest of officer safety. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977). *See also, Maryland v. Wilson*, 519 U.S. 408, 410 (1997)(interpreting *Mimms*’ holding to allow officers to order someone out of a legally detained vehicle “as a matter of course”)

b. Frisking and Handcuffing Mr. ██████

While the officers were justified to approach Mr. ██████ they needed further justification to frisk him and handcuff him. To be justified in doing this, the officers needed reasonable articulable suspicion that Mr. ██████ was armed and presently dangerous. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). Additionally, they were permitted to handcuff Mr. ██████ without transforming the stop beyond a *Terry* stop into an arrest if it was a “reasonable and necessary measure” for officer safety. *Colyar*, 2013 IL 111835 at ¶ 46-47.

⁵⁹ Att. 29, at 10:24.

⁶⁰ Att. 30, at 5:44 to 6:37.

⁶¹ *Id.* at 9:22. At the time, Officer Lombard was still sitting in the squad car, Att. 29 at 9:28, which corroborates his statement that the drugs were found while he was searching the computer system.

The same facts that provided reasonable suspicion to detain Mr. [REDACTED] also provided reasonable suspicion that he was armed and presently dangerous, since this info known to them suggested that he may be engaged in gang-related surveillance, which he would likely be armed in doing. Additionally, as they approached, he leaned over as if he were hiding something, providing further evidence that he may have a weapon. While Mr. [REDACTED] claimed he was leaning over to put the keys in the ignition, from the officers' point of view it was not unreasonable to believe he was leaning to hide something.

Officer Lombard may have pushed the boundary of what he was permitted to do when he squeezed at least one of the pockets and may have reached inside one of the pockets. However, officers are allowed to reach into pockets to inspect items which plainly feel as if they are weapons, and there is insufficient evidence to show by the preponderance of the evidence that Officer Lombard did not feel something in Mr. [REDACTED] pockets which may have felt like a weapon from his training.

c. Searching the Interior of Mr. [REDACTED] Car.

The officers did not have a warrant to search the car, and Mr. [REDACTED] most certainly did not consent to a search. Therefore, the officers needed an exception to the warrant requirement in order to search the vehicle.

No Probable Cause:

At the time Mr. [REDACTED] exited the car, and prior to any search being conducted inside the vehicle, it is very unlikely that the officers had probable cause to arrest Mr. [REDACTED] for any crime. While Officer Coughlin informed him that he was "obstructing, which is arrestable," Mr. [REDACTED] had in fact not committed obstruction of justice under Illinois law. To commit the crime of obstruction of justice or resisting arrest, a person must engage in *physical* resistance to police action, merely arguing the validity of a police action will not suffice. *See People v. Flannigan*, 131 Ill. App. 2d 1059, 1062 (5th Dist. 1971). However, Officer Lombard suggested, in his interview with COPA, that Mr. [REDACTED] committed an offense under the municipal code by failing to obey. Presumably he meant the disorderly conduct provision which states:

A person commits disorderly conduct when he knowingly: (e) Fails to obey an order by a peace officer...who has identified himself as such, or is otherwise reasonably identifiable as such, issued under circumstances where it is reasonable to believe that the order is necessary to allow public safety officials to address a situation that threatens public health, safety, or welfare."

MCC 8-4-010(e).

COPA was unable to find caselaw defining the extent to which a person must "fail to obey" in order to be guilty of this offense. Mr. [REDACTED] conduct likely did not rise to a level that would constitute a crime: he got out of the car on his own volition in well under two minutes, during which time he was complying with some orders and answering all questions, all while politely asserting his request to speak with a sergeant and refusal to consent to a search. However, since

this question is ultimately not relevant to the propriety of searching the vehicle there is no need to reach a decision where there is no case law on point.

Protective Sweep:

Officers conducting vehicle stops are permitted, consistent with the principles of *Terry* searches, to conduct a limited search of a vehicle where “they possess reasonable suspicion that the occupant of the vehicle is dangerous and can gain control of a weapon from inside the vehicle. *Michigan v. Long*, 463 U.S. 1032, 1050 (1983). *See also, People v. Colyar*, 2013 IL 111835 at ¶¶ 38-40 (discussing that *Terry* principles apply to vehicle searches pursuant to *Long*).⁶² The search must be limited to areas where a weapon may be hidden *and* where the occupant may have immediate access. *United States v. Arnold*, 388 F.3d 237, 240-41 (7th Cir. 2004). Therefore, the officers were *initially* justified in searching the vehicle, including locked compartments, to look for weapons. This justification included searching the front and back seat areas as well as the trunk, due to the fact that in this SUV, the trunk was accessible from the passenger portion of the vehicle. *See, Arnold*, 388 F.3d at 240-41.

However, the continued search of the vehicle, exceeded the scope permitted by *Michigan v. Long*, which was the only permissible basis to search. Searches pursuant to *Long*, as with *Terry* stops and searches, are limited in scope and duration to what is reasonably necessary to dispel officers’ fear that the vehicle may contain a weapon. Here after about two and a half minutes of searching, both Officers Lombard and Pattenaude (with some assistance from Officer Moyer) had searched the entirety of the vehicle, including all areas where a weapon may be found, and discovered no such weapon. It was unreasonable to continue their search beyond there. However, Officers Pattenaude and Moyer continued to search the vehicle, and as Officer Pattenaude admitted during his interview, the purpose of this search was to find narcotics. *See Minnesota v. Dickerson*, 508 U.S. 366, 378 (1993)(holding that officers may not conduct general exploratory searches for contraband under the guise of a *Terry* search).

Search Incident to Lawful Arrest:

Additionally, the officers could potentially have been justified in their search by the search incident to lawful arrest doctrine which allows officers to search a person who is being arrested, as well as their “immediate vicinity.” *Arizona v. Gant*, 556 U.S. 332, 335 (2009). This search may be extended to include a car that the arrestee recently occupied. *Id.* However, the search must be limited to a search for weapons, or *evidence of the crime for which the person has been arrested.* *Knowles v. Iowa*, 525 U.S. 113 (1998).

Here, there was, at most, probable cause to arrest Mr. [REDACTED] for disorderly conduct under the municipal code. There is no conceivable belief that there would be any evidence of this crime located in the SUV. Moreover, Mr. [REDACTED] was handcuffed, being kept away from the SUV, and had at least two, usually three officers around him at all times. Therefore, pursuant to *Arizona v. Gant*, the Search Incident to Lawful arrest doctrine would not justify a search of the vehicle to determine if there were weapons, because Mr. [REDACTED] would not be able to readily access the

⁶² As demonstrated in *Colyar*, the principles of *Michigan v. Long* apply in this case, even though Mr. [REDACTED] was parked at the outset of the encounter and had committed no traffic (or other) offense.

vehicle. *Arizona v Gant*, 556 U.S. at 335; *People v. Bridgewater*, 235 Ill.2d 85, 94-95 (2009) (holding that an arrest for obstructing a police officer” does not justify searching a vehicle for weapons, and interpreting *Gant* to apply to “rare circumstances” where an arrestee could access a vehicle). Therefore, even if the officers had probable cause to arrest Mr. ██████ for disorderly conduct, this arrest would not justify the search of the vehicle.

d. Searching Under the Hood of Mr. ██████ Car.

The other search at issue was Officer Coughlin lifting the hood of the car. He did so based on his suspicion that car was stolen since the VIN sticker affixed to the windshield appeared to be tampered with. The Illinois Supreme Court, in a dated case, addressed the issue of searching inside a car for the VIN on the door. *People v. Wolf*, 60 Ill.2d 230 (1975). They stated that, at the time, there was a debate between jurisdictions as to whether looking at the VIN even constituted a search, but did not reach the decision as to whether Illinois would consider it a search. *Id.* at 232. Instead they found that “assuming arguendo” it was a search, there was sufficient cause to search for the VIN because the officer believed the car was stolen since the license plate was only attached with wire, despite the fact that the make and model of the car and the license plate number matched the description on the vehicle registration card. *Id.* In 1986, the US Supreme Court held that looking inside of a car for the VIN affixed to the door did constitute a search, but in the case found that the officers were justified in their minimal search of opening the door to move papers blocking the dashboard VIN, even though there was no suspicion the car was stolen. *New York v. Class*, 475 U.S 106, 108-09 (1986). The opinion in *Class* did nothing to overturn the *Wolf* holding, nor have any Illinois courts⁶³ or the Seventh Circuit held post-*Class* that the *Wolf* analysis of probable cause was insufficient.

Officer Coughlin stated that based on his training and experience, the fact that the dashboard VIN sticker appeared to be altered indicated that the car may be stolen. While this is a tenuous argument—after all, the VIN on the inside of the door matched the VIN on the car’s registration papers and Mr. ██████ knew the name and address of the car’s registered owner—based on the aged but not overturned precedent of *Wolf*, COPA does not have a basis under Illinois or Seventh Circuit law to find that Officer Coughlin’s search was done without cause.

VIII. ANALYSIS

Officer Luis H. Saldana

a. Allegation #1

COPA finds that the allegation that Officer Saldana failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6, COPA is SUSTAINED. Although Officer Saldana stated in his interview that he believed his camera to be activated, he failed to ensure that it was functioning properly and recording. Since the camera footage was a crucial

⁶³ The Second District Court of Appeals did find that searching for a vehicles gross weight ratio was justified, and held that it was not.

element in this investigation, Officer Saldana must be held accountable for neglecting his duty to record the incident.

b. Allegation #2

COPA finds that the allegation that Officer Saldana twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8, is UNFOUNDED. The Body Worn Camera footage of this incident directly contradicts Mr. [REDACTED] claim that he was dragged from the vehicle by Officers Lombard and Saldana or that they used excessive force in removing him from the vehicle. The footage showed Mr. [REDACTED] step out of the car on his own and he did not trip, fall, or stumble any way. Although he visited the hospital later, he did not complain of any pain on scene, and the Medical reports state that he was injured prior to the encounter.

c. Allegation #3

COPA finds that the allegation that Officer Saldana conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment, is UNFOUNDED. The evidence demonstrated that Officer Saldana was not directly involved in searching the vehicle; rather, he detained and questioned Mr. [REDACTED] while the other officers were conducting the search.

d. Allegation #4

COPA finds the allegation that Officer Saldana failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6, COPA is SUSTAINED. By his own admission, Officer Saldana did not complete this report even though this event began as an investigatory stop. Regardless of whether or not he thought the report was needed, department policy does not negate the completion of ISRs in lieu of other various case reports; therefore, an ISR was still required here.

Officer Kevin M. Lombard

a. Allegation #1

COPA finds the allegation that Officer Lombard conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment, is NOT SUSTAINED. Officer Lombard was able to articulate his reasonable suspicion for conducting an investigatory stop of Mr. [REDACTED] as well as the suspicion that he may have concealed “items” including a gun, due to his furtive movements, which is cause to search the vehicle. Despite the fact that Officer Lombard says he searched the backseat for drugs, an improper basis to search, his subjective reason for searching does not invalidate the search because searches must be evaluated based upon whether an objective officer would be justified in searching in the situation. While Officer Lombard did have a limited legal basis to search the car, he was not justified in a full search of all parts of the vehicle, nor to conduct an ongoing search once the entire vehicle was searched without finding a weapon. There is not clear and convincing evidence that Officer Lombard did

not overstep the legal justification to search, and therefore it is not appropriate to exonerate him. However, he does not appear from the preponderance of the evidence to search the vehicle beyond what was legally justified, so the allegations are not sustained. (see Legal Analysis, section III).

b. Allegation #2

COPA finds the allegation that Officer Lombard failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6, is SUSTAINED. By his own admission, Officer Lombard did not complete this report even though this event began as an investigatory stop. Regardless of whether or not he thought the report was needed, department policy does not negate the completion of ISRs in lieu of other various case reports; therefore, an ISR was still required here.

c. Allegation #3

COPA finds the allegation that Officer Lombard twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8, is UNFOUNDED. The Body Worn Camera footage of this incident shows that Officer Lombard only lightly held Mr. [REDACTED] by the forearm as Mr. [REDACTED] stepped out of the car on his own, his arm was never “twisted.” Additionally, the evidence shows that Mr. [REDACTED] toe was broken prior to the encounter.

Officer Craig E. Coughlin

a. Allegation #1

COPA finds the allegation that Officer Coughlin conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment, is NOT SUSTAINED. Officer Coughlin was able to articulate his justification for why he searched under the hood. As discussed in the Legal Analysis section above, there is no basis in Illinois case law to find that Officer Coughlin was not justified in this search. However, due to the minimal evidence that the car was stolen compared to the evidence that the car was not stolen, COPA does not find that there is clear and convincing evidence that Officer Coughlin was justified to search under the hood to exonerate him on these allegations.

b. Allegation #2

COPA finds the allegation that Officer Coughlin failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6, is SUSTAINED. By his own admission, Officer Coughlin did not complete this report even though this event began as an investigatory stop. Regardless of whether or not he thought the report was needed, department policy does not negate the completion of ISRs in lieu of other various case reports; therefore, an ISR was still required here.

Officer Zachary T. Pattenaude

a. Allegation #1

COPA finds the allegation of Officer Pattenaude conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment, is SUSTAINED. As discussed in the legal analysis section, supra, Officer Pattenaude was justified only to conduct a limited search to determine if there were weapons. However, even after he and Officer Lombard had searched the entire vehicle and found no weapons, he continued to search. COPA finds that the preponderance of the evidence shows that it was unreasonable for him to continue his search once he had finished searching the trunk and that any search conducted after that point, including the point where he found the cocaine, was improper.

b. Allegation #2

COPA finds the allegation that Officer Pattenaude failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6, is SUSTAINED. By his own admission, Officer Pattenaude did not complete this report even though this event began as an investigatory stop. Regardless of whether or not he thought the report was needed, department policy does not negate the completion of ISRs in lieu of other various case reports; therefore, an ISR was still required here. Despite the fact that he was an assisting officer, he did not ensure that an ISR was completed.

c. Allegation #3

COPA finds the allegation that Officer Pattenaude failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6, is SUSTAINED. Although Officer Pattenaude was only an assisting officer and did not initiate the search, he recovered the narcotics which were fundamental to the validity of the arrest and search itself. By his own admission and Department policy, searches of a vehicle require activation of all applicable cameras; therefore, Officer Pattenaude must be held accountable for neglecting his duty to record the incident.

IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Saldano****Complimentary and Disciplinary History**

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

Complimentary History

3, Deployment Operation Center Award
1, Presidential Election Deployment Award 2008
3, Attendance Recognition Award

1, Military Deployment Award
99, Honorable Mention
7, Department Commendation
1, 2004 Crime Reduction Ribbon
7, Complimentary Letter
1, Life Saving Award
1, Honorable Mention Ribbon Award
1, NATO Summit Service Award
1, 2009 Crime Reduction Award
1, Unit Meritorious Performance Award

Disciplinary History

CR – None
SPAR - None

i. Recommended Penalty, by Allegation**1. Allegation No. 1**

Officer Saldana failed to activate his Body Worn Camera during the incident. COPA finds a 1-day suspension appropriate.

2. Allegation No. 4

Officer Saldana failed to complete an Investigatory Stop Report. COPA finds a Violation Noted appropriate.

b. Officer Lombard**Complimentary and Disciplinary History**

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

Complimentary History

1, Attendance Recognition Award
20, Honorable Mention
3, Department Commendation
1, Life Saving Award

Disciplinary History

CR – None
SPAR - None

i. Recommended Penalty, by Allegation**1. Allegation No. 2**

Officer Lombard failed to complete an Investigatory Stop Report. COPA finds a Violation Noted appropriate.

a. Officer Coughlin**Complimentary and Disciplinary History**

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

Complimentary History

1, Democratic National Convention Award
 1, Deployment Operation Center Award
 1, Problem Solving Award
 1, Other Awards
 1, Presidential Election Deployment Award 2008
 4, Attendance Recognition Award
 1, Recognition / Outside Governmental Agency Award
 220, Honorable Mention
 11, Department Commendation
 1, 2004 Crime Reduction Ribbon
 6, Complimentary Letter
 1, Superintendents Award of Valor
 2, Life Saving Award
 1, Honorable Mention Ribbon Award
 1, NATO Summit Service Award
 1, 2009 Crime Reduction Award
 1, Unit Meritorious Performance Award

Disciplinary History

CR – None
 SPAR – 1 Reprimand, Preventable Accident, 2018

ii. Recommended Penalty, by Allegation**1. Allegation No. 2**

Officer Coughlin failed to complete an Investigatory Stop Report. COPA finds a Violation Noted appropriate.

a. Officer Pattenaude**Complimentary and Disciplinary History**

COPA has taken into account both the complimentary and prior disciplinary history of the officer.

Complimentary History

17, Honorable Mention
2, Department Commendation
1, Complimentary Letter

Disciplinary History

CR – None
SPAR - None

iii. Recommended Penalty, by Allegation

1. Allegation No. 1

Officer Pattenaude conducted an unlawful search of a vehicle. COPA finds 3-day suspension appropriate.

2. Allegation No. 2

Officer Pattenaude failed to complete an Investigatory Stop Report. COPA finds Violation Noted appropriate.

3. Allegation No. 3

Officer Pattenaude failed to activate his Body Worn Camera. COPA finds 1-day suspension appropriate.

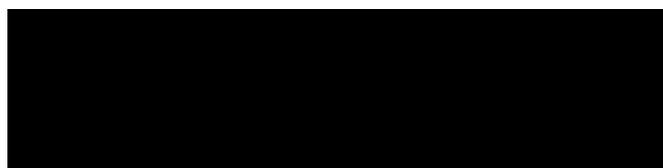
X. CONCLUSION

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

Officer	Allegation	Finding
Officer Luis H. Saldana	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8.</p> <p>3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>4. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Saldana failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p>	<p>SUSTAINED / 1 Day Suspension</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>SUSTAINED / Violation Noted</p>
Officer Kevin M. Lombard	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p> <p>3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Lombard twisted [REDACTED] arm during the extraction of the complainant from the vehicle, causing him to shift</p>	<p>NOT SUSTAINED</p> <p>SUSTAINED / Violation Noted</p> <p>UNFOUNDED</p>

	his weight onto the tip of his right foot and break his toe, in violation of G03-02 and Rule 8.	
Officer Craig E. Coughlin	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Coughlin conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Coughlin failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p>	<p>NOT SUSTAINED</p> <p>SUSTAINED / Violation Noted</p>
Officer Zachary T. Pattenaude	<p>1. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude conducted an unlawful search of the vehicle that [REDACTED] was occupying, in violation of the 4th Amendment.</p> <p>2. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude failed to complete an Investigatory Stop Report for this incident, in violation of S04-13-09 and Rule 6.</p> <p>3. It was alleged that on July 25, 2017 at 4848 S. Hoyne Ave. at approximately 1745 hours, Officer Pattenaude failed to activate his Body Worn Camera during this incident, in violation of S03-14 and Rule 6.</p>	<p>SUSTAINED / 3-Day Suspension</p> <p>SUSTAINED / Violation Noted</p> <p>SUSTAINED / 1 Day Suspension</p>

Approved:



Angela Hearts-Glass
Deputy Chief Administrator

2-25-2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	Jessica Beckman
Supervising Investigator:	Sherry Daun
Deputy Chief Administrator:	Angela Hearts-Glass