

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	August 30, 2018
Time of Incident:	7:30 p.m.
Location of Incident:	3715 West Greenshaw Street, Chicago, Illinois
Date of COPA Notification:	September 4, 2018
Time of COPA Notification:	6:32 p.m.

On August 30, 2018, [REDACTED] alleged that he was stopped, searched, and his vehicle searched by officers without justification. Additionally, the officers threatened to arrest him unless he provided them with a gun.

**II. INVOLVED PARTIES**

Involved Officer #1:	[REDACTED] star # [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2014, PO, Unit [REDACTED] DOB: [REDACTED] 1992, Male, White Hispanic
Involved Officer #2:	[REDACTED] star # [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2014, PO, Unit [REDACTED] DOB: [REDACTED] 1990, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1988, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer [REDACTED]	It is alleged that on August 30, 2018, in the vicinity of 3715 West Greenshaw Street, Chicago, Illinois, at approximately 7:30 p.m., you: 1. stopped [REDACTED] without justification; 2. searched [REDACTED] without justification; 3. searched [REDACTED] vehicle without justification 4. failed to properly complete an Investigatory Stop Report; 5. failed to record the incident in its entirety; and 6. threatening to arrest [REDACTED] unless he provided officers with a gun.	Not Sustained Not Sustained Unfounded Sustained Sustained Not Sustained

Officer [REDACTED]	<p>It is alleged that on August 30, 2018, in the vicinity of 3715 West Greenshaw Street, Chicago, Illinois, at approximately 7:30 p.m., you:</p> <ol style="list-style-type: none"> <li>1. stopped [REDACTED] without justification;</li> <li>2. searched [REDACTED] without justification;</li> <li>3. searched [REDACTED] vehicle without justification</li> <li>4. failed to properly complete an Investigatory Stop Report; and</li> <li>5. failed to record the incident in its entirety.</li> </ol>	<p>Not Sustained</p> <p>Unfounded</p> <p>Not Sustained</p> <p>Sustained</p> <p>Sustained</p>
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**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
3. Rule 6: Disobedience of an order or directive, whether written or oral.
4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
5. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
6. Rule 11: Incompetency or inefficiency in the performance of duty.

General Orders

1. G02-02 “The First Amendment and Police Actions”

Special Orders

1. S04-13-09 “Investigatory Stop System”

Federal Laws

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

<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.”

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

### a. Interviews

In an interview with COPA, on September 4, 2018, ██████████ (██████████) stated that, on August 30, 2018, he parked his vehicle to go into a friend's house. As he sat in his vehicle, ██████████ saw two unmarked police vehicles jump a median and believed maybe they received a call. The first police vehicle drove past him, but the second vehicle stopped at the alley in front of him. ██████████ exited his vehicle and began to walk to his friend's house. There were approximately four to eight plain clothed officers,<sup>3</sup> who had their weapons drawn, told ██████████ to get down, and handcuffed him behind his back. Officers searched him, but recovered nothing. The officers took his keys and searched his vehicle. Officers recovered marijuana from the vehicle.<sup>4</sup> ██████████ admitted to the officers he was going to his friend's house to smoke. They had a call about guns, recognized him as someone who had been arrested with a gun, so they stopped him. The officers stated they were not interested in the marijuana, and if he provided them with a gun, within the hour, he would not go to jail. An officer entered his phone number in ██████████ cell phone, and told ██████████ to call when he had a gun.<sup>5</sup> Officers ran his license plate, then let him go without giving him an Investigatory Stop Receipt.

On September 1, 2018,<sup>6</sup> ██████████ was driving his cousin, ██████████<sup>7</sup> to Douglas and Homan, when ██████████ believed Officer ██████████ recognized him and the officers hit their vehicle lights. The officers<sup>8</sup> jumped out of their vehicles with their guns and flashlights out. Officer ██████████ called ██████████ by his first name, ██████████ and told him to turn off his vehicle. Officer ██████████ and a female officer opened the ██████████ vehicle door and ordered him out of the vehicle. As he exited the vehicle, the officers grabbed him, handcuffed him and ordered him to the rear of the vehicle. Officer ██████████ searched ██████████ including inside his underwear and his groin area, where Officer ██████████ said he found pills on ██████████ the last time.<sup>9</sup> Officers searched ██████████ vehicle and ██████████. Nothing was recovered during this incident. Officer ██████████ told ██████████ he knew his vehicle and would catch him, but neither Officer ██████████ or any other officer present asked ██████████ about a gun or marijuana from his August 30th incident. Officer ██████████ let ██████████ go after he ran ██████████ and ██████████ names.<sup>10</sup>

In an interview with COPA, on April 3, 2019, ██████████ ("Officer ██████████) stated, on August 30, 2018, while on routine patrol with his partner, Officer ██████████ they decided

<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> ██████████ did not know who the officers were, but believed two of the officers were ██████████ and ██████████

<sup>4</sup> ██████████ admitted to COPA Investigators that he had marijuana with him, but he did not have it on his person when he exited the vehicle. The marijuana was vacuum sealed in multiple bags inside the center console, armrest.

<sup>5</sup> The officer also got ██████████ phone number and called him that day. ██████████ stated he no longer has the temporary phone he was using that day to show the officers' call.

<sup>6</sup> There are no documents, including Department Reports, Event Queries, or name searches related to ██████████ ██████████ or ██████████ license plate on September 1, 2018. *See* Attachment 39.

<sup>7</sup> COPA made several unsuccessful attempts to interview ██████████ *See* Attachment 39.

<sup>8</sup> There were approximately ten to twelve officers in four marked squad cars with the emergency lights activated.

<sup>9</sup> ██████████ confirmed pills were recovered from this area in his March 23, 2018 and Officer ██████████ was the arresting officer. *See also* Attachment 14.

<sup>10</sup> There is no evidence Attachment 5.

to stop and conduct a narcotics investigation after observing [REDACTED] step out of a vehicle, walk away quickly and they smelled cannabis emanating from his vehicle.<sup>11</sup> Officer [REDACTED] and Officer [REDACTED] recognized [REDACTED] from a prior incident where [REDACTED] was arrested with a firearm. [REDACTED] walked quickly away from his vehicle. Officer [REDACTED] stopped and detained [REDACTED] placing him in handcuffs, not far from his vehicle. Officer [REDACTED] searched the passenger area of [REDACTED] vehicle because the smell of cannabis gave him probable cause to search. Officer [REDACTED] believed he found a small amount of cannabis but no firearms. Officer [REDACTED] did not believe he searched [REDACTED]

At this time, Officer [REDACTED] is speaking with [REDACTED] but Officer [REDACTED] cannot hear the conversation. Officer [REDACTED] did not see any physical contact between Officer [REDACTED] and [REDACTED] but stated it was possible that Officer [REDACTED] conducted a protective pat down of [REDACTED]. Officer [REDACTED] did not recover anything. Officer [REDACTED] described [REDACTED] demeanor as normal, not upset. When Officer [REDACTED] completed his search of the vehicle, [REDACTED] was released without any citation. The whole interaction was approximately five minutes. Officer [REDACTED] said, although neither he or Officer [REDACTED] called for an assist over the radio, another police unit was present at some point. Officer [REDACTED] did not believe they assisted in the investigation in any way.

Officer [REDACTED] admitted he did not activate his BWC. Normally, he activates his BWC as he exits his vehicle, but, in this case, he did recognize [REDACTED] as someone he recovered a weapon from before and wanted to quickly detain him. Officer [REDACTED] did not notice the BWC was not activated during the stop. Additionally, Officer [REDACTED] stated this is an incident that required an Investigatory Stop Report to be completed, but he admitted one was not completed. He did not know why an ISR was not completed.<sup>12</sup>

In an **interview with COPA**, on April 3, 2019, [REDACTED] (“Officer [REDACTED]”) provided a consistent statement as Officer [REDACTED] with the following additional details. While Officer [REDACTED] was searching [REDACTED] vehicle because of the odor of cannabis,<sup>13</sup> Officer [REDACTED] spoke with [REDACTED] who he described as calm. [REDACTED] denied having marijuana in his vehicle. Officer [REDACTED] conducted a protective pat down of [REDACTED] outer garments at the waistline for weapons because Officer [REDACTED] based on a previous arrest, knew [REDACTED] carried a weapon. He did not recover anything.

As [REDACTED] was about to walk away, he said he may know where a pistol is laid up. Officer [REDACTED] asked where, but [REDACTED] was not sure of the location. Officer [REDACTED] gave [REDACTED] his phone number. [REDACTED] called Officer [REDACTED] later that night, provided a location, and asked to remain anonymous. Officers [REDACTED] and [REDACTED] recovered and inventoried a firearm. Officer [REDACTED] denied threatening to arrest [REDACTED] if he did not provide a gun. He did not talk to [REDACTED] about a gun until [REDACTED] volunteered the information on his own.<sup>14</sup>

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<sup>11</sup> When presented with the Event Query where [REDACTED] name was run, Officer [REDACTED] stated he did not understand why it said person with a gun but that may be why they were in the area.

<sup>12</sup> Attachment 25.

<sup>13</sup> Officer [REDACTED] believed the Event Query where [REDACTED] name was run was unrelated to this incident, but likely why other units were in the area. In his second interview, Officer [REDACTED] stated he and Officer [REDACTED] were originally in the area due to the person with a gun call. *See* Attachment 38.

<sup>14</sup> Attachments 30, 38.

Officer ██████ admitted this incident required an ISR to be completed. He did not remember whether he completed an ISR, but did not search for the ISR prior to the interview. Officer ██████ did not know whether his camera was on during this incident, but again, did not check for the video prior to the interview.

### b. Digital Evidence

No **Body Worn Camera** or **In-Car camera** captured the August 30, 2018 or September 1, 2018 incident.<sup>15</sup>

### c. Documentary Evidence

**Office of Emergency Management and Communications (OEMC) Event Query** #██████ documented, on August 30, 2018, there was an anonymous call of a black male, wearing black and white, with a pistol. Officer ██████ entered identity information for ██████ and ██████ and ██████ license plate number. Officers ██████ and ██████ acknowledged a request for assistance. The event was closed as 19B, no person found.<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
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**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

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<sup>15</sup> Attachment 20.

<sup>16</sup> Attachment 8.

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 ██████████

COPA finds the allegation that Officer ██████████ stopped ██████████ without justification is **Not Sustained**. An officer “may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions.”<sup>17</sup> A lawful stop requires “at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law.”<sup>18</sup> ██████████ stated he had exited his vehicle and was walking toward his friend’s house when officer ordered him to stop. The officers, eventually, told ██████████ they stopped him because they had a call about guns and recognized him from a prior arrest. In contrast, Officers ██████████ and ██████████ stated they stopped ██████████ who was sitting inside his vehicle, to conduct a narcotics investigation after they detected an odor of cannabis emanating from ██████████ vehicle. The officers indicated ██████████ had a small amount of cannabis in his vehicle, but not enough to arrest ██████████. As discussed below, the officers did not document this encounter and explain their reason for the stop. There are no independent witnesses or video to corroborate the incident as described by ██████████ or the officers. COPA finds ██████████ Officer ██████████ and Officer ██████████ to be equally credible. Therefore, there is insufficient evidence to determine whether Officers ██████████ and ██████████ smelled cannabis emanating from ██████████ or his vehicle, and, in turn, possessed Reasonable Articulable Suspicion that ██████████ committed a crime, possession of cannabis.<sup>19</sup> Thus, this allegation is **Not Sustained**.

COPA finds the allegation that Officer ██████████ searched ██████████ without justification is **Not Sustained**. An officer may conduct a protective pat down on 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>20</sup> Illinois case law also holds that “*Terry* permits a protective search only when the suspect ‘is armed and presently dangerous.’”<sup>21</sup> The proper test is an objective one, not whether the officer subjectively believed that the person may be armed.<sup>22</sup> Officer ██████████ admitted he conducted a protective pat down due to one previous encounter where ██████████ had a firearm on his person. Although Officer ██████████ handcuffed ██████████ he described ██████████ as calm and the two had a pleasant conversation that resulted in ██████████ voluntarily providing information on where to recover a firearm. While Officer ██████████ stated he recognized ██████████ from a prior arrest with a firearm, neither he or Officer ██████████ provided specific facts or observations that led them to believe ██████████ may be carrying a firearm

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<sup>17</sup> Special Order S04-13-09 V.A.

<sup>18</sup> *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

<sup>19</sup> See 720 ILCS 550/4.

<sup>20</sup> S04-13-09 II.C.2.

<sup>21</sup> *People v. Walker*, 2013 IL App (4th) 120118, ¶47(emphasis in original).

<sup>22</sup> *People v. Galvin*, 127 Ill. 2d 153, 167 (1989).

or weapon during this incident. Neither Officer [REDACTED] or Officer [REDACTED] described [REDACTED] taking any actions where they feared for their safety. There are no independent witnesses, video, or documentation that shows whether [REDACTED] was armed or dangerous.

Additionally, as discussed above, there is insufficient evidence to determine whether Officer [REDACTED] smelled cannabis emanating from [REDACTED] or his vehicle that would provide him probable cause to search [REDACTED] person. Therefore, based on the evidence Officer [REDACTED] did not possess specific and articulable facts combined with rational inferences that [REDACTED] was armed and dangerous during this incident, and there is insufficient evidence to determine whether Officer [REDACTED] possessed probable cause to search [REDACTED]. Thus, this allegation is **Not Sustained**.

COPA finds the allegation that Officer [REDACTED] searched [REDACTED] vehicle without justification is **Unfounded**. As discussed below, Officer [REDACTED] admitted to searching [REDACTED] vehicle. Both officers stated Officer [REDACTED] did not search [REDACTED] vehicle.

COPA finds the allegation that Officer [REDACTED] failed to properly complete an Investigatory Stop Report is **Sustained**. Pursuant to Special Order S04-13-09, an officer who conducts an Investigatory Stop and, if applicable, a Protective Pat Down or other search in a public place is required to submit an Investigatory Stop Report (“ISR”) into the Investigative Stop Database.<sup>23</sup> Officers [REDACTED] and [REDACTED] admitted they were required to complete an ISR to document their interaction with [REDACTED]. Officer [REDACTED] stated he did not remember whether he completed an ISR, but he did not check to see if one existed. Officer [REDACTED] admitted he did not complete an ISR. No ISR was found for this incident. Because Officers [REDACTED] and [REDACTED] were required to complete an ISR for this encounter and no ISR was completed, this allegation is **Sustained**.

COPA finds the allegation that Officer [REDACTED] failed to record the incident in its entirety is **Sustained**. An officer will start recording, on BWC, will record the entire incident for all 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>24</sup> Officer [REDACTED] admitted he had BWC for this incident, but did not recall whether he activated it. Officer [REDACTED] did not search to confirm whether BWC video existed for this incident. No BWC was found for this incident. Because, as discussed above, Officer [REDACTED] conducted an investigatory stop of [REDACTED] and he did not record the incident on his BWC, this allegation is **Sustained**.

COPA finds the allegations that Officer [REDACTED] threatened to arrest [REDACTED] unless he provided officers with a gun is **Not Sustained**. According to [REDACTED] officers said he would not go to jail if he provided them with a gun, and the officer called him later that day. Conversely, Officer [REDACTED] stated [REDACTED] without provocation said he may know the location of a pistol. Officer [REDACTED] provided [REDACTED] his phone number. [REDACTED] called later that night to, anonymously, provide the location of a gun. Officer [REDACTED] denied asking [REDACTED] about a gun or threatening to arrest [REDACTED] if he did not provide a gun. Department reports completed by Officer [REDACTED] support Officer [REDACTED] account of the incident. There are no independent witnesses, video, or documentation that supports either [REDACTED] or Officer [REDACTED] accounts of the incident.

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<sup>23</sup> S04-13-09 VIII.A.1.

<sup>24</sup> Special Order S03-14 III.A.2.

Therefore, there is insufficient evidence to determine whether Officer ██████ threatened to arrest ██████ unless he provided officers with a gun, and this allegation is **Not Sustained**.

**b. Officer ██████**

As discussed above, COPA finds the allegation that Officer ██████ stopped ██████ without justification is **Not Sustained**.

COPA finds the allegation that Officer ██████ searched ██████ without justification is **Unfounded**. As discussed above, Officer ██████ admitted to conducting a protective pat down search of ██████ Both officers stated Officer ██████ did not search ██████

COPA finds the allegation that Officer ██████ searched ██████ vehicle without justification is **Not Sustained**. “After an officer is in possession of facts sufficient to support probable cause to believe that a vehicle contains contraband, the vehicle may be searched without a warrant and the search area includes any interior compartment of the vehicle that might reasonably contain the contraband.” *People v. Contreras*, 2014 IL App (1st) 131889, ¶ 28. Under the “automobile exception” to the search warrant requirement, “law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize.” *People v. James*, 163 Ill. 2d 302, 312 (Ill. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). As discussed above, Officers ██████ and ██████ stated they detected an odor of cannabis emanating from ██████ vehicle. Although ██████ admitted he had a small amount of marijuana in his vehicle, he stated it was in vacuum sealed bags inside the center console and the officers approached him after he exited and walked away from his vehicle. As discussed above, there is insufficient evidence to determine whether the officers smelled cannabis emanating from ██████ or his vehicle, therefore, there is insufficient evidence to determine whether Officer ██████ had probable cause to search ██████ vehicle. Thus, this allegation is **Not Sustained**.

As discussed above, COPA finds the allegation that Officer ██████ failed to properly complete an Investigatory Stop Report is **Sustained**.

COPA finds the allegation that Officer ██████ failed to record the incident in its entirety is **Sustained**. As discussed above, Officer ██████ conducted an investigatory stop of ██████ and was required to record the incident on BWC. Officer ██████ stated he normally activates his BWC as he exits his vehicle, but in this case, he admitted he did not record the incident on his BWC,

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

**a. Officer ██████**

COPA considered Officer ██████ complimentary, training and disciplinary history when recommending discipline in this matter. Officer ██████ stated he could not recall whether he activated his body worn camera or completed an ISR for this incident. Officer ██████ does not have a history of discipline. COPA recommends Officer ██████ receive a reprimand for the sustained allegations. COPA also recommends Officer ██████ be retrained on Investigatory Stop Reports and Body Worn Cameras.

**b. [REDACTED]**

COPA considered Officer [REDACTED] complimentary, training and disciplinary history when recommending discipline in this matter. Officer [REDACTED] stated that although he regularly activates his body worn camera, he did not in this event. He also admitted that he did not complete an ISR. Officer [REDACTED] has the following disciplinary history:

June 7, 2018	Reprimand	Preventable Accident
April 8, 2019	Reprimand	Preventable Accident
November 19, 2019	Reprimand	Failure to Perform Assigned Tasks

COPA recommends Officer [REDACTED] receive a 1-day suspension for the sustained allegations. COPA also recommends he be retrained on Investigatory Stop Reports and Body Worn Cameras.

**IX. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer [REDACTED]	<p>It is alleged that on August 30, 2018, in the vicinity of 3715 West Greenshaw Street, Chicago, Illinois, at approximately 7:30 p.m., you:</p> <ol style="list-style-type: none"> <li>1. stopped [REDACTED] without justification;</li> <li>2. searched [REDACTED] without justification;</li> <li>3. searched [REDACTED] vehicle without justification</li> <li>4. failed to properly complete an Investigatory Stop Report;</li> <li>5. failed to record the incident in its entirety; and</li> <li>6. threatening to arrest [REDACTED] unless he provided officers with a gun.</li> </ol>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Unfounded</p> <p>Sustained/Reprimand</p> <p>Sustained/Reprimand</p> <p>Not Sustained</p>
Officer [REDACTED]	<p>It is alleged that on August 30, 2018, in the vicinity of 3715 West Greenshaw Street, Chicago, Illinois, at approximately 7:30 p.m., you:</p> <ol style="list-style-type: none"> <li>1. stopped [REDACTED] without justification;</li> </ol>	<p>Not Sustained</p>

2. searched [REDACTED] without justification;	Unfounded
3. searched [REDACTED] vehicle without justification	Not Sustained
4. failed to properly complete an Investigatory Stop Report; and	Sustained/1-day
5. failed to record the incident in its entirety.	Sustained/1-day

Approved:



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Andrea Kersten  
*Deputy Chief Administrator – Chief Investigator*

November 25, 2019

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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