

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 19, 2018
Time of Incident:	5:43 pm
Location of Incident:	██████████, Chicago, IL 60620
Date of COPA Notification:	June 20, 2018
Time of COPA Notification:	12:59 pm

Officers Kenneth Brink and Bryan Moylan and Jeremiah Pentek were patrolling the 7700 block of S. Sangamon based on a history of violent crime in the area. While on patrol Officer Brink observed several males congregating outside of ██████████. Once the males noticed Officer Brink they fled on foot while holding their sides. Officer Brink observed at least one of the males enter a parked black Volvo. Once the male(s) were inside the vehicle, it pulled from the curb failing to signal. Officer Brink conducted a traffic stop on the vehicle. Once the vehicle was stopped, Officer Brink explained to the driver (██████████) why he was being stopped and requested his driver’s license. After some reluctance, ██████████ provided his driver’s license and Officer Brink completed a name check. Once the name check was complete, Officer Brink requested ██████████ exit the vehicle. ██████████ responded by saying he was going to call his attorney and rolling up all the dark tinted windows to the vehicle. After several minutes, ██████████ rolled the window down and told the person on the phone he was going to turn off his vehicle, exit, and allow the officers to search. Once ██████████ completed his phone call, he exited the vehicle and was escorted to the rear. Once at the rear of the vehicle, Officer Brink attempted to explain to ██████████ why he was asked to exit the vehicle; however, ██████████ was not interested in the explanation and told Officer Brink he could search his person and the vehicle. Officer Brink then searched ██████████ and his vehicle. Once the search was complete, ██████████ was issued a traffic citation, Investigatory Stop Receipt and released.

During his statement to COPA, ██████████ alleged that officers stopped him and searched his vehicle without justification and failed to provide their Star numbers when requested. During our investigation, COPA determined that ██████████ consented to a search of his person and vehicle numerous times, and that Officer Brink and others made their Star numbers known to ██████████ – thus COPA did not serve allegations related to this conduct. COPA determined that Officer Brink’s traffic stop of ██████████ was **exonerated**.

II. INVOLVED PARTIES

Involved Officer #1:	Officer Kenneth Brink / Star #17865 / Employee ID# ██████████ / DOA: July 15, 2013 / Unit: 006/312 / DOB: ██████████ 1981 / Male / White.
Involved Individual #1:	██████████ / DOB: ██████████, 1988 / Male / Black.

**III. ALLEGATIONS<sup>1</sup>**

Officer	Allegation	Finding / Recommendation
Officer Kenneth Brink	1. Stopping Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.

**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 6: prohibits disobedience of any order or directive, whether written or oral.

Special Orders

1. S04-13-19 – Investigatory Stop System – effective July 10, 2017 to current.

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

**a. Interviews**

In a **statement to COPA<sup>3</sup>** on July 3, 2018, **Mr. [REDACTED]** stated he offered to drive his nephew and friends to a movie theater, and as soon as he pulled his vehicle away from the curb, he was stopped by several officers (Officers Brink, Moylan, and Pentek). Officer Brink ordered [REDACTED] to exit the vehicle, but [REDACTED] refused and demanded to speak to his attorney. [REDACTED] contacted his attorney who told him to exit the vehicle and comply with the officers because he was out on bond for a gun offense.<sup>4</sup> Once [REDACTED] exited the vehicle Officer Brink took [REDACTED] phone from his hand and placed it on the hood of the vehicle. Officer Brink placed him in handcuffs. Once [REDACTED] was handcuffed, the officers searched his vehicle but did not search the trunk because it is difficult to open. Once the search was completed, Officer Brink issued [REDACTED] citations, one of which was failing to use his signal as he pulled away from the curb.<sup>5</sup>

[REDACTED] also explained that as the officers were searching his vehicle, he requested their names and stars number, but was never provided the requested information. [REDACTED] added that he has video footage of the encounter. Finally, [REDACTED] believes the Department members are harassing him by regularly stopping him, at least weekly, and issuing him traffic citations.<sup>6</sup> At no time during his statement does [REDACTED] claim to have used his signal as he pulled away from the curb, rather he

<sup>1</sup> COPA determined that while, Officers Moylan and Pentek were present during this interaction, Officer Brink was driving the Department vehicle and was the enforcement officer; therefore, COPA determined that Officers Moylan’s or Pentek’s mere presence did not warrant allegations.

<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> Att. 6.

<sup>4</sup> [REDACTED] is currently being prosecuted under 18CR0550201 for being an armed habitual criminal, three counts of felon in possession of a firearm, and not possessing a FOID card all related to an arrest that occurred on March 23, 2018 (CB 19619848).

<sup>5</sup> [REDACTED] did not deny the action cited in his citation but did explain he believes the officers could not have seen him pull away from the curb because there was another vehicle blocking their view.

<sup>6</sup> A review of the Clerk of Court Records revealed that [REDACTED] was issued two traffic citations in 2018. Att. 18, pg. 2.

asserts that the officers were unable to see his vehicle pull away from the curb because there was another vehicle obscuring their view.<sup>7</sup>

In a **statement to COPA**<sup>8</sup> on December 17, 2019, **Officer Kenneth Brink** stated that his partners (Officers Pentek and Moylan) and he were patrolling the 7700 block of S. Sangamon in response to an increase in gun violence. While in the area they observed several individuals outside of [REDACTED]. Once the individuals looked in the officers direction, they fled on foot in different directions while holding their waistbands.<sup>9</sup> Three of the males entered a parked black vehicle. Once in the vehicle it pulled from the parallel parking space without signaling. Officer Brink stopped the vehicle and contacted the driver ([REDACTED]). Officer Brink explained to [REDACTED] the basis for the stop and requested his driver's license and proof of insurance. While [REDACTED] provided the records, the front and rear passenger windows on the vehicle were opening and closing. Officer Brink requested [REDACTED] and the other occupants to exit the vehicle. [REDACTED] initially refused and demanded to call his attorney. Officer Brink allowed Lowe to contact his attorney. After the phone call, [REDACTED] exited the vehicle. While standing at the rear of the vehicle, [REDACTED] stated, without prompting, that Officer Brink could search him and his car. Based on [REDACTED] statement Officer Brink completed a search of the vehicle and [REDACTED] but did not locate any contraband. Once the search was completed, Officer Brink completed a traffic citation and provided [REDACTED] with an Investigatory Stop Receipt.

Officer Brink was clear that he had an unobstructed view of [REDACTED] vehicle as it pulled away from the curb and that [REDACTED] failed to signal as required by law. Additionally, Officer Brink explained that the tint on the windows was extremely dark and prevented an officer from seeing inside the passenger compartment, but he was unsure if the dark tint on the windows was a violation of law.

## **b. Digital Evidence**

**Body Worn Camera**<sup>10</sup> (BWC) footage depicts the officers approaching a stopped black Volvo being driven by [REDACTED]. Officer Brink explains to [REDACTED] he was stopped for failing to use his turn signal as he pulled away from the curb, and request [REDACTED] driver's license, registration, and proof of insurance. Simultaneously, other officers request that the extremely dark tinted windows be rolled down. Initially, the windows are rolled down but before [REDACTED] provides his driver's license the windows are rolled back up. The officers again request the windows to be rolled down. The windows are partially rolled down. Officer Brink obtains [REDACTED] driver's license and conducts a name check. After completing the name check Officer Brink returns to the vehicle and request identification from the rear driver's side passenger while explaining the no one had on a seat belt. [REDACTED] informs Officer Brink that his passengers had just graduated from school and he was taking them to the movies. Officer Brink informs [REDACTED] that the officers observed the passengers run to the vehicle after observing the officers and requests [REDACTED] to exit the vehicle. Simultaneously, [REDACTED] begins to roll up the driver's window as the rear driver's side window is rolled up. [REDACTED]

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<sup>7</sup> Based on a review of all the evidence, COPA determined that the only the basis for the traffic stop warranted an allegation.

<sup>8</sup> Att. 25.

<sup>9</sup> Officer Brink explained that this is an indication that a person is possibly armed.

<sup>10</sup> Att. 18.

asks why he is being asked to step out of the vehicle. Officer Brink explains to ██████ that during a traffic stop an officer can request the driver exit the vehicle. ██████ refuses and tells Officer Brink that he is calling his attorney and rolls up the windows on the car.

While the windows are rolled up Officer Moylan asks Officer Brink if the driver is ██████. Officer Brink confirms that ██████ is the driver and Officer Moylan explains ██████ has a habit of acting in a similar manner and is known carry firearms. Additionally, while waiting for ██████ to complete his phone call with an attorney, Officer Brink informs Officer Moylan that since the passengers ran to the vehicle while holding their sides, he believes there is possibly a firearm in the vehicle.

Once ██████ rolls down the driver's window, he begins to argue with the officer's request to exit the vehicle. While refusing to comply, ██████ speaks to a person on the phone about the officers demanding he exit the vehicle and the officers harassing him. ██████ tell the caller that he will comply with their instructions to turn off the vehicle, exit, allow them to search the vehicle.<sup>11</sup>

██████ exits and is asked to step to rear of the vehicle. As ██████ is standing at the rear of the vehicle he states, without prompting or request, "search, just search, search my car."<sup>12</sup> As ██████ is handcuffed, he again, without prompting or request, says "just search me and search my car,"<sup>13</sup> and "search, search my car."<sup>14</sup> Once ██████ is handcuffed, Officer Brink searches the vehicle. During the search of the vehicle, Officer Brink tells Officer Moylan that ██████ gave permission to search the car, which is why the car was being searched. Additionally, ██████ states, without prompting or request, "you can pop the trunk and everything and the hood if you want to."<sup>15</sup>

Once the search is completed, ██████ asks for Officer Brink's star number. Officer Brink responds by telling ██████ the information would be listed on the traffic citation, ██████ responds with "that's okay, cool."<sup>16</sup>

After ██████ learns he is receiving a traffic citation he is uncuffed and allowed to return to the vehicle while Officer Brink completes the traffic citation. Once the traffic citation is complete, Officer Brink requested ██████ to sign the citation, which he does. Officer Brink attempts to explain to ██████ why he was requested to exit the vehicle; however, ██████ was clear he did not want to speak with Officer Brink.

The BWC footage is clear that ██████ vehicle is directly in front of the Department vehicle and that the roadway is so narrow no other vehicle could pass either stopped vehicle.

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<sup>11</sup> *Id.*, Moylan – AXON\_Body\_2\_Video\_2018-06-19\_1740 at 07:15.

<sup>12</sup> *Id.*, Brink – AXOM\_Body\_2\_Video\_2018-06-19\_1739 at 08:20.

<sup>13</sup> *Id.*, Moylan – AXON\_Body\_2\_Video\_2018-06-19\_1740 at 08:15.

<sup>14</sup> *Id.*, Brink – AXON\_Body\_2\_Video\_2018-06-19\_1739 at 08:35.

<sup>15</sup> *Id.*, Gilmore – AXON\_Body\_2\_Video\_2018-06-19\_1747 at 01:50.

<sup>16</sup> *Id.*, Brink – AXON\_Body\_2\_Video\_2018-06-19\_1739 at 12:44.

### c. Documentary Evidence

██████████ **Investigatory Stop Report**<sup>17</sup> (ISR) details that officers were patrolling the 7700 block of S. Sangamon based on prior reports of armed gang members being in the area of ██████████<sup>18</sup> While on patrol the officers observed several males in front of ██████████. Once the males noticed the officers, the males fled on foot while holding their sides, which caused the officers to believe they were possibly armed. One of the males ran to a parked vehicle, entered the vehicle, and the vehicle pulled away from the curb without signaling. The officers conducted a traffic stop and contacted the driver (██████████). Upon contacting ██████████ the officers recognized him from roll call meeting in which officers were advised to use caution with ██████████ because he was possibly armed in response to his brother's recent homicide and his history of firearm arrests. The officers conducted a name check and discovered that ██████████ was to be considered armed and dangerous. During the traffic stop ██████████ kept rolling up the dark tinted windows on the vehicle. Since ██████████ continued to roll up the windows, the officers requested that he exit the vehicle because his actions gave officers concerns that he was possibly armed or there was a weapon in the vehicle. Initially, ██████████ refused to exit, but eventually did. Once out of the vehicle ██████████ stated "search my car you will find nothing. Search my car" and "search my trunk too." Based on ██████████ statements the officers searched his vehicle. This search did not result in the recovery of any contraband.

The ISR details that ██████████ was subjected to a protective pat down and a search of his vehicle.<sup>19</sup> ██████████ was provided an Investigatory Stop Receipt.

██████████ **Traffic Citation**<sup>20</sup> details that he was driving a black Volvo when Officer Brink observed ██████████ fail to properly signal.

## 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.

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<sup>17</sup> Att. 19.

<sup>18</sup> This address is ██████████ residence.

<sup>19</sup> During his statement, Officer Brink explained that in addition to the listed concerns that ██████████ maybe armed and dangerous, ██████████ was patted down based on his consent. Officer Brink added that it appeared he incorrectly selected the "no" box when detailing the consent to search ██████████

<sup>20</sup> Att. 7.

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 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

COPA finds that the allegation is **exonerated**. Department members are permitted to conduct a traffic stop when there is articulable reasonable suspicion that a violation of law has occurred.<sup>21</sup> Additionally, Illinois law and the Municipal Code of Chicago (MCC) require drivers to give a signal when starting from a parallel parked position.<sup>22</sup> Further, Illinois law and MCC prohibit window tinting on the front driver's or passenger windows.<sup>23</sup>

While there is no direct independent evidence to corroborate or refute ██████ allegation, COPA finds that Officer Brink's account of the events leading to the traffic stop are more credible than ██████ and therefore determines that there is clear and convincing evidence that ██████ failed to signal as he pulled away from the curb.

COPA's credibility determination is based on several factors. First, during his statement, ██████ never denies his failure to signal while pulling away from the curb but rather he asserts that Officer Brink had no ability to observe whether a signal was used. Second, ██████ was insistent to COPA that officers searched his vehicle without permission. However; this assertion is completely contradicted by the BWC footage; which depicts ██████ on several occasions, consenting to a search of his person and vehicle. Third, ██████ was insistent to COPA that officers failed to provide their Star numbers upon request. However; this assertion is also contradicted by the BWC footage; which clearly depicts Officer Brink informing ██████ that his Star number would be listed on the traffic citation, and ██████ responding with: "that's okay, cool." These three specific instances in which ██████ statement clearly differs from actual events, combined with the facts that Officer Brink was consistently clear; a seen on the BWC footage, his issuance of the traffic citation, and during his statement; that ██████ failed to signal as he pulled away from the curb causes COPA finds that ██████ credibility is questionable at best.

## VIII. CONCLUSION

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<sup>21</sup> S04-13-09 II(A).

<sup>22</sup> 625 ILCS 5/11-804(d); Municipal Code of Chicago – 9-40-200(c).

<sup>23</sup> 625 ILCS 5/12-503(a-5); Municipal Code of Chicago – 9-76-220(a).

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

Officer	Allegation	Finding / Recommendation
Officer Kenneth Brink	1. Stopping Mr. [REDACTED] without justification, in violation of Rule 6.	Exonerated.

A [REDACTED]

9/29/20

James Murphy-Aguilu  
*Deputy Chief Administrator – Chief Investigator*

Date

**Appendix A**

Assigned Investigative Staff

<b>Squad#:</b>	2
<b>Investigator:</b>	[REDACTED]
<b>Supervising Investigator:</b>	[REDACTED]
<b>Deputy Chief Administrator:</b>	James Murphy-Aguilu