

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	Feb. 19, 2019
Time of Incident:	10:07 pm
Location of Incident:	████████████████████
Date of COPA Notification:	Feb. 20, 2019
Time of COPA Notification:	7:22 pm

This complaint details an incident that occurred on Feb. 19, 2019 at approximately 10:07 pm near ██████████. The Complainant, ██████████ was approached by tactical officers while parked in his vehicle outside the above address. The officers ordered ██████████ and has passenger out of his car and subjected ██████████ to handcuffing and a pat-down. The interior of ██████████ car was searched yielding no illegal weapons or drugs, and he and his passenger were released.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Fennell #15220, Emp.# ██████████, Date of Appt.
Involved Officer #2:	Luke Opoka, #18952, Emp.# ██████████, Date of Appt. Unit of Assignment, DOB, gender, race]
Involved Individual #1:	██████████ DOB ██████████ 1975 M/B
Involved Individual #2:	██████████ DOB ██████████ 1991, F/B

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Fennell	1. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of ██████████, you detained ██████████ without justification.	Exonerated
	2. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of ██████████, you failed to complete an Investigatory	Sustained

	<p>Stop Report ('ISR') documenting the contact you had with the Complainant.</p> <p>3. It is alleged that on Feb. 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to issue an ISR receipt to the Complainant documenting the incidence of the investigatory stop.</p>	<p>Sustained</p>
<p>Officer Opoka</p>	<p>1. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you detained [REDACTED] without justification.</p> <p>2. It is alleged that on Feb. 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to complete an Investigatory Stop Report ('ISR') documenting the contact you had with the Complainant.</p> <p>3. It is alleged that on Feb. 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to issue an ISR receipt to the Complainant documenting the incidence of the investigatory stop.</p> <p>4. It is alleged that on Feb. 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you used profane language directed towards the Complainant during an investigatory stop.</p>	<p>Exonerated</p> <p>Sustained</p> <p>Sustained</p> <p>Not Sustained</p>

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 8—Disrespect to or maltreatment of any person, while on or off duty
3. Rule 9—Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Special Orders

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

Federal Laws

1. The Fourth Amendment to the United States Constitution

State Laws

1. Illinois Officer-Worn Body Camera Act 50 ILCS 706/10
2. Uniform Peace Officers’ Disciplinary Act 50 ILCS 725
3. Traffic and Pedestrian Stop Statistical Study 625 ILCS 5/11-212

V. INVESTIGATION

a. Interviews

Interview of Complainant [REDACTED]

[REDACTED] gave his statement to COPA on March 5, 2019. In it, [REDACTED] was seated in his vehicle with [REDACTED] while parked in front of [REDACTED] mother's residence at [REDACTED]. He noted that the officers drove by in their unmarked SUV ten minutes prior to returning to [REDACTED] car. They came from the north, onto [REDACTED], which is a one-way street facing south. [REDACTED] said the officers were aggressive and that their removing him from the car and handcuffing him was unnecessary. The officers went beyond a pat-down search and actually went into his pockets. He believes they obtained his identification from his pocket, because he does not recall giving the officers the card himself. The officers searched the interior area of his car and the trunk area. When [REDACTED] mother came outside to inquire about what was going on, the officers used profanity towards her, telling her 'Back the fuck up; we're doing a narcotics investigation.'². [REDACTED] did not dispute the legality of the stop, but felt the officers' treatment was overly aggressive and unnecessary in comparison to other encounters he had with the police. He did not believe he should have been handcuffed or removed from the car, and the [REDACTED] the officers used towards him and Ms. [REDACTED] mother was not necessary.

Interview of Officer Thomas Fennell³

Officer Fennell gave his statement to COPA on Feb. 7, 2020. Officer Fennell was working with his usual partner, Officer Opoka, working the fourth watch in an unmarked Department SUV. Both he and Officer Opoka were in plainclothes, and Officer Fennell does not recall if they were working a specific mission or detail.

As they passed by [REDACTED] vehicle, Officer Fennell detecting the odor of cannabis coming from a vehicle. Officer Fennell exited his vehicle and approached the car, where he observed a male occupant ([REDACTED] in the driver's seat and a female occupant ([REDACTED] in the passenger seat. Officer Fennell asked [REDACTED] to step outside of the vehicle, as he and Officer Opoka were conducting a narcotics investigation. Officer Fennell placed the [REDACTED] in handcuffs, for the safety of the officers and [REDACTED] own safety, for the duration of the encounter. Officer Fennell performed a pat-down search of [REDACTED] based on [REDACTED] jacket being "bulky and could easily conceal a weapon."⁴

Officer Fennell led [REDACTED] to the front of their SUV and then performed a name-check on [REDACTED] Officer Opoka searched [REDACTED] vehicle, which yielded no illegal items or firearms. Following the investigation, [REDACTED] was released. Officer Fennell did not fill out and issue an investigatory stop receipt, nor did he fill out an Investigatory Stop Report ('ISR'). He did not recall if Officer Opoka filled out an ISR or ISR receipt. Immediately after the encounter with

¹ Att.#1

² Att.#1 at the 12:20 mark

³ Att.#5

⁴ Att.#6 at the 12:49 mark

██████ he and Officer Opoka responded to a call for assistance involving a vehicle that was possibly trapped in a waterway in the vicinity ██████ and ██████. Officer Fennell believed that this may have been why the ISR was not completed.

Officer Fennell was asked if it were possible to fill out ISRs at a later time, and he indicated that was possible. He then mentioned that he had attempted to create an ISR documenting the contact with ██████ but could not do so due to the information being lost when the PDT logged off.

Interview of Officer Luke Opoka⁵

Officer Opoka gave his statement to COPA on Feb. 7, 2020. Officer Opoka was working with his partner, Officer Fennell, on fourth watch in their usual tactical capacity. They were using an unmarked Department SUV that was not equipped with an In-Car Camera ('ICC') system, and were dressed in civilian clothes. They approached the ██████ vehicle after smelling the scent of cannabis emanating from inside the car while they were seated inside their squad car. Officer Opoka could not recall if the windows were up or down on their SUV when they approached ██████ car, and that to the best of his knowledge, he and Officer Fennell smelled the cannabis prior to reaching ██████ vehicle.

Officer Opoka described the contact as an investigatory stop,⁶ and that the procedure for documenting this type of contact is to fill out the Investigatory Stop Report. Officer Opoka did not believe that he filled out an ISR for this stop,⁷ and he did not recall if his partner had. Officer Opoka was then asked if he recalled issuing an investigatory stop receipt to ██████ and he replied "I do not recall if I issued him a receipt, but I know that we were low; we didn't have any at the station, so even if I was able to give him a receipt, I wouldn't have one to give to him."⁸ Officer Opoka stated that on some occasions, due to volume of calls or frequency of activity, officers are not always able to complete ISRs in the field. He then remembered that immediately after concluding the contact with ██████ he and his partner responded to a "high priority call involving an outside agency that came into our district where a vehicle was, it was relayed to us via OEMC, there was a vehicle potentially in the water with multiple people dispersed in the water. They were calling multiple units to assist with."⁹ Officer Opoka responded in the affirmative when asked if he had filled out an ISR before and the process for submitting it.

Officer Opoka then discussed the interaction he had with ██████ as her mother approached the scene. Officer Opoka was asked if he recalled the conversation between himself and ██████ to which he indicated he did. Officer Opoka was then asked if he used any profanity or vulgarity in the conversation. Officer Opoka denied using profanity in talking to ██████. As the footage of his BWC was about to be played, Officer Opoka stated, "I'm not saying that there wasn't profane ██████ used, it was directed at neither of them, but it was in

⁵ Att.#7

⁶ Att.#7 at the 13:02 mark

⁷ Att.#7 at the 14:06 mark

⁸ Att.#7 at the 14:29 mark

⁹ Att.#7 at the 16:30 mark

relation to the male subject.”¹⁰ Officer Opoka described the stop as escalating in tension and that [REDACTED] was becoming disrespectful. Officer Opoka,, in an attempt to keep the situation from escalating, did not direct his [REDACTED] at [REDACTED] but to the situation itself, and he did not believe [REDACTED] was offended by what he said. Officer Opoka said “it was an attempt to maintain this positive encounter and keep it where it was at from escalating.”¹¹

b. Digital Evidence

Body Worn Camera footage from Officer Fennell¹²

Officer Fennell’s BWC footage begins while he is still inside the Department SUV, steering the vehicle to a stop. There are no blue lights visible as he places the vehicle in park and exits. Officer Fennell crosses the street towards [REDACTED] car and approaches the driver’s side where [REDACTED] is seated. [REDACTED] window appears to be down, and the door closed. Officer Fennell pulls the door open and then activates the record button his camera. [REDACTED] can be seen wearing blue and yellow work clothes, and [REDACTED] is visible in the passenger seat wearing red sweatpants and a gray hooded sweatshirt. It cannot be determined if the vehicle is on, but the instrument panel is lit up and the headlights were on when Officer Fennell approaches with an illuminated flashlight in his hand. The audio activates and Officer Fennell is heard asking if [REDACTED] and [REDACTED] have been smoking. Officer Fennell is heard saying, “You know they say that’s the gateway drug,”¹³ to which [REDACTED] answers “so they say.”¹⁴ Officer Fennell then orders [REDACTED] out of the car while simultaneously displaying his handcuffs. Officer Fennell reaches into [REDACTED] car and places one cuff on his left hand. [REDACTED] questions why he was being handcuffed as he stepped out of the car. Officer Fennell tells [REDACTED] that he is conducting a narcotics investigation. He cuffs [REDACTED] other hand and positions him against the car while performing a pat-down search.

Officer Fennell then walks [REDACTED] towards their squad car, continuing to pat-down [REDACTED] Officer Fennell takes an object, that appears to be [REDACTED] wallet, out of the pocket of his uniform. [REDACTED] is seen standing next to [REDACTED] in front of the officers’ SUV. She is not handcuffed, and Officer Fennell is heard asking if she has any identification on her. [REDACTED] does not have her identification, so she gives her name, which Officer Fennell writes down after which, he enters the squad car to run her name. While he is doing this, a conversation between his partner and [REDACTED] and [REDACTED] occurs that Officer Fennell’s camera doesn’t entirely capture. When Officer Fennell exits the Department SUV, Officer Opoka is heard saying “Because it’s in your system. How about we do a DUI? Is that cool? You wanna do that? Well I suggest you shut your fucking mouth. Yeah, now you got nothing to say, huh?”¹⁵ Officer Opoka then drops [REDACTED] keys back inside [REDACTED] car, telling [REDACTED] she is free to go, while uncuffing [REDACTED] [REDACTED] walks towards her mother, who is now visible standing outside of their residence.

¹⁰ Att.#7 at the 18:59 mark

¹¹ Att.#7 at the 21:15 mark

¹² Att.#10

¹³ Att.#5 at the 11:08:41 mark

¹⁴ Att.#5 at the 11:08:44 mark

¹⁵ Att.#5 at the 11:13:05 mark

Body Worn Camera footage from Officer Opoka¹⁶

Officer Opoka's footage begins with him already outside the Department vehicle speaking to ██████ who is seated on the passenger side of ██████ vehicle. An illuminated flashlight is visible in Officer Opoka's hand as he instructs ██████ to exit the vehicle, commenting that she appears to be "out of it."¹⁷ ██████ exits the vehicle and follows Officer Opoka to the front of his Department SUV. Officer Opoka asks if ██████ has identification on her, to which she indicates she does not and that she had just came out the house. ██████ also indicated that her parents are watching from the window.

Officer Opoka returns to ██████ car and ██████ can be seen standing in handcuffs talking Officer Fennell. Officer Opoka asks ██████ if his employer allows him to smoke weed while being employed by the airline, to which ██████ stated they do not test him in his position. Officer Opoka then begins searching the passenger area of ██████ car, while Officer Fennell speaks ██████

Officer Opoka then searches the driver's side of the vehicle, where ██████ was seated, and after opening the rear passenger door, he searches a bookbag on the backseat. Finding nothing, he returns to the driver's seat and retrieves the car keys from the ignition. Officer Opoka then approaches the trunk of ██████ car and presses a button on the key fob that makes ██████ taillights flash. At that exact moment, a woman's voice is heard saying "What's going on?"¹⁸ Officer Opoka takes his attention away from the trunk to face the approaching individual who appears to be a middle-aged, African American woman wearing a coat over sleepwear. Officer Opoka is heard replying "nothing,"¹⁹ in response to the woman's question. ██████ and/or ██████ then say something to the woman, leading Officer Opoka to say, "Ok, do you guys really wanna play that game?"²⁰ Officer Opoka tells the woman to stay back and remain on the sidewalk, to which she replies "this is my daughter."²¹ Officer Opoka says he understands and that ██████ and ██████ were just smoking weed in the car, and that he and Officer Fennell were just making sure nothing more serious was going on, and then they would be free to go. ██████ mother steps back a few steps but does not return to the sidewalk.

At this point, ██████ is continuing to talk to ██████ about the actions of the officers and states "They're harassing us for some weed that's not even there"²². Officer Opoka then interjects, "Right, because it's in your system. How about we do a DUI? Is that cool? You wanna do that? Well I suggest you shut your fucking mouth."²³ Officer Opoka then approaches ██████ and ██████ and says, "Yeah, now you got nothing to say, huh?"²⁴ Officer Fennell then approaches and flips ██████ driver's license at him with the license landing on the hood of the

¹⁶ Att.#11

¹⁷ Att.#11 at the

¹⁸ Att.#11 at the 11:12:10 mark

¹⁹ Att.#11 at the 11:12:14 mark

²⁰ Att.#11 at the 11:12:18 mark

²¹ Att.#11 at the 11:12:21 mark

²² Att.#11 at the 11:12:32 mark

²³ Att.#11 at the 11:12:37 mark

²⁴ Att.#11 at the 11:12:47 mark

officers' SUV. Officer Opoka then drops [REDACTED] keys onto the floor of [REDACTED] car before informing [REDACTED] she was free to go. He then uncuffs [REDACTED] and [REDACTED] returns to his vehicle.

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 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

After reviewing the statements of the involved parties and the officer's BWC footage, COPA is able to determine the following facts: The officers conducted an investigatory stop of a vehicle that was stationary on a winter night. The basis for the stop was allegedly that the officers could smell marijuana smoke emanating from the Mr. [REDACTED] car from their own squad car, as they approached the wrong-way down a one-way street. No marijuana or drug paraphernalia was ever seen or recovered by the officers, yet they required [REDACTED] to exit his vehicle and submit to both handcuffing and a pat-down. [REDACTED] was not patted down or searched by the officers during the stop. The cabin area of [REDACTED] automobile was searched, and Officer Opoka was in the process of opening the trunk to [REDACTED] car when he was interrupted by [REDACTED] mother inquiring about what was going on.

In assessing the allegations of misconduct pending against the officers, it is easiest to separate the allegations into three separate areas of review. First, was there reasonable articulable suspicion for the stop and detention? Second, was the stop an investigatory stop, and therefore subject to the documentary requirements of Special Order S04-13-09? And third, was Officer Opoka's use of profane [REDACTED] outside of Department policy?

Was there reasonable articulable suspicion for the investigatory stop?

[REDACTED] car was stationary and not moving when the officers approached it. This is supported by the fact that neither of the officers articulated a traffic-based offense that [REDACTED] was alleged to have committed during the stop, no traffic citation was issued or no driver's information card prepared, and the officers approached [REDACTED] vehicle from northbound on the one-way street. Additionally, [REDACTED] stated she lived at [REDACTED] where the stop occurred. There was no probable cause based on a committed traffic offense, which means there must be reasonable articulable suspicion to justify the police contact.

For the officers to have reasonable articulable suspicion, they would have to suspect that [REDACTED] and [REDACTED] had engaged in a criminal act or were about to engage in a criminal act in order to detain them. While approaching [REDACTED] vehicle from the north on a one-way street facing southbound, both Officer Opoka and Officer Fennell attested to being able to smell marijuana emanating from [REDACTED] vehicle. COPA has no independent evidence to clearly and convincingly refute the officer's claim that they could smell marijuana smoke coming from [REDACTED] vehicle, though [REDACTED] indicated the windows on his vehicle were up prior to the contact with the officers. Neither of the Accused officers' BWC footage shows the position of [REDACTED] car windows prior to the activation of the BWC cameras. [REDACTED] does not deny that he and [REDACTED] had used marijuana, so the officers statements, that they smelled marijuana, cannot be impeached. Investigating the smell of suspected cannabis for its source is a legitimate basis for initiating the detention. Therefore, COPA makes a finding of EXONERATED for Allegation #1 for both officers.

Did the Accused Officer's fail to complete an Investigatory Stop Report (ISR) and issue an Investigatory Stop Receipt?

As the evidence supports the finding that the officers did have reasonable articulable suspicion to conduct an investigatory stop, S04-13-09 (VIII) requires that officers conducting such a stop need to prepare an Investigatory Stop Report (ISR) if no arrest is made or no citations are issued. Both Officer Opoka and Officer Fennell admit that they did not prepare an ISR for the stop of [REDACTED]. Therefore, they failed to comply with the Order. Additionally, both officers admit they did not issue an Investigatory Stop Receipt to Mr. [REDACTED]. Both officers stated that immediately after the stop of Mr. [REDACTED] they were called to a "high priority" call and did not issue a Receipt and the BWC's also corroborate that no Receipt was given. Therefore, COPA makes a finding of SUSTAINED for Allegations #2 and #3 for both officers.

Was Officer Opoka's use of profane language outside of Department policy?

Based on both Accused officers BWC footage, Officer Opoka is clearly heard telling [REDACTED] and [REDACTED] that they should "shut the fuck up"²⁵ and if they did not, Officer Opoka would escalate the situation by arresting [REDACTED] for suspicion of DUI. While his [REDACTED] is profane, it is not directed at [REDACTED] or [REDACTED] directly. The use of profanity, in and of itself, is not a violation of the Rules or recommended. However, the use of it, if it is derogatory and directed at a specific person, may be a violation. That does not occur here. Therefore, COPA makes a finding of NOT SUSTAINED as to Allegation #4 for Officer Opoka.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Thomas Fennell****i. Complimentary and Disciplinary History****1. No Disciplinary History****ii. Recommended Penalty, by Allegation****1. Allegation No. 2 and 3, Officer Fennell admits not completing an ISR or ISR Receipt****b. Officer Opoka****i. Complimentary and Disciplinary History****1. No Disciplinary History****ii. Recommended Penalty, by Allegation****1. Allegation No. 2 and 3, Officer Opoka admits not completing an ISR or ISR Receipt****IX. CONCLUSION**

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

²⁵ Att.#11 at the 11:12:37 mark

Officer	Allegation	Finding / Recommendation
Officer Fennell	<p>1. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you detained [REDACTED] without justification.</p>	Exonerated
	<p>2. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to complete an Investigatory Stop Report ('ISR') documenting the contact you had with the Complainant.</p>	Sustained/Reprimand
	<p>3. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to issue an ISR receipt to the Complainant documenting the incidence of the investigatory stop.</p>	Sustained/Reprimand
Officer Opoka	<p>1. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you detained [REDACTED] without justification.</p>	Exonerated
	<p>2. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to complete an Investigatory Stop Report ('ISR') documenting the contact you had with the Complainant.</p>	Sustained/Reprimand
	<p>3. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the vicinity of [REDACTED], you failed to issue an ISR receipt to the Complainant documenting the incidence of the investigatory stop.</p>	Sustained/Reprimand
	<p>4. It is alleged that on February 19, 2019 at approximately 10:07 pm, at or near the</p>	Not Sustained

	vicinity of [REDACTED], you used profane language directed towards the Complainant during an investigatory stop.	
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Approved:

[REDACTED]

8-25-2020

Angela Hearts-Glass
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Michael Fleury
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass