

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	January 25, 2018
Time of Incident:	At approximately 1:30 p.m.
Location of Incident:	At or near 3750 W. Huron St., Chicago, IL 60624
Date of COPA Notification:	January 25, 2018
Time of COPA Notification:	2:20 p.m.

On January 25, 2018, at approximately 1:30 p.m., Officer Matthew Patruno (“Officer Patruno”) and his partner Officer Joseph Cunningham (“Officer Cunningham”) conducted a traffic stop/investigatory stop of a black or dark blue Volvo SUV at or near 3750 W. Huron St. in Chicago. [REDACTED] ([REDACTED]) was driving the car, and [REDACTED] ([REDACTED]) was in the front passenger seat.

After stopping the vehicle, the officers asked [REDACTED] and [REDACTED] to exit. After exiting the vehicle, [REDACTED] and [REDACTED] were patted down and placed in handcuffs behind [REDACTED] car. They waited behind the car until the officers finished searching the vehicle and checking their names, after which, they were permitted to leave.

After investigating the allegations against Officer Patruno, The Civilian Office of Police Accountability (“COPA”) has determined that there is insufficient evidence to sustain a finding as to Allegation 1 (Improper stop of vehicle), but there is sufficient evidence to sustain findings for Allegations 2 (Detained for an unreasonable amount of time), Allegation 3 (Improper search of vehicle), and Allegation 4 (Failed to have his Body Worn Camera (“BWC”) activated and recording during his entire encounter).

Similarly, after investigating the allegations against Officer Cunningham, COPA has determined that there is insufficient evidence to sustain a finding as to Allegation 1 (Improper stop of vehicle), but there is sufficient evidence to sustain findings for Allegations 2 (Detained for an unreasonable amount of time, Allegation 3 (Threatened to issue tickets to [REDACTED] and [REDACTED] if they did not consent to search vehicle in which they were riding and/or cooperate with the officers), and Allegation 4 (Failed to activate his Body Worn Camera (“BWC”) during his encounter with [REDACTED] and [REDACTED]

II. INVOLVED PARTIES

Accused Officer #1:	Officer Matthew Patruno, Star #11814, Employee # [REDACTED] Unit of Assignment: 11 th District, Date of Appointment: November 24, 2014, Rank: Police Officer, DOB: [REDACTED], 1988, Male, Caucasian
Accused Officer #2:	Officer Joseph Cunningham, Star #9871, Employee # [REDACTED] Unit of Assignment: 11 th District, Date of Appointment: February 18, 2014, DOB: [REDACTED], 1985, Male, Caucasian
Officer Mark Ritchey – Witness	Officer Mark Ritchey, Star #14979, Employee # [REDACTED] Unit of Assignment: 25 th District, Date of Appointment: December 14, 2012, DOB: [REDACTED], 1984, Male, Caucasian
Complainant:	[REDACTED] DOB [REDACTED], 1987, Male African-American
Civilian Witness	[REDACTED] DOB [REDACTED], 1988, Male African-American

III. ALLEGATIONS¹

Officer	Allegation	Finding/ Recommendation
Officer Matthew Patruno	It is alleged by the complainants that on or about January 25, 2018, at approximately 2:30 p.m., at or near 3750 W. Huron St., Chicago, IL 60624, Officer Matthew Patruno, star #11814 committed misconduct through the following acts or omissions:	
	1. Detained [REDACTED] and [REDACTED] by stopping the vehicle they occupied;	Not Sustained
	2. Detained [REDACTED] and [REDACTED] for an unreasonable amount of time;	Sustained / 5-Day Suspension
	3. Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification; and	Sustained / 5-Day Suspension
	4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during his entire encounter with [REDACTED] and [REDACTED]	Sustained / 5-Day Suspension
Officer Joseph Cunningham	It is alleged by the complainants that on or about January 25, 2018, at approximately 2:30 p.m., at or near 3750 W. Huron St., Chicago, IL 60624, Officer Joseph Cunningham,	

¹ Corrected allegations were served on both officers.

	star #9871, committed misconduct through the following acts or omissions:	
	1. Detained [REDACTED] and [REDACTED] by stopping the vehicle they occupied	Not Sustained
	2. Detained [REDACTED] and [REDACTED] for an unreasonable amount of time	Sustained / 5-Day Suspension
	3. Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification; and	Sustained / 5-Day Suspension
	4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during his entire encounter with [REDACTED] and [REDACTED]	Sustained / 5-Day Suspension

IV. APPLICABLE RULES AND LAWS

Rules

1. Fourth Amendment to the Constitution of the United States
2. Fifth Amendment to the Constitution of the United States
3. Fourteenth Amendment to the Constitution of the United States

Chicago Police Department Rules and Regulations

General Orders

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

Special Orders

1. S04-13-09, Investigatory Stop System, Effective Date: June 17, 2017
 2. S03-14, Body Worn Cameras, Effective Date: October 17, 2017
-

V. INVESTIGATION

a. Interviews

██████████²

COPA interviewed ██████████ on January 26, 2018, about the incident that occurred on January 25, 2018. ██████████ stated that while he and ██████████ (██████████) were driving around at or near 3750 W. Huron St., Chicago, they were stopped by Officers Patruno and Cunningham. ██████████ was driving in his car, and ██████████ was in the front passenger seat.

██████████ said that when the police pulled him over, Officer Patruno asked ██████████ for his license and insurance card, and then he reached into the car, grabbed ██████████ arm, and pulled him out of the car. ██████████ said that he began recording the incident from the beginning of the stop because the officers were yelling, telling him to lower his windows, and Officer Patruno had his hand on his “heat.”³

After they were removed from the vehicle, ██████████ and ██████████ were patted down, handcuffed, and then positioned at the rear of ██████████ car while the officers searched the vehicle. After searching the vehicle, the officers then ran ██████████ license and let him go.

██████████ said that while the officers never told him why they pulled him over, they did tell him that they could give him a ticket because ██████████ had not been wearing a seatbelt and an air freshener was hanging in ██████████ car. The officers never issued any tickets.

██████████ said that Officer Patruno told him that his body-worn camera (“BWC”) was recording as soon as he walked up to ██████████ vehicle. Officer Patruno also told ██████████ that he had arrested ██████████ before. While ██████████ acknowledged that he had been arrested before for drug offenses, he did not recall being arrested by Officer Patruno.

██████████

COPA interviewed ██████████ on July 25, 2018. ██████████ interview was substantially similar to ██████████ interview, but for the following facts. While ██████████ said the officers asked him for his license and insurance cards, ██████████ said the officers never asked ██████████ for those items. ██████████ acknowledged that both he and ██████████ are members of the Vice Lord street gang. ██████████ believed that the officers were more aggressive with ██████████ than they were with him. ██████████ said that after he gave the police his identification, and after they ran his name, they told him he was free to leave, and he walked away, prior to ██████████ leaving the scene.

² Atts. 4 & 42

³ While ██████████ never specified what he meant by “heat,” based on the context, COPA presumes that ██████████ was referring to the officer’s gun.

⁴ Atts. 36 & 49

██████████ also said that the police never told them why they were pulling him over and he was wearing his seatbelt. ██████████ further stated that he believed the windows of the vehicle were tinted, so he did not think the police could see inside the car.

Accused Officer Matthew Patruno⁵

On September 12, 2018, COPA interviewed Officer Patruno with regard to the stop of ██████████ vehicle that he and his partner Officer Cunningham conducted on January 25, 2018.

Officer Patruno stated that, on January 25, 2018, or less than forty eight (48) hours prior to that time, he and his partner had received information from a confidential informant (“CI”) or an anonymous source that they had worked with in the past, that members of the Co Gang⁶ were armed, driving around in a dark-colored Volvo SUV, and committing armed robberies in the area. Officer Patruno stated that they believed the anonymous source to be credible, because this individual had given them good information in the past.

Officer Patruno said that he knew that the predominant gang in the area where they stopped ██████████ car were the Conservative Vice Lords Cronulla Gang, which is also known as the Co Gang. This was one of the larger gangs in the area, and they were heavily into narcotics activities, robberies, and shootings. Officer Patruno knew that ██████████ and ██████████ were members of the Conservative Vice Lords and he believed that either he or his team had stopped ██████████ before. Officer Patruno stated that he had seen ██████████ in the area, and he may have stopped him on a prior occasion.

While patrolling the area, Officer Patruno and Officer Cunningham noticed ██████████ vehicle, which ██████████ described as a blue Volvo truck, thereby matching the description from the informant. They pulled the vehicle over for an investigatory stop, but they did not do so until they saw the seatbelt violation. He said that they made a traffic stop, and they expanded on that due to the information that they had received about the vehicle and the armed robberies. Officer Patruno said the stop was an attempt to corroborate the information they had received from the anonymous source.

Officer Patruno explained that he wanted the occupants to exit the vehicle based on the movements of the individuals and ██████████ hostility. Officer Patruno also stated that he was concerned for his safety based on his knowledge about ██████████ Officer Patruno stated that, as shown in the BWC, he unbelted ██████████ seatbelt before ██████████ exited the car. Officer Patruno said that this was his regular procedure when conducting weapons related arrests or investigations, because he had seen people grabbing weapons from the area between the seat and the center console. Similarly, Officer Patruno stated that he handcuffed the men due to their hostility towards the officers.

With respect to why the officers searched the vehicle, Officer Patruno said it was a “protective pat down of the vehicle,” looking for anywhere in the vehicle where the occupants could have access to a weapon. Officer Patruno explained that they searched the vehicle for

⁵ Att. 52, 53 & 59

⁶ The officers referred to the particular subgroup of the Conservative Vice Lords as the Co Gang.

weapons because of the information they had received, the movements of the occupants, and their knowledge of the occupants. Officer Patruno stated that he believed that, given those circumstances, they had probable cause to search the vehicle.

When asked about whether [REDACTED] had given consent to search the car, Officer Patruno pointed to the part in the video when [REDACTED] told him that there was nothing in the vehicle and they should do what they had to do. He did not recall if he specifically asked for his consent to search the car.

When asked why he did not tell [REDACTED] and [REDACTED] why they were being stopped, Officer Patruno stated that if this was not the right vehicle, he did not want [REDACTED] and [REDACTED] to tell others what was going on.

When asked about why his BWC was not initially turned on, Officer Patruno said that it was a mistake. He said that he thought he had turned it on. Officer Patruno also said that using the BWCs was not yet second nature to him. He explained that he had been on medical leave and first received his BWC when he came back to work in January just three weeks before the stop.

Accused Officer Joseph Cunningham⁷

On September 21, 2018, COPA interviewed Officer Cunningham regarding the stop that he and his partner, Officer Patruno, conducted on January 25, 2018. On that date, Officers Patruno and Cunningham were given the general assignment of suppressing gang activity, narcotics activity, and investigating any firearm or weapon related matters.

Officer Cunningham stated that prior to the stop, he and his partner had received information from an anonymous source, that the individuals belonging to the Co Gang were driving around the area, in a dark Volvo SUV, and had been committing armed robberies in the area. When they saw [REDACTED] vehicle matching the description, they pulled the car over to conduct both a traffic stop because [REDACTED] was not wearing his seatbelt, and an investigatory stop, based on the information they had received from the anonymous source.

Officer Cunningham stated that when he approached the front passenger side of the vehicle, he noticed that [REDACTED] who was in the front passenger seat, was moving around a lot and looking back at them. Officer Cunningham was familiar with [REDACTED] whom he had known from prior encounters, as a member of the Conservative Vice Lords. He said that his prior encounters with [REDACTED] had been consensual, and he had not previously arrested [REDACTED] or conducted an investigatory stop of [REDACTED]. He said that he knew [REDACTED] was violent, based on [REDACTED] statements to him, statements from numerous other individuals, as well as internal information. He also had knowledge about [REDACTED] and his having weapons and his involvement in narcotics business with the gang. Officer Cunningham knew [REDACTED] to be an enforcer for the gang, which is the person who metes out violence when necessary, either with a weapon or physical violence. In addition, Officer Cunningham stated that when they stopped the vehicle, [REDACTED] made threats to him and his partner. Based on all of this information, Officer Cunningham was concerned that either [REDACTED] or [REDACTED] was armed or would become physical.

⁷ Att. 57, 58 & 60

When Officer Cunningham approached the front passenger side of the vehicle, he could tell that [REDACTED] was intoxicated because [REDACTED] breath smelled of alcohol, and [REDACTED] was very loud, agitated, combative, and uncooperative. Officer Cunningham also said that when he asked [REDACTED] to exit the vehicle, it took some time before [REDACTED] complied. Once [REDACTED] was outside the vehicle, Officer Cunningham patted him down and placed him in handcuffs. Officer Cunningham denied going into [REDACTED] pockets during the search.

Officer Cunningham stated that he did not prepare the Investigatory Stop Report. However, he said that because the form indicated that [REDACTED] consented to the pat down, [REDACTED] had given consent. He said that he did not believe he participated in the search of [REDACTED] car because he was too concerned about [REDACTED]

When asked why there was no footage from his BWC, Officer Cunningham said that he believed that he had activated it, but apparently it had not been activated. Officer Cunningham admitted that this was a situation where his BWC should have been activated. Officer Cunningham explained that he had not been given the BWC until the previous August or September. He further stated that while he had been trained on how to use the BWC, he was not trained on how to think about it in a tactical situation. He said that the fact that there is no BWC footage was due to a mistake and was not intentional.

Initially, Officer Cunningham recognized himself on the footage from Officer Patruno's BWC, and he recognized his voice on the cell phone footage. During the interview, Officer Cunningham was shown the footage from [REDACTED] cell phone, and when asked why [REDACTED] did not appear intoxicated from the cell phone video, Officer Cunningham explained that the video does show signs of intoxication and that he may be better able to tell if a person is intoxicated due to the police training for DUIs.

Officer Cunningham explained that he discusses that he has discretion to write tickets to calm people down when he stops them. When asked about his statements on the cell phone indicating that while he could issue tickets, he did not want to issue tickets, and that they should show him some respect and he will give respect back, Officer Cunningham explained that he used this strategy to calm people down, by letting them know that they were there to investigate gangs, drugs, and guns, when he stopped them, and were not there to write tickets. Officer Cunningham said his statements were not made for the purpose of telling the occupants that if they did not cooperate, he would want to write them tickets.

When asked if they had detained [REDACTED] and [REDACTED] for an unreasonable amount of time for a seatbelt violation, he said that ten minutes was not too long for a seatbelt violation.

Officer Mark Ritchey – Witness⁸

COPA interviewed Officer Mark Ritchey ("Officer Ritchey") on July 3, 2018. Officer Ritchey was one of the patrol officers that appeared on the scene to assist Officers Patruno and Cunningham. Officer Ritchey stated that he and his partner were in the area for a call of shots fired.

⁸ Att. 32

When they arrived on the scene, nothing was going on. When they saw the tactical officers with a car pulled over, they stopped to see if they could be of assistance. Officer Ritchey stated that he and his partner watched the occupants of the vehicle while the other officers searched the vehicle. Officer Ritchey did not know the reason the car was stopped or what the officers were looking for.

b. Digital Evidence

██████████ Cell Phone Footage⁹

COPA reviewed the footage recorded by ██████████ cell phone during the stop made by Officers Patruno and Cunningham. The footage begins with either ██████████ or ██████████ saying that they had not done anything wrong. Then Officer Cunningham appears to be telling them to calm down. Officer Cunningham then told them that the officers could write them tickets, but they did not want to do that. When ██████████ asked why they would write tickets, Officer Cunningham told them that ██████████ was not wearing a seatbelt, and there was an air freshener improperly hanging from the rear-view mirror. ██████████ told the Officers to just give them the tickets and let them leave. Officer Cunningham told them that he just wanted to check them out. Officer Cunningham stated that he did not want to write tickets, but he could issue tickets. Officer Cunningham further stated that if they did not cooperate, it would make him want to write tickets. Officer Cunningham told them, “you know how the hood is.” He then told them that they should just let the police check them out, and, if they were good, they could leave. Officer Cunningham said that their best bet was to be quiet, give the police some respect, the police would give them respect, and if there were no problems, they would be on their way.

Officer Cunningham asked them if they were cool. ██████████ said they were cool, but he asked them why they had to exit the vehicle and asked why the police wanted to check the car. When ██████████ told them that there was nothing in the car, Officer Cunningham told him that if there was nothing in the car, he had nothing to worry about.

Body-worn Camera Footage (“BWC”)¹⁰

COPA reviewed footage from Officer Patruno’s BWC, which was activated at some point after the stop had already begun. The BWC does not depict the part of the stop depicted by the cell phone footage.

The BWC shows both ██████████ and ██████████ get out of the car, mostly on their own, although ██████████ may have had some help. ██████████ kept asking them why they were making them get out of the car and why they wanted to search the car. ██████████ also told them that there was nothing in the car.

The BWC footage also shows Officer Cunningham leaning into the car by the open front passenger window, trying to coax ██████████ to get out of the vehicle. Officer Cunningham told ██████████ that he was always cool with ██████████ so ██████████ should be cool with him.

⁹ Att. 25

¹⁰ Att. 26

c. Documentary Evidence***Investigatory Stop Reports¹¹***

Investigatory Stop Reports were generated for both [REDACTED] and [REDACTED]. The Investigatory Reports for both men contain essentially the same information. The reports indicate that the officers observed [REDACTED] vehicle travelling from Monticello westbound on Huron. The officers had received information in the “days prior” to the stop from an anonymous source, that CVL (Conservative Vice Lords) Co-Gang members were traveling in a dark blue or black Volvo SUV, and that they were armed with handguns and committing robberies in the area. In addition, the officers noted that the front seat passenger was not wearing a seatbelt. The report states that the officers activated their lights and conducted a traffic stop for a seatbelt violation.

The officers stated that when they approached the car, they recognized [REDACTED] and [REDACTED] from prior previous encounters, as well as information they had received from CIs. The officers were aware that both men were members of the Vice Lords from Chicago Avenue, and that both were active in the narcotics trade in the area. Based on intelligence from an anonymous source, the officers believed that the men in the car might be armed.

They asked both men to get out of the car and they then conducted a protective pat down of each man. The report states that [REDACTED] and [REDACTED] told the officers that they had nothing either on their person or in the car and that the officers could freely search them.

The ISR first states that the stop was not related to gang or narcotic enforcement, but later indicates that it was related to gang or narcotic enforcement. The report also indicates that the searches of both men were consensual, as was the search of the vehicle. The narrative states that both men stated that they had nothing on them or in the car, and the officers were free to search them and the vehicle.

Original and Supplementary Case Report¹²

Attached to documentation for Officer Patrino’s BWC footage, are police reports regarding an armed robbery that occurred at approximately 13:05 on January 25, 2018. The reports indicate that at approximately 13:05, the victim was inside his car in his garage, when three men entered the garage, pulled him out of his car, beat him, pointed a gun at him, and then left in the victim’s car. The victim’s car was a black Nissan Rogue, which was later found abandoned. Because this appears to be an unrelated incident, it will not be addressed in this report.

V. 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;

¹¹ Att. 17 & 18

¹² Att. 23

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

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

VI. ANALYSIS

Upon the conclusion of this investigation, COPA sustains Allegations 2 through 4 against Officer Patruno. COPA finds Allegation 1 against Officer Patruno is unsustainable. Similarly, with respect to Officer Cunningham, COPA sustains Allegations 2 through 4 and finds Allegation 1 to be Not Sustained.

a. *Summary of the Relevant Facts*

The credibility assessments in this report have been determined by examining the statements made by the officers during their interviews and comparing those statements with the video footage from both [REDACTED] cell phone and Officer Patruno's BWC, as well as the ISRs. The information from the officers' interviews and the ISRs, is significantly divergent from what is seen on the videotape footage.

During his interview, Officer Cunningham conveyed the fact that they stopped [REDACTED] vehicle, in which [REDACTED] was a passenger, both due to a seatbelt violation, as well as information they had received from an anonymous source. With regard to the seatbelt violation, there is insufficient evidence to determine whether or not [REDACTED] was wearing his seatbelt.

With respect to the propriety of the investigatory stop, both officers discussed the information from the anonymous source during their interviews and that same information was included in the Investigatory Stop Reports. The Investigatory Stop Reports and the officers in their

interviews stated that an anonymous source informed them that members of the Co Gang were armed and driving around the neighborhood in a blue or dark colored Volvo SUV, and that they had been committing armed robberies in the area.

While there is no direct evidence that the officers were not being truthful about the information they received from the anonymous source, the officers' actions on the video footage is inconsistent with the officers' claims that they had stopped a vehicle in which they believed the occupants were armed and violent or dangerous. It is also inconsistent with their interest in stopping a vehicle where the occupants may have been committing armed robberies in the area. Moreover, although Officer Patruno claimed that the stop was an attempt to corroborate the information they had received from the anonymous source, they never asked any questions that may have corroborated this information.

Both officers discussed their knowledge that both [REDACTED] and [REDACTED] were members of the Co Gang and their belief that the occupants of the vehicle may have been armed. Officer Cunningham specifically said that he was particularly concerned about [REDACTED] whom had been known to carry firearms and to be violent. In fact, Officer Cunningham stated that he knew [REDACTED] to be the "enforcer" for the Co Gang, which is the person responsible for carrying out violence when necessary.

Nevertheless, the video footage shows that when the officers approached the vehicle, they did not appear to be in any fear that the passengers were armed. Initially, neither officer had his weapon drawn when he approached the vehicle. In addition, Officer Cunningham did not recall if he or Officer Patruno had their hands on their weapons. The officers merely asked [REDACTED] and [REDACTED] to exit the vehicle and told them that they just wanted to check them out. When [REDACTED] questioned what they had done, Officer Cunningham told them that [REDACTED] was not wearing a seatbelt, and an air freshener was improperly hanging from the rear-view mirror. When Officer Patruno said that he did not want to write tickets, but that if [REDACTED] and [REDACTED] did not cooperate, they would "want to write tickets." [REDACTED] responded by telling them that they should just write the tickets and let them leave, but Officer Cunningham continued trying to convince them to let the officers search the vehicle. While Officer Cunningham stated that he used this tactic of explaining that writing tickets was within the officers' discretion in order to calm people down, the language he used clearly intended to convince [REDACTED] and [REDACTED] to let them search them and the vehicle.

Not only did the officers not appear to be concerned that the occupants of the vehicle were armed, but they also did not ask them any questions to check out the information they said the anonymous source had given them. While Officer Patruno said he did not want them to know that they were stopping the car based on the information from the anonymous source because he did not want them to warn others, they did not ask a single question to check out the information from the anonymous source. He could have asked questions that did not give away the reason they were stopping the car. The officers could have asked them where they had been and where they were going or where they had been. Thus, while Officer Patruno said that the stop was a way for them to corroborate the information from the anonymous source, by not asking any questions about that information, he was not corroborating this information.

In his attempt to search the vehicle, Officer Cunningham said that they should just let the police check them out, specifically stating, “you know how the hood is.” He also said that their best bet was to be quiet and give the police some respect. Then the police would give them respect and let them leave if there were no problems. Moreover, the BWC footage shows Officer Cunningham casually leaning into the car by the open front passenger window and telling ██████ to be cool and get out of the car. He said that if there was nothing in the car as ██████ said, they would have nothing to worry about.

Moreover, although the ISRs stated that the search of both ██████ and ██████ as well as the search of the vehicle were consensual, an examination of the cell phone footage does not depict a consensual search. Most important is the fact that the officers did not ask for consent. Rather, they told ██████ and ██████ to exit the vehicle, because that is how it is in the hood. Thus, the officers conveyed they did not need to obtain consent to search. It is axiomatic that officers are not permitted to search a vehicle merely because they are in the hood.

Furthermore, both ██████ and ██████ questioned why they had to exit the vehicle, and both stated that they were never told what they did wrong. Instead, the officers continued to tell ██████ and ██████ to exit the vehicle and cooperate, Officer Cunningham’s threat to write traffic tickets if they did not exit the vehicle and permit the officers to search was ineffective, because ██████ told them to write the tickets and let them leave.

Although the video footage shows ██████ finally telling the officers to search the car, because they wouldn’t find anything, the cell phone footage and the BWC footage show that ██████ and ██████ exited the vehicle for the officers to search because Officers Patrino and Cunningham gave them not choice. This is not a valid consent. ██████ and ██████ were forced to “consent.”

Officer Patrino

Allegation 1

A lawful traffic stop requires “at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law,” including traffic law. *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)). Articulable and reasonable suspicion means that the police “must be able to identify some ‘particularized and objective basis’ for thinking that the person to be stopped is or may be about to engage in unlawful activity,” amounting to more than a hunch. *United States v. Miranda-Sotolongo*, 827 F.3d 663, 666 (7th Cir. 2015) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Police need not meet the higher threshold of probable cause to perform a traffic stop. *Rodriguez v. United States*, 135 S. Ct. 1609, 1617-18 (2015). An officer’s subjective intent does not enter into the analysis; even where officers hope to effectuate a goal unrelated to addressing a traffic violation (such as uncovering criminal activity), intent alone does not invalidate a stop that is otherwise objectively justified by reasonable articulable suspicion. See *Whren v. United States*, 517 U.S. 806, 812 (1996).

COPA finds that there is insufficient evidence to find by a preponderance of the evidence that there was any misconduct in stopping the vehicle. The officers stated that the traffic stop was proper because they had seen [REDACTED] not wearing a seatbelt. The information they received from the anonymous source also gave them a legitimate reason to stop the vehicle. There are insufficient facts for COPA to determine whether [REDACTED] was wearing a seatbelt or whether the officers actually received the information stated in the ISRs. Accordingly, this allegation is NOT SUSTAINED.

Allegation 2

A traffic stop must last no longer than is required for law enforcement to effectuate its “mission,” which is “to address the [] violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). “[O]rdinary inquiries incident to [the] stop” are lawful, falling under the rubric of ‘related safety concerns.’” *Id.*, at 1615. Such inquiries include performing outstanding warrant and criminal history checks, as well as examining driver’s licenses, vehicle registrations, and proof of insurance. *Id.* See also *People v. Cummings*, 2016 IL 115769, ¶ 14 (2016). Inquiries unrelated to the stop’s mission are lawful only if they “do not measurably extend the duration of the stop.” *Id.* at 1614; *Caballes*, 543 U.S. at 410 (holding that it was lawful for an officer to walk a narcotics-detection dog around a vehicle while another officer issued a speeding ticket because it did not prolong the stop).

Even when police stay on-mission throughout the traffic stop, holding a vehicle’s occupants for too long a period of time is unlawful. The Supreme Court has declined to establish a bright-line rule on how long is too long, *United States v. Sharpe*, 470 U.S. 675, 686 (1985), but has stated that “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicions in a short period of time.” *People v. Gonzales*, 204 Ill. 2d 220, 233 (2003) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). If an alternative, less intrusive means of investigation was available at the time of the stop, the determinative factor in the lawfulness of the investigation is “whether the police acted unreasonably in failing to recognize or pursue [the alternative].” *Sharpe*, 470 U.S. at 687 (holding a twenty-minute stop reasonable because the police acted diligently and the suspect’s actions contributed to the added delay).

In this particular case, all parties agreed that the stop or at least the search took about 10 minutes. While 10 minutes may not be a long time to detain an individual for a traffic stop, because the search was not related to the traffic stop, and the officers never articulated to COPA that they had probable cause to search the vehicle, the time taken to search the vehicle would cause the stop to be unreasonably long for the purpose of the stop and the time needed to complete the traffic stop for which no tickets were issued.

COPA finds that based on a preponderance of the evidence standard, there is sufficient evidence to sustain a finding that [REDACTED] and [REDACTED] were detained for an unreasonable amount of time. Based on the above stated facts, while it cannot be said that the officers did not have a valid reason for stopping the vehicle, even if they had the information from the anonymous source, the video footage shows that they were not, in fact, stopping the vehicle based on that

information. The officers did not take reasonable investigative steps to confirm or dispel their suspicion in a timely manner.

As discussed, despite the fact that the information they received indicated that the occupants of the vehicle were armed, the officers did not approach the vehicle as they would if they truly believed the occupants may have been armed. The officers did not take reasonable precautionary steps to ensure their own safety. For example, the officers did not have their weapons drawn and did not immediately order the occupants out of the vehicle. Furthermore, when they requested the occupants to exit the vehicle, Officer Cunningham was merely casually leaning into the vehicle as he tried to coax ██████████ to exit the vehicle. In addition, they did not ask ██████████ or ██████████ any questions that might have given them any indication whether the occupants of this vehicle were the individuals that had been committing armed robberies in the area. In fact, they did not ask them any questions at all. The officers took steps to complete the traffic stop in a timely manner and even assuming the officers had all the information they alleged, they unduly lengthened the stop by not taking reasonable investigative steps to confirm or dispel their suspicions in a timely manner. Accordingly, this allegation is SUSTAINED.

Allegation 3

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)). “When officers have such probable cause, the search may extend to ‘all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks.’” *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)). Officers are not limited to searching the driver’s possessions; “police officers with probable cause to search a car may [also] inspect passengers’ belongings found in the car that are capable of concealing the object of the search.” *Wyoming v. Houghton*, 526 U.S. 295, 307 (1999).

Furthermore, when officers perform a traffic stop, they may search the passenger compartment for weapons without probable cause if they “possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.” *Michigan v. Long*, 463 U.S. 1032, 1051 (1983).

Finally, a search conducted with valid consent does not violate the Fourth Amendment. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). “For the consent to be voluntary, the consentor must have been under no duress or coercion, actual or implied, and the consent must have been unequivocal, specific, and freely and intelligently.” *People v. Cardenas*, 237 Ill.App.3d 584, 587 (3d 1992) (internal quotations and citations omitted). “The question of whether the consent was voluntary or the product of duress or coercion, express or implied, is determined from the totality of the surrounding circumstances.” *People v. Manke*, 181 Ill. App. 3d 374, 377 (3d Dist. 1989).

COPA finds that based on a preponderance of the evidence standard, there is sufficient evidence to sustain a finding that Officer Patruno conducted an improper search of [REDACTED] vehicle. As discussed above, the officers did not in fact articulate that they had probable cause to search during their investigatory stop of the vehicle, and they did not have consent to search the vehicle. Rather, Officers Cunningham and Patruno told [REDACTED] and [REDACTED] that they had to allow the officers to search. They never even asked for consent. They merely asked for “cooperation,” while indicating that the officers were going to search the car. The officers made it clear that [REDACTED] and [REDACTED] would not be permitted to leave if they did not permit the officers to search the vehicle. [REDACTED] was willing to take any traffic tickets if he was allowed to leave. That is not consent to search. Nor does COPA find that the officers fear that [REDACTED] and [REDACTED] were armed and dangerous. Therefore, the search of the vehicle was improper. Accordingly, this allegation is SUSTAINED.

Allegation 4

COPA finds that based on a preponderance of the evidence standard, there is sufficient evidence to sustain a finding that Officer Patruno violated Special Order S03-14 for failing to activate his BWC at the beginning of the incident. CPD Special Order S03-14 requires that a body camera be activated during traffic stops, investigatory and “any instance when enforcing the law.” Officer Patruno was required to activate his BWC when he initiated the stop, but he failed to do so. Accordingly, this allegation is SUSTAINED.

Officer Cunningham

Allegation 1

For the reasons discussed with regard to Officer Patruno, COPA finds that there is insufficient evidence to find, by a preponderance of the evidence, that there was any misconduct in stopping the vehicle. Accordingly, COPA finds that this allegation NOT SUSTAINED.

Allegation 2

For the reasons discussed with regard to Officer Patruno, COPA finds that there is sufficient evidence to find, by a preponderance of the evidence, that Officer Cunningham detained [REDACTED] and [REDACTED] for an unreasonable amount of time. Accordingly, COPA finds that this allegation is SUSTAINED.

Allegation 3

As discussed above with respect to Officer Patruno, Allegation 3 is also SUSTAINED against Officer Cunningham

Allegation 4

COPA finds that, based on a preponderance of the evidence standard, there is sufficient evidence to sustain a finding that Officer Cunningham failed to activate his BWC in violation of

Special Order S03-14. CPD Special Order S03-14 requires that a body camera be activated during traffic stops, investigatory and “any instance when enforcing the law.” Officer Cunningham was required to activate his BWC when he initiated the stop, but he failed to do so. Accordingly, Allegation 4 is SUSTAINED.

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Matthew Patruno

Complimentary and Disciplinary History: Officer Patruno’s Complimentary History includes: 1 Military Service Award, 1 Emblem of Recognition – Physical Fitness, 1 Special Commendation, 4 Department Commendations, 62 Honorable Mentions, 1 Complimentary Letter, 1 Police Officer of the Month Award, 1 Honorable Mention Ribbon Award, and 1 Top Gun Award. No applicable disciplinary history.

i. Recommended Penalty, by Allegation

Allegation No. 2: Detained [REDACTED] and [REDACTED] for an unreasonable amount of time. **Penalty:** 5-Day Suspension.

Allegation No. 3: Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification. **Penalty:** 5-Day Suspension.

Allegation No. 4: Failure to have BWC activated for entire encounter with [REDACTED] and [REDACTED]. **Penalty:** 5-Day Suspension.

b. Officer Joseph Cunningham

i. Complimentary and Disciplinary History: Officer Cunningham’s Complimentary History includes: 1 Attendance Recognition Award, 2 Emblems of Recognition – Physical Fitness, 1 Special Commendation, 73 Honorable Mentions, 5 Department Commendations, 2 Police Officer of the Month Awards, 1 Complimentary Letter, 1 Honorable Mention Ribbon Award, and 1 Top Gun Arrest Award. No applicable disciplinary history.

ii. Recommended Penalty, by Allegation

Allegation No. 2: Detained [REDACTED] and [REDACTED] for an unreasonable amount of time. **Penalty:** 5-Day Suspension.

Allegation No. 3: Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification. **Penalty:** 5-Day Suspension.

Allegation No. 4: Failure to have BWC activated for entire encounter with [REDACTED] and [REDACTED] **Penalty:** 5-Day Suspension.

VII. CONCLUSION

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

Officer	Allegation	Finding/ Recommendation	
Officer Matthew Patruno	It is alleged by the complainant that on January 25, 2018, at approximately 2:30 p.m., at or near 3750 W. Huron St., Chicago, IL 60624, while on duty, Officer Matthew Patruno, star #11814 committed misconduct through the following acts or omissions:		
	1. Detained [REDACTED] and [REDACTED] by stopping the vehicle they occupied;	Not Sustained	
	2. Detained [REDACTED] and [REDACTED] for an unreasonable amount of time;	Sustained / 5-Day Suspension	
	3. Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification; and;	Sustained / 5-Day Suspension	
	4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during his entire encounter with [REDACTED] and [REDACTED]	Sustained / 5-Day Suspension	
Officer Joseph Cunningham	It is alleged by the complainant that on January 25, 2018, at approximately 2:30 p.m., at or near 3750 W. Huron St., Chicago, IL 60624, while on duty, Officer Joseph Cunningham, star #9871 committed misconduct through the following acts or omissions:		
	1. Detained [REDACTED] and [REDACTED] by stopping the vehicle they occupied.		Not Sustained
	2. Detained [REDACTED] and [REDACTED] for an unreasonable amount of time;		Sustained / 5-Day Suspension
	3. Searched the vehicle occupied by [REDACTED] and [REDACTED] without justification; and	Sustained / 5-Day Suspension	

	4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during his entire encounter with [REDACTED] and [REDACTED] [REDACTED]	Sustained 5-Day Suspension
--	---	----------------------------

Approved:

[REDACTED]

3/31/2021

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	3
Investigator:	Michele Lavin
Deputy Chief Administrator:	Matthew Haynam