

353

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 1, 2019
Time of Incident:	9:40 am
Location of Incident:	7845 South Aberdeen Street, Chicago, IL 60620
Date of COPA Notification:	August 1, 2019
Time of COPA Notification:	10:19 am

On August 1, 2019, Chicago Police Department (“CPD”) members stop [REDACTED] for slamming on his brakes and making abrupt stops in ongoing traffic. [REDACTED] alleges that CPD members, Officers Cesar Perez (“Officer Perez”) and Nancy Castellano (“Officer Castellano”), without justification, detained him, searched his person, and searched his vehicle prior to releasing him.

INVOLVED PARTIES

Involved Officer #1:	Officer Cesar Perez, Star #9198, Employee No. [REDACTED], Date of Appointment: June 27, 2016, Rank: Police Officer, Unit of Assignment: 006, DOB: [REDACTED], 1990, Gender: Male, Race: White Hispanic
Involved Officer #2:	Officer Nancy Castellano, Star #17028, Employee No. [REDACTED], Date of Appointment: September 29, 2014, Rank: Police Officer, Unit of Assignment: 006, DOB: [REDACTED], 1989, Gender: Female, Race: White Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1998, Gender: Male, Race: Black

Intentionally Left Blank

II. ALLEGATIONS

Officer	Allegation	Finding
Officer Perez	<p>It is alleged by the complainant, [REDACTED] that on or about August 1, 2019, at approximately 9:40 am, at or near 7845 S. Aberdeen Street, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] person without justification; and/or 2. Searched [REDACTED] vehicle without justification; and/or 3. Detained [REDACTED] without justification; and/or 4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during entire encounter with [REDACTED] 	<p>Sustained</p> <p>Sustained</p> <p>Not Sustained</p> <p>Sustained</p>
Officer Castellano	<p>It is alleged by the complainant, [REDACTED] that on or about August 1, 2019, at approximately 9:40 am, at or near 7845 S. Aberdeen Street, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] person without justification; and/or 2. Searched [REDACTED] vehicle without justification; and/or 3. Detained [REDACTED] without justification; and/or 4. Failed to follow Special Order 03-14 by not having her body worn camera activated and recording during entire encounter with [REDACTED] 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained</p>

III. APPLICABLE RULES AND LAWS

Rules

1. Rule 1, CPD Rules of Conduct (Prohibiting violation of any law or ordinance)
 2. Rule 2, CPD Rules of Conduct (Prohibiting any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department)
 3. Rule 6, CPD Rules of Conduct (Prohibiting disobedience of an order or directive, whether written or oral)
-

Special Orders

1. CPD Special Order S04-13-09: *Investigatory Stop System* (effective date: July 10, 2017)
 2. CPD Special Order S03-14: *Body Worn Cameras* (effective date: April 30, 2018)
-

Federal Laws

1. U.S. Constitution, Fourth Amendment
-

IV. INVESTIGATION¹

a. Interviews

██████████

In a statement with COPA on August 5, 2019, ██████████ told investigators that he was headed eastbound on 79th street when he observed officers driving westbound in an unmarked Ford. Prior to the investigatory stop, ██████████ stated that he made eye contact with Officer Perez while driving, and they both recognized each other.² ██████████ then took a left on Aberdeen where he pulled over and walked away from his vehicle. ██████████ stated that he observed Officer Perez driving out of the alley, and eventually stopped at 7948 South Aberdeen Street where ██████████ was located. As ██████████ stood outside, Officer Perez told him to get back in his vehicle.³ ██████████ replied, “[n]o, why would I do that?”⁴ After ██████████ refusal, Officer Perez placed ██████████ in handcuffs, and grabbed his car keys from out of his pockets.⁵ ██████████ stated that Officer Perez then unlocked the doors and searched his vehicle. ██████████ also told COPA investigators that he has encountered Officer Perez on multiple occasions.⁶

During the investigatory stop, ██████████ was informed by officers that they stopped him because he did not make a complete stop at a stop sign.⁷ ██████████ confidently told COPA investigators that he had made a complete stop, and Officer Perez never wrote a citation for the traffic violation.⁸

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² See Attachment #5 at Mark 3:15.

³ *Id* at Mark 2:25.

⁴ *Id* at Mark 2:27.

⁵ *Id* at Mark 2:38.

⁶ *Id* at Mark 3:27.

⁷ *Id* at Mark 4:22.

⁸ *Id* at Mark 4:25.

█████ later told investigators that Officer Perez’s female partner actually placed him in handcuffs while Officer Perez searched his pockets and took his car keys.⁹ █████ stated that Officer Perez only searched the front of the vehicle (including the middle console and glove compartment).¹⁰ Officer Perez informed █████ that he searched his vehicle because he smelled an odor of cannabis.¹¹ █████ told COPA investigators that he has been stopped at least 20 times prior to this incident, and he believes its partly due to owning multiple cars and having friends who are gang affiliated.¹² █████ even admitted to investigators that he smokes cannabis, but he did not smoke at all on this particular day, especially in his vehicle.¹³

Soon thereafter, the stop concluded, and █████ was released from handcuffs prior to officers engaging in an unrelated incident with passerby. █████ stated that he was never issued any citations, and he was given an investigatory stop receipt after making several requests to the officers.¹⁴

Officer Perez

Officer Perez gave an audio-recorded statement on February 5, 2020. In summary, Officer Perez told investigators that he was a police officer at the 6th District on August 1, 2019. On the day of the incident, Officer Perez stated that he was on a routine patrol in the 6th District when he observed a vehicle slamming on its brakes and making abrupt stops on 79th Street.¹⁵ After observing the traffic violation, Officer Perez and his partner, Officer Costello, turned east of Aberdeen while █████ turned down Aberdeen street.¹⁶ Officer Perez also told COPA investigators that he only knows of █████ in the 6th District due to officer debriefings and interaction – and other officers’ interactions with him.¹⁷ Officer Perez recalled becoming familiar with █████ from being a person of interest who has a crime pattern or involved in criminal acts.¹⁸

Additionally, Officer Perez stated that he effectuated the traffic stop on Aberdeen where he observed █████ standing a feet away from his vehicle.¹⁹ Officer Perez approached █████ and smelled “a strong odor of marijuana emitting from his person.”²⁰ After smelling cannabis, Officer Perez and his partner detained █████ and asked where the car keys to his vehicle.²¹ Officer Perez told COPA investigators that he did not indicate to █████ that his person smelled of cannabis prior to smelling cannabis from his vehicle.²²

⁹ *Id* at Mark 7:22.

¹⁰ *Id* at Mark 8:32.

¹¹ *Id* at Mark 8:52.

¹² *Id* at Mark 12:32.

¹³ *Id* at Mark 16:02.

¹⁴ *Id* at Mark 14:17-14:33.

¹⁵ See Attachment #24 (pg. 7).

¹⁶ *Id* at pg. 9.

¹⁷ *Id* at pg. 10.

¹⁸ *Id* at pg. 10-11.

¹⁹ *Id* at pg. 13.

²⁰ *Id*.

²¹ *Id* at pg. 14.

²² *Id* at pg. 18.

After receiving permission from [REDACTED] to search his vehicle, Officer Perez then retrieved [REDACTED] car keys from his pockets and searched his vehicle. Officer Perez believed that there could be evidence of additional cannabis found inside [REDACTED] vehicle so that is why he took [REDACTED] keys.²³ Immediately afterwards, Officer Perez searched [REDACTED] vehicle while only searching “the front and the back passenger and driver side.”²⁴ Officer Perez told COPA investigators that he did not recover anything from the search of [REDACTED] vehicle.²⁵ Once the search was completed, Officer Perez asked for [REDACTED] identification and ran the information through LEADS database. The name check from LEADS came back clear, and [REDACTED] was released from the traffic stop.²⁶

Soon thereafter, the traffic stop concluded, and [REDACTED] was free to leave. Officer Perez stated that [REDACTED] requested an investigatory stop receipt (ISR receipt), and his partner prepared and issued the ISR receipt to [REDACTED].²⁷

Officer Perez gave a subsequent audio-recorded statement on April 21, 2021. Officer Perez adopted the same statements that he made in his initial statement. In addition to his previous statements, Perez added that, “it’s not in here that we informed [REDACTED] to come to a complete stop” in regard to the investigatory stop report.²⁸ Officer Perez stated that it was a verbal warning given to [REDACTED] to come to a complete stop next time and to be aware of his surroundings. He then told COPA investigators that “during the whole course of [REDACTED] making abrupt stops, he failed to come to a complete stop.”²⁹ Officer Perez also added that he “did not need consent from [REDACTED] to search the vehicle for narcotics.”³⁰

Officer Castellano

Officer Castellano gave an audio-recorded statement on February 5, 2020. In summary, Officer Castellano told investigators that she was a police officer at the 6th District on August 1, 2019. On the day of the incident, Officer Castellano observed [REDACTED] abruptly stopping on his brakes on 79th Street and causing other drivers behind him to stop.³¹ Officer Castellano and her partner then drove down another street before they regained sight of [REDACTED] on Aberdeen.³² Upon arrival at Aberdeen, Officer Castellano and her partner approached [REDACTED] as he was standing outside of his vehicle.³³ Officer Castellano stated that she immediately smelled a strong odor of cannabis on [REDACTED] when she walked towards him.³⁴

²³ See Attachment #24 (pg. 21).

²⁴ *Id.*

²⁵ *Id.* at pg. 24.

²⁶ *Id.* at pg. 25.

²⁷ *Id.* at pg. 26-27.

²⁸ See Attachment #23 (pg.15).

²⁹ *Id.* at pg. 16.

³⁰ *Id.* at pg. 18.

³¹ See Attachment #25 (pgs.8-9).

³² *Id.* at pg. 9.

³³ *Id.* at pg. 8.

³⁴ *Id.* at pg. 11.

Furthermore, Officer Castellano told COPA investigators that she has met [REDACTED] on two other occasions prior to this incident.³⁵ Officer Perez stated that [REDACTED] usually “hangs around with younger individuals who are in stolen vehicles.”³⁶ During this stop, Officer Castellano recalled [REDACTED] was very agitated and started yelling at them.³⁷ She tried calming [REDACTED] down while her partner, Officer Perez, conducted the search.³⁸

After the conclusion of the search, Officer Castellano prepared and signed an investigatory stop receipt to issue to [REDACTED].³⁹ Officer Castellano told COPA investigators that she does not know why she did not indicate a reason for the investigatory stop on the receipt.⁴⁰

Officer Castellano gave a subsequent audio-recorded statement on June 08, 2021.⁴¹ Officer Castellano adopted the same statements that she made in her initial statement.

b. Digital Evidence

COPA reviewed approximately 11 minutes of body-worn camera (“BWC”) captured by the involved officers. Collectively, the footage establishes that the incident lasted roughly 5 minutes, starting when CPD officers initiated a traffic stop of a vehicle driven by [REDACTED] and ending when those officers who led the detention and search of [REDACTED] and his vehicle.

The BWC footage captured by Beat 665E (Officers Perez and Castellano) shows Officer Perez driving an unmarked vehicle and dressed in plain clothes.⁴² The BWC then depicts Officer Perez driving down 79th street and eventually making two right turns before entering what appears to be an alley.⁴³ Before activating his BWC, Officer Perez then approaches a side street and parks his vehicle. The BWC captures [REDACTED] standing on the sidewalk which is a couple of feet away from his parked vehicle. Officer Perez states, “[REDACTED] back to the car,” and [REDACTED] replies, “naw bro, I seen what you did.”⁴⁴ The BWC footage also captures Officer Perez escorting [REDACTED] back to his vehicle while Officer Castellano assists him.

Furthermore, the BWC footage captures Officer Perez asking [REDACTED] for the keys to his vehicle.⁴⁵ [REDACTED] replies, “[inaudible] don’t worry about it... I’m not in the car no more bro.”⁴⁶ Officer Perez then places handcuffs on [REDACTED] while Officer Castellano assists him. [REDACTED] states, “my keys are in my pockets... you don’t need to do none of this bro.. its uncalled for.”⁴⁷ The BWC

³⁵ *Id* at pg. 10.

³⁶ *Id* at (pg. 9: 22-24).

³⁷ *Id* at pg. 13.

³⁸ *Id* at pg. 14.

³⁹ *Id* at pg. 18.

⁴⁰ *Id* at pg. 18-19; See Attachment #6.

⁴¹ See Attachments #24 and 25.

⁴² See Attachment #10.

⁴³ *Id* at Mark 1:39.

⁴⁴ *Id* at Mark 2:00.

⁴⁵ *Id* at Mark 2:13.

⁴⁶ *Id* at Mark 2:15.

⁴⁷ *Id* at Mark 2:22.

footage also captures Officer Perez touching the outer pockets of [REDACTED] pants and pulling out the car keys in [REDACTED] left pocket.⁴⁸

Meanwhile, Officer Perez opens the driver's door and [REDACTED] states, "do not search my car bro."⁴⁹ The BWC footage captures Officer Perez informing [REDACTED] that he should make sure to come to a complete stop.⁵⁰ Officer Perez also informs [REDACTED] that he smells cannabis emanating from his vehicle.⁵¹ [REDACTED] then states, "there is nothing in my car... you can search it bro."⁵² After such statement, Officer Perez only searches the front of the vehicle including the inner consoles and glove compartment.⁵³ Officer Perez then asks [REDACTED] about having both a Tesla and Ford after finding the car keys in the vehicle.

Soon thereafter, Officer Perez concludes the search of [REDACTED] vehicle and asks [REDACTED] for his identification card. The BWC footage captures Officer Perez walking back to his unmarked vehicle and asking [REDACTED] for his information. Officer Perez then removes the handcuffs from [REDACTED] and the officers return to their vehicle. The BWC footage also captures [REDACTED] requesting an investigatory stop receipt prior to the last few seconds of the footage.⁵⁴ Officer Perez opens his door to his vehicle and informs [REDACTED] that he did not pat him down after [REDACTED] made multiple requests for an investigatory stop receipt.⁵⁵ The officers then deactivate their BWC, and the footage concludes at 5 minutes and 53 seconds.

c. Documentary Evidence

Investigatory Stop Receipt⁵⁶ documented that it was signed by Officers Castellano and Perez and failed to indicate a reason for the stop.

Investigatory Stop Report (ISR)⁵⁷ documented that the officers observed [REDACTED] slamming on his brakes which caused him to make abrupt stops and forced vehicles behind him to slam on their brakes to avoid an accident. The ISR also documented that officer approached [REDACTED] and smelled a strong odor of burnt cannabis. The ISR also indicated that a receipt was given to [REDACTED] and that he was not patted down by the officers.

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;

⁴⁸ *Id* at Mark 2:27.

⁴⁹ *Id* at Mark 2:40.

⁵⁰ *Id* at Mark 2:44.

⁵¹ *Id*.

⁵² *Id* at Mark 2:46.

⁵³ *Id* at Mark 2:52.

⁵⁴ See Attachment #10 at Mark 5:38.

⁵⁵ *Id* at Mark 5:45.

⁵⁶ See Attachment #6.

⁵⁷ See Attachment #8.

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.

VI. ANALYSIS

a. Allegations 1, 2, and 3.

COPA recommends a finding of **NOT SUSTAINED** as to Officers Perez and Costello for detaining ██████ without justification and the subsequent search of ██████ and his vehicle.

The issue is whether Officers Perez and Castellano had reasonable articulable suspicion and/or probable cause to detain ██████ and then probable cause to search ██████ and ██████ vehicle. Here, the officers asserted they observed ██████ committing a traffic violation by slamming on his brakes and making abrupt stops in traffic which became the basis for the traffic stop.⁵⁸ However, were no traffic citations prepared, recorded, and/or issued by either Officer Castellano or Officer Perez. Furthermore, it is still unclear whether the officers had justification to continue to detain and to search ██████ vehicle and person. First, the officers never communicated to ██████ that they smelled cannabis on his person.⁵⁹ Additionally, the investigatory stop *receipt* given to ██████ failed to document any reason for the stop including whether the stop was related to narcotics.⁶⁰ Furthermore, the completed ISR indicates that the officers smelled the order of cannabis on ██████ conversely, on Officer Perez's BWC recording Officer Perez indicated it was ██████ vehicle (not ██████ person) that smelled like cannabis⁶¹, which was only stated after Officer Perez had

⁵⁸ See Attachment #8; See Attachment #25 (pg.8-9); See Attachment #24 (pg. 7).

⁵⁹ See Attachment #24 (pg.18)

⁶⁰ See Attachment #6.

⁶¹ See Attachment #10 at Mark 2:40

searched █████ entered/search the vehicle. Nevertheless, it is important to note that █████ admitted to COPA investigators that he smokes cannabis, but he did not smoke at all on this given day especially in his vehicle, nor was there any cannabis recovered from █████ or his vehicle.⁶² For these reasons, COPA is unable to clearly and convincingly determine that the officers smelled the odor on cannabis on █████ prior to entering/search the vehicle. Accordingly, COPA finds the allegations 1, 2, and 3 against both officers **NOT SUSTAINED**.

d. Allegation 4.

Lastly, COPA brought allegations against Officers Perez and Castellano for not having their body worn camera activated and recording during the entire encounter with █████ Special Order S03-14 states, “the department member will not deactivate an event mode unless the entire incident has been recorded and the member is no longer engaged in the law enforcement-related activity.”⁶³ During an interview with COPA, Officer Perez stated that he deactivates his body worn camera when the traffic stop has completed.⁶⁴ In her interview with COPA, Officer Castellano stated that an investigatory stop receipt does “[n]ot necessarily” have to be recorded on body worn camera and that once the traffic stop is completed then they “turn off” their body worn camera.⁶⁵

Contrary to the officers’ belief, Officers Perez and Castellano failed to comply with Special Order S03-14 because their BWC failed to record the issue of the investigatory stop receipt that was given to █████ The BWC footage shows Officer Perez opening his door to his vehicle and informing █████ that he did not pat him down after █████ made multiple requests for an investigatory stop receipt on camera.⁶⁶ After █████ requests were made, the officers deactivated their BWC which suggests that the entire incident with █████ was not recorded even though officers were still engaged in a law enforcement related activity (ex. the issue of investigatory stop receipt). For these reasons, COPA finds by a preponderance of the evidence that the officers’ actions constituted misconduct. Therefore, COPA finds the allegation is **SUSTAINED** as to Officers Perez and Costello.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Cesar Perez

i. Complimentary and Disciplinary History

As of August 19, 2021, Officer Perez’ Complimentary History comprises of fifty-eight (58) awards, including forty-six (46) Honorable Mentions. As of August 19, 2021, Officer Perez has zero (0) sustained complaints against him.

⁶² See Attachment #5 at Mark 16:02.

⁶³ See Attachment #20; CPD Special Order S03-14 *Body Worn Cameras* (effective date: April 30, 2018), Section III, B, 1(a).

⁶⁴ See Attachment #24 (pg. 29).

⁶⁵ See Attachment #25 (pg. 15-16).

⁶⁶ See Attachment #10 at Mark 5:45.

ii. Recommended Penalty, by Allegation

1. Allegation No. 4: 5-Day Suspension

b. Officer Nancy Castellano

i. Complementary and Disciplinary History

As of August 19, 2021, Officer Costello’ Complimentary History comprises of forty-two awards, including three (3) Department Commendation and sixty-eight (68) Honorable Mentions. As of August 19, 2021, Officer Costello has zero (0) sustained complaints against him.

ii. Recommended Penalty, by Allegation

1. Allegation No. 4: 5-Days Suspension

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer Perez	<p>It is alleged by the complainant, [REDACTED] that on or about August 1, 2019, at approximately 9:40 am, at or near 7845 S. Aberdeen Street, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] person without justification; and/or 2. Searched [REDACTED] vehicle without justification; and/or 3. Detained [REDACTED] without justification; and/or 4. Failed to follow Special Order 03-14 by not having his body worn camera activated and recording during entire encounter with [REDACTED] 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained</p>
Officer Castellano	<p>It is alleged by the complainant, [REDACTED] that on or about August 1, 2019, at approximately 9:40 am, at or near 7845 S. Aberdeen Street, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p>	

	<ol style="list-style-type: none">1. Searched [REDACTED] person without justification; and/or2. Searched [REDACTED] vehicle without justification; and/or3. Detained [REDACTED] without justification; and/or4. Failed to follow Special Order 03-14 by not having her body worn camera activated and recording during entire encounter with [REDACTED]	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

Approved:



10/21/2021

Matthew Haynam
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	7
Investigator:	Khristian Wills
Supervising Investigator:	Dortricia Penn
Deputy Chief Administrator:	Matthew Haynam