

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 30, 2019
Time of Incident:	10:09 AM
Location of Incident:	8034 S. Marshfield
Date of COPA Notification:	August 30, 2019
Time of COPA Notification:	12:08 PM

On August 30, 2019, Officers Adrian Diaz (“Officer Diaz”) and Ricardo Alcaraz, Jr. (“Officer Alcaraz”) observed the complainant, [REDACTED] ([REDACTED] receive cash from an individual on the street. The officers approached [REDACTED] and the other individual, suspecting a narcotics transaction had just occurred. The officers detained and searched both men, as well as [REDACTED] vehicle. [REDACTED] was upset and requested a supervisor, prompting Sergeant Kevin Sellers (“Sergeant Sellers”) to respond to the scene. No contraband was found, and the officers released both men. [REDACTED] subsequently filed a complaint with COPA alleging that he and his acquaintance were detained and searched without justification, that his vehicle was searched without justification, and that Sergeant Sellers allowed the misconduct to occur. COPA’s findings are discussed in the Analysis portion of this report.

II. INVOLVED PARTIES

Involved Officer #1:	Adrian Diaz, Star #17350, Employee ID # [REDACTED], Date of Appointment: February 16, 2017, Police Officer, 6 th District, Date of Birth: [REDACTED] 1987, Male, White Hispanic
Involved Officer #2:	Ricardo Alcaraz, Jr., Star #10926, Employee ID # [REDACTED], Date of Appointment: May 16, 2017, Police Officer, 6 th District, Date of Birth: [REDACTED], 1990, Male, White Hispanic
Involved Officer #3:	Kevin Sellers, Star #841, Employee ID # [REDACTED], Date of Appointment: July 7, 1997, Sergeant of Police, Unit 606 (Investigative Field Group), Date of Birth: [REDACTED], 1973, Male, White
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED], 1992, Male, Black

¹ [REDACTED] was killed in a double homicide on June 27, 2021. Att. 35.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Diaz	It is alleged that on August 30, 2019, at approximately 10:09 AM, at or near 8034 S. Marshfield Ave., Officer Adrian Diaz engaged in misconduct through the following acts and/or omissions:	
	1. Detained [REDACTED] without justification.	Exonerated
	2. Detained [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] person without justification.	Sustained
	4. Searched inside [REDACTED] pockets without justification.	Sustained
	5. Improperly searched the vehicle being operated by [REDACTED] without justification.	Sustained
	6. Failed to explain the reasons a search beyond a protective pat down was performed on [REDACTED] in the narrative for ISR # [REDACTED].	Sustained
Officer Alcaraz	It is alleged that on August 30, 2019, at approximately 10:09 AM, at or near 8034 S. Marshfield Ave., Officer Ricardo Alcaraz Jr. engaged in misconduct through the following acts and/or omissions:	
	1. Detained [REDACTED] without justification.	Exonerated
	2. Detained [REDACTED] without justification.	Exonerated
	3. Improperly searched the vehicle being operated by [REDACTED] without justification.	Sustained
Sergeant Sellers	It is alleged that on August 30, 2019, at approximately 10:09 AM, at or near 8034 S. Marshfield Ave., Sergeant Kevin Sellers engaged in misconduct through the following acts and/or omissions:	
	1. Failed to properly supervise by allowing officers to detain [REDACTED] without justification.	Exonerated

2. Failed to properly supervise by allowing an officer to search [REDACTED] person without justification.	Sustained
3. Failed to properly supervise by allowing an officer to search inside [REDACTED] pockets without justification.	Sustained
4. Failed to properly supervise by allowing officers to search [REDACTED] car without justification.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

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- Rule 2:** Prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
 - Rule 3:** Prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
 - Rule 5:** Prohibits failure to perform any duty.
 - Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
 - Rule 10:** Prohibits inattention to duty.

Special Orders

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- S04-13-09:** Investigatory Stop System.²

Federal Laws

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- Fourth Amendment to the United State’s Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

V. INVESTIGATION³

a. Interviews

[REDACTED] ([REDACTED])⁴

COPA interviewed [REDACTED] on March 10, 2020. [REDACTED] stated that on August 30, 2019, he was sitting in his vehicle in front of 8032 S. Marshfield when he saw a friend, now identified as

² Att. 32.

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in the analysis.

⁴ Att. 9.

██████████ (██████████⁵ who owed ██████████ \$10.00. ██████████ approached ██████████ vehicle and handed ██████████ cash through the driver's window as a police vehicle drove past them. As ██████████ walked away, two officers got out of their vehicle, searched ██████████ and released him. The officers then approached ██████████ asked for his license and insurance, and requested that he exit the vehicle. ██████████ asked why, and the officers told him it looked like ██████████ and ██████████ had just engaged in a narcotics sale. ██████████ requested a supervisor respond to the scene, explaining that just because ██████████ gave him money, it did not mean he was selling drugs. After a supervisor arrived, one of the officers searched ██████████ person, reaching inside his pockets and removing items. The officers then searched ██████████ vehicle, including the front seat, back seat, glove compartment, and trunk. ██████████ did not give consent for the vehicle search. The officers, who did not recover anything during the search, gave ██████████ an investigatory stop receipt and departed the scene. ██████████ stated he had previously interacted with both officers, and he did not believe this was the first time they had improperly searched his vehicle.

Officer Adrian Diaz ("Officer Diaz")⁶

COPA interviewed Officer Diaz on July 29, 2021. On August 30, 2019, Officer Diaz and his partner, Officer Alcaraz, were on patrol near Marshfield Avenue and 80th Street. As they drove, the officers observed a hand-to-hand transaction between an individual on foot, now identified as ██████████ and an individual inside a vehicle, now identified as ██████████ stood outside ██████████ parked vehicle and handed something to ██████████ inside the vehicle. Officer Diaz described the location as "a high narcotics area,"⁷ and he stated that ██████████ vehicle was stopped in front of a building "known for the Killaward GDs to hang out and sell narcotics from."⁸ When ██████████ started walking away from ██████████ vehicle, Officers Diaz and Alcaraz detained him. ██████████ told Officer Diaz he was repaying ██████████ money. However, ██████████ could not provide Officer Diaz with ██████████ name, and he stated ██████████ was a friend of a friend, further suggesting to Officer Diaz that he had just observed a narcotics transaction. The officers told ██████████ he was free to leave, and they reversed their squad car to where ██████████ was parked.

Officer Diaz related that he and his partner were still suspicious of ██████████ even though no contraband was found on ██████████ due to their location, the hand-to-hand transaction, ██████████ admission that he gave ██████████ money, and the dark tint on ██████████ vehicle windows. As Officer Diaz approached the passenger's side of ██████████ vehicle, Officer Alcaraz announced the individual inside was ██████████ who was known to both officers. Per Officer Diaz, ██████████ "was a top ten person of interest in the 6th District... for being a Killaward gang member, known to sell narcotics. And at the time he was a registered gun offender as well."⁹ The officers asked ██████████ to exit his vehicle. ██████████ complied, but he was upset and requested a supervisor respond to the scene. Officer Diaz then searched ██████████ pockets for narcotics or related contraband, although he denied performing a protective pat down on ██████████. The officers also searched ██████████ vehicle, which Officer Diaz explained was necessary because ██████████ had time to hide contraband while the officers spoke with ██████████. No narcotics were located, and the officers told ██████████ he was free to leave.

⁵ While ██████████ referred to his friend as ██████████" the Investigatory Stop Report ("ISR") identifies the friend as ██████████ Att. 5.

⁶ Atts. 18 & 30.

⁷ Att. 30: Page 8, Line 19.

⁸ Att. 30: Page 8, Lines 22 – 24.

⁹ Att. 30: Page 12, Line 24 – Page 13, Line 8.

Officer Diaz subsequently completed Investigatory Stop Reports (“ISRs”) documenting the detentions of ██████ and ██████. Officer Diaz related he did not include his prior knowledge of ██████ in his ISR because the encounter did not “go further than investigatory stop... I didn’t feel at the time all the additional information was needed in my report.”¹⁰ Officer Diaz added that he checked the boxes indicating it was a narcotics investigation and ██████ was a gang member. He reported he had one previous interaction with ██████ in the form of a traffic stop.

Officer Ricardo Alcaraz, Jr. (“Officer Alcaraz”)¹¹

COPA interviewed Officer Alcaraz on July 29, 2021. On August 30, 2019, Officers Alcaraz and Diaz were on patrol in the 6th District. Officer Alcaraz observed an individual inside a vehicle, now identified as ██████, hand something to a person standing outside the vehicle, now identified as ██████. Officer Alcaraz did not see what was passed between ██████ and ██████ but believed he might have observed a hand-to-hand narcotics transaction. Officer Alcaraz related this occurred in a “high violent, high gang, and high narcotic area,”¹² and 8034 S. Marshfield was known to be the hangout of the Killaward faction of the Gangster Disciples. When ██████ saw the officers, he immediately started walking away from ██████ vehicle. The officers detained ██████, ran a name check, provided him with an investigatory stop receipt, and told him he was free to leave.

Officers Alcaraz and Diaz then returned to their vehicle, and they “reversed and relocated to where ██████ was.”¹³ The officers decided to detain ██████ because he was the second individual involved in what appeared to be a hand-to-hand transaction. Officer Alcaraz also recognized ██████ as “one of the top ten persons of interest in our district”¹⁴ as a result of ██████ suspected involvement in narcotics sales. Officer Alcaraz did not believe he had personally interacted with ██████ prior to this stop, and he denied knowing it was ██████ until he approached the vehicle. At that point, the officers asked ██████ out of his car for officer safety. ██████ asked to speak to a supervisor and the officers called in the request. Officer Alcaraz denied he performed a pat down of ██████ or a search of ██████ person. He did, however, search ██████ vehicle under “suspicion of narcotics.”¹⁵ Officer Alcaraz believed the scope of the search was appropriate, as the officers had observed a hand-to-hand transaction but could not see the inside the vehicle due to the dark-tinted windows. The officers did not recover any contraband, and ██████ was free to leave.

Sergeant Kevin Sellers (“Sergeant Sellers”)¹⁶

COPA interviewed Sergeant Sellers on August 5, 2021. On August 30, 2019, Sergeant Sellers was a field supervisor in the 6th District who was called to the scene of ██████ stop. When Sergeant Sellers arrived at the location, Officer Diaz explained that he and his partner detained ██████ for a suspected narcotics transaction. ██████ did not believe the stop was valid and had requested a supervisor. Sergeant Seller had no personal knowledge of or history with ██████ but

¹⁰ Att. 30: Page 16, Lines 3 – 12.

¹¹ Atts. 13 & 29.

¹² Att. 29: Page 9, Lines 3 – 4.

¹³ Att. 29: Page 10, Line 24.

¹⁴ Att. 29: Page 11, Lines 13 – 14.

¹⁵ Att. 29: Page 13, Lines 20 – 21.

¹⁶ Atts. 24 & 31.

he was aware of ██████ name from CPD intelligence bulletins. Sergeant Sellers believed ██████ stop was valid, as ██████ and ██████ had exchanged currency in an area known for guns and narcotics. Sergeant Sellers also pointed out that officers have recovered narcotics and weapons from 8034 S. Marshfield in the past.

Sergeant Sellers told COPA it was appropriate for the officers to pat down ██████ but there was no probable cause to justify the search of ██████ pockets. Upon review of his BWC video, Sergeant Sellers acknowledged that Officer Diaz searched inside ██████ pockets; however, the sergeant did not see this in person on August 30, 2019 and acknowledged he should have been more attentive. He believed the vehicle search was justified, as the officers were allowed to check the portions of the vehicle within ██████ immediate reach. Sergeant Sellers denied observing the officers open any compartments in ██████ vehicle, but he also admitted he was not paying attention. Sergeant Sellers did not have an answer as to why he did not personally supervise the vehicle search, aside from his belief that it was unnecessary. He left the scene before the stop concluded.

b. Digital Evidence

Body Worn Camera (“BWC”) of Officers Diaz and Alcaraz¹⁷

The BWC videos begin as Officers Diaz and Alcaraz approach ██████ on the sidewalk. Officer Diaz asks what ██████ was doing “with that car right there.”¹⁸ ██████ relates he was repaying money, and he denies that he engaged in a hand-to-hand transaction with ██████ refuses to provide ██████ name but shows Officer Diaz his ID. Officer Diaz tells ██████ he wants to check ██████ pockets for drugs, and ██████ consents to the search. Officer Diaz then runs ██████ name, gives him an investigatory stop receipt, and tells him he is free to leave. While Officer Diaz runs ██████ information, Officer Alcaraz waits on the sidewalk with ██████ Officer Alcaraz asks, “You know where you were standing at, right?” followed by, “You know who lives in that building?”¹⁹

Officers Diaz and Alcaraz then return to their squad car and reverse down the street. They exit their vehicle and approach ██████ white Ford Fusion, which is parked next to the curb in front of 8034 S. Marshfield. When Officer Alcaraz reaches the driver’s window, he recognizes ██████ and announces, “Ah, look who it is...that’s ██████”²⁰ The officers open the driver’s door and ██████ exits the vehicle. Officer Diaz explains what he saw, and ██████ responds that ██████ was repaying him \$45.00, and it was not a drug deal. ██████ denies having anything illegal in his car but tells the officers they do not have permission to search the vehicle.²¹ Officer Diaz then states, “I don’t need your permission to search your car. I was just asking for it.”²² ██████ and Officer Diaz argue about the search and ██████ asks for a supervisor. Officer Alcaraz relays the request via radio, and Sergeant Sellers arrives approximately five minutes later.

¹⁷ Atts. 3 & 12.

¹⁸ Approximately 2:10 minutes of Officer Diaz’s BWC (Att. 3).

¹⁹ Approximately 5:47 minutes of Officer Alcaraz’s BWC (Att. 12).

²⁰ Approximately 8:49 minutes of Officer Alcaraz’s BWC (Att. 12).

²¹ Approximately 9:59 minutes of Officer Diaz’s BWC (Att. 3).

²² Approximately 10:32 minutes of Officer Diaz’s BWC (Att. 3).

█████ conversation with Sergeant Sellers and Officer Diaz indicates he knew them from previous experiences. █████ asks Sergeant Sellers, “Anytime somebody pass another person some money, that’s suspicion to think there was a drug transaction?”²³ Sergeant Sellers responds, “Possibly. In front of 8034 Marshfield, absolutely. Location matters. So, either you can hand over your ID...and you can let the officers conduct their stop, or you can be placed in handcuffs and go to jail for obstruction.”²⁴ Officer Diaz takes █████ ID, which █████ is holding in his left hand, and hands it to Officer Alcaraz. Officer Diaz asks █████ if he has anything in his pockets and begins a pat down. He searches inside █████ pants and jacket pockets and manipulates █████ clothing. He then walks to █████ vehicle and searches the center console, which contains a large amount of cash. Officer Alcaraz also begins searching █████ vehicle, including under the passenger’s seat and in the truck. At approximately 10:28 AM, Officer Diaz brings █████ an investigatory stop receipt and relates he is free to leave. As Officer Diaz returns to his car he tells █████ “Catch you next time.”²⁵

BWC of Sergeant Sellers²⁶

Sergeant Sellers’ BWC shows him arriving at the scene at approximately 10:20 AM, then speaking with both Officer Diaz and █████ Sergeant Sellers explains to █████ that the officers have reasonable suspicion to search his vehicle, based on the fact that they observed him engage in a hand-to-hand transaction in front of 8034 S. Marshfield, a known location for narcotics sales.²⁷ Sergeant Sellers then remains outside the vehicle with █████ before terminating his BWC at about 10:28 AM.

c. Documentary Evidence

Investigatory Stop Report (“ISR”)²⁸

Officer Diaz completed ISRs for both █████ and █████ The reports indicate the officers stopped both men upon observing “actions indicative of engaging in a drug transaction.” █████ ISR relates that █████ was “a documented Killaward GD gang member in an area known for high narcotics sales,”²⁹ and the officers observed █████ make a hand-to-hand transaction with █████ put something in his pocket, and walk away from █████ vehicle.

█████ ISR states the officers stopped █████ after observing him make a hand-to-hand transaction from the driver’s seat of his vehicle. The officers asked █████ out of the vehicle and detained him while they searched his person and vehicle. No contraband was recovered, but officers found “a large amount of USC in various bill denomination which is indicative of narcotics sales inside [█████ vehicle middle console.”³⁰ █████ ISR describes him as a member of the Gangster Disciples, but it does not contain any reference to the officers’ prior knowledge of █████ or the significance of his location in front of 8034 S. Marshfield.

²³ Approximately 17:14 minutes of Officer Diaz’s BWC (Att. 3).

²⁴ Approximately 17:19 minutes of Officer Diaz’s BWC (Att. 3).

²⁵ Approximately 24:29 minutes of Officer Diaz’s BWC (Att. 3).

²⁶ Att. 11.

²⁷ Approximately 3:44 – 4:04 minutes of Sergeant Sellers’ BWC (Att. 11).

²⁸ Atts. 5 & 8.

²⁹ Att. 5: Page 2.

³⁰ Att. 8: Page 2.

*Event Query Report*³¹

The Event Query Report documents that on August 30, 2019, at approximately 10:09 AM, Beat 606A performed a traffic stop near 8025 S. Marshfield Ave. At approximately 10:16 AM, Beat 610 (Sergeant Sellers) was dispatched to the scene. The officers ran [REDACTED] driver's license at 10:28 AM, then released him and concluded the stop approximately two minutes later.

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.³² 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. 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.”³³

VII. ANALYSIS AND CONCLUSIONS

a. The officers had reasonable suspicion to detain [REDACTED] and [REDACTED]

Allegations 1 & 2 against Officers Diaz and Alcaraz, that they detained [REDACTED] and [REDACTED] without justification, are exonerated. Similarly, Allegation 1 against Sergeant Sellers, that he failed to properly supervise by allowing the officers to detain [REDACTED] without justification, is also exonerated. Special Order S04-13-09 and Illinois state law allow officers to temporarily stop and

³¹ Att. 1.

³² 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).

³³ See *e.g., People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

question an individual when there is reasonable articulable suspicion “that the person is committing, is about to commit, or has committed a criminal offense.”³⁴ By all accounts, Officers Diaz and Alcaraz had reasonable articulable suspicion that [REDACTED] and [REDACTED] had engaged in a hand-to-hand drug transaction. The officers explained to COPA that they saw [REDACTED] sitting inside his vehicle, in front of a known gang hangout with a history of narcotics sales. They observed [REDACTED] approach [REDACTED] vehicle, exchange something with [REDACTED] and quickly walk away. [REDACTED] admitted to COPA, and to the officers on scene, that he and [REDACTED] had exchanged cash. Further, the officers and Sergeant Sellers all had prior knowledge of [REDACTED] criminal history and of drug sales at the location of the stop. For these reasons, COPA finds there is clear and convincing evidence that the officers had reasonable articulable suspicion to stop [REDACTED] and [REDACTED] and the allegations are exonerated.

b. Officer Diaz did not have reasonable suspicion to conduct a pat down of [REDACTED]

COPA finds Allegation 3 against Officer Diaz, that he searched [REDACTED] person without justification, is sustained. Similarly, Allegation 2 against Sergeant Sellers, that he failed to properly supervise by allowing the officer to search [REDACTED] person without justification, is also sustained. Pursuant to Special Order S04-13-09 officers may only perform a protective pat down to search for weapons, not to search for evidence.³⁵ Prior to conducting a pat down, “a sworn member must possess specific and articulable facts, combined with rational inferences from these facts, that the suspect is armed and dangerous or reasonably suspect that the person presents a danger of attack to the sworn member or others in the area.”³⁶

In this case, although the officers had reasonable suspicion to detain [REDACTED] COPA finds they did not have reasonable suspicion that [REDACTED] was armed and dangerous. The BWC videos show that when the officers approached [REDACTED] vehicle, [REDACTED] immediately followed their directions to step outside, and he was compliant and cooperative throughout the encounter. [REDACTED] did not make any furtive movements, was not handcuffed, and gave the officers no objective reason to believe he was armed. The totality of these facts shows that Officer Diaz did not have reasonable suspicion that [REDACTED] was armed and dangerous.³⁷

Therefore, COPA finds that Officer Diaz did not have reasonable suspicion to conduct a pat down of [REDACTED] and Sergeant Sellers failed to properly supervise by allowing the improper pat down. As a result, Allegation 3 against Officer Diaz and Allegation 2 against Sergeant Sellers are sustained as violations of Rules 2, 3, 6, and 10.

³⁴ S04-13-09(II)(A).

³⁵ S04-13-09(II)(B).

³⁶ S04-13-09(II)(C)(2); *see also People v. Sorenson*, 196 Ill. 2d 425, 432 (2001); 725 ILCS 5/108-1.01 (“When a peace officer has stopped a person for temporary questioning...and reasonably suspects that he or another is in danger of attack, he may search the person for weapons.”)

³⁷ In fact, Officer Diaz never asserted he believed [REDACTED] was armed and dangerous. Officer Diaz did not recall performing a pat down of [REDACTED] though the BWC footage shows he did. For his part, Sergeant Sellers acknowledged that Officer Diaz conducted a pat down but asserted the officer had justification.

c. Officer Diaz searched [REDACTED] pockets without justification, and Sergeant Sellers failed to properly supervise by allowing the improper search.

COPA finds Allegation 4 against Officer Diaz, that he searched inside [REDACTED] pockets without justification, is sustained. Similarly, Allegation 3 against Sergeant Sellers, that he failed to properly supervise by allowing the officer to search inside [REDACTED] pockets without justification, is sustained. Special Order S04-13-09 provides that “during a Protective Pat Down of the outer clothing of the subject, the officer may not go into the pockets of the subject or reach underneath the outer surfaces of the garments.”³⁸ The order explicitly prohibits officers from searching a subject’s pockets unless the officer feels an object which he or she believes to be a weapon.³⁹ In this case, there is no indication Officer Diaz felt any weapon-like objects in [REDACTED] pockets, nor did the officer have probable cause to search [REDACTED] pockets. Additionally, by Sergeant Sellers’ own admission, he was not paying close attention and did not see Officer Diaz reach inside [REDACTED] pockets. COPA finds this explanation insufficient, as the sergeant’s BWC shows he was standing only a few feet from Officer Diaz and [REDACTED] facing both men, as the officer searched the insides of [REDACTED] pockets.⁴⁰

For all these reasons, the preponderance of the evidence shows that Officer Diaz searched inside [REDACTED] pockets without justification, and Sergeant Sellers knew or should have known about the improper search. As a result, Allegation 4 against Officer Diaz and Allegation 3 against Sergeant Sellers are sustained as violations of Rules 2, 3, 6, and 10.

d. Officers Diaz and Alcaraz searched [REDACTED] vehicle without justification, and Sergeant Sellers failed to properly supervise by allowing the improper search.

COPA finds that Officers Diaz and Alcaraz searched [REDACTED] vehicle without justification, and that Sergeant Sellers failed to properly supervise by allowing the improper vehicle search. Special Order S04-13-09 allows officers to temporarily detain a subject until they can confirm or dispel whether criminal activity is afoot.⁴¹ By the time the officers searched [REDACTED] car, they had already performed a pat down on both [REDACTED] and [REDACTED] and they had searched inside both men’s pockets.⁴² No drugs or evidence of any crime was uncovered. However, the officers continued to detain [REDACTED] and proceeded to search his vehicle. As discussed above, the officers did not have reasonable articulable suspicion that [REDACTED] was armed and dangerous. Thus, even a “protective sweep” of [REDACTED] vehicle, limited to areas where [REDACTED] could have reasonably placed a weapon, would have violated Department policy and the law.⁴³ In this situation, Officers Diaz and Alcaraz conducted a far more invasive search of [REDACTED] vehicle than a “protective sweep.”

The BWC videos show that Officer Diaz started his search at the driver’s seat, then opened the center console and pulled out a large amount of cash. While Officer Diaz searched the driver’s

³⁸ S04-13-09(VI)(A)(2).

³⁹ *Id.*

⁴⁰ Approximately 4:28 minutes of Sergeant Sellers’ BWC (Att. 11).

⁴¹ S04-13-09(V)(A).

⁴² [REDACTED] consented to the search of his pockets on BWC video.

⁴³ *See Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (holding that officers may search the passenger compartment of a vehicle for weapons, so long as they “possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.”).

area, Officer Alcaraz searched the front passenger's area. Both officers then proceeded to search the backseat, where presumably, it would have been more difficult for ██████ to hide a firearm from his position in the driver's seat. Officer Diaz opened a cigarillo package, which could not have possibly contained a weapon. Officer Alcaraz also pulled down the rear seats to access the trunk, something ██████ could not have reasonably done to hide a weapon. Officer Alcaraz then searched the trunk, including inside a cardboard box and a zipped duffle bag, which ██████ could not have reached from the driver's seat.

The video evidence indicates the officers were not looking for a weapon based on reasonable articulable suspicion but were instead looking for any evidence of any crime. In fact, Officer Alcaraz told COPA he searched the car under "suspicion of narcotics."⁴⁴ Given these circumstances, COPA finds the officers lacked any legal basis to perform a warrantless, non-consensual search for evidence of ██████ vehicle. Therefore, Allegation 5 against Officer Diaz and Allegation 3 against Officer Alcaraz are sustained as violations of Rules 2, 3, and 6.

Additionally, COPA finds that Sergeant Sellers failed to properly supervise when he allowed the officers to search ██████ vehicle. Department rules state that supervisors have the "responsibility for the performance of all subordinates placed under them and while they can delegate authority and functions to subordinates, they cannot delegate responsibility. They remain answerable and accountable for failures or inadequacies on the part of their subordinates."⁴⁵ By Sergeant Sellers' own admission, he was present when the vehicle search occurred and was "not paying attention."⁴⁶ COPA finds Sergeant Sellers knew or should have known the officers did not have sufficient justification to search ██████ vehicle, and the sergeant had a duty to prevent and/or stop the unlawful search. Therefore, Allegation 4 against Sergeant Sellers is sustained as a violation of Rules 2, 3, 6, and 10.

e. Officer Diaz failed to adhere to the requirements of S04-13-09 in completing an ISR for ██████

Allegation 6 against Officer Diaz, that he failed to explain the reasons a search beyond a protective pat down was performed on ██████ in the narrative for ISR #003088442, is sustained. ██████ ISR does not include all the reasons that justified Officer Diaz's actions. The narrative does not mention ██████ criminal history, the fact that he was known to the officers, or the significance of ██████ location in front of 8034 S. Marshfield. The entire purpose of an ISR is to document these types of factors, which clearly contributed to the Officer Diaz's reasonable articulable suspicion that ██████ was involved in criminal activity. Since Officer Diaz omitted this information from the ISR, Allegation 6 is sustained against Officer Diaz as a violation of Rules 5 and 6.

⁴⁴ Att. 29: Page 13, Lines 20 – 21.

⁴⁵ Rules and Regulations of the Chicago Police Department, Article IV(B).

⁴⁶ Att. 31: Page 13, Line 3.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Adrian Diaz

COPA has considered Officer Diaz's complimentary history, minimal disciplinary history, and inexperience as an officer in mitigation.⁴⁷ However, apart from Sergeant Sellers, Officer Diaz bears the most culpability for violating ██████ Fourth Amendment rights. Officer Diaz conducted improper searches of ██████ person and vehicle, and he failed to adequately document the reasons for the protective pat down in ██████ ISR. These violations undermine public trust and confidence in the Department. Based on his answers to COPA, Officer Diaz appears to genuinely believe his actions complied with Department policy, calling attention to the need for more training. Accordingly, COPA recommends Officer Diaz receive a **3-day suspension and re-training** on vehicle searches and protective pat downs.

b. Officer Ricardo Alcaraz, Jr.

COPA has considered Officer Alcaraz's complimentary history, minimal disciplinary history, and inexperience as an officer in mitigation.⁴⁸ COPA has found that Officer Alcaraz participated in the unjustified search of ██████ vehicle, a violation of ██████ Fourth Amendment rights. Additionally, Officer Alcaraz's COPA statement suggests he genuinely believed his actions complied with Department policy. Accordingly, COPA recommends Officer Alcaraz receive a **1-day suspension and re-training** on vehicle searches.

COPA has considered Sergeant Seller's extensive complimentary history and lack of disciplinary history in mitigation.⁴⁹ However, COPA has found that Sergeant Sellers failed to properly supervise by allowing officers to conduct improper searches of ██████ person and vehicle. Sergeant Sellers' conduct was particularly egregious given that ██████ requested the sergeant's presence to protect him from an unlawful vehicle search, yet Sergeant Sellers allowed the unlawful search to proceed. COPA credits Sergeant Sellers for accepting responsibility during his statement and candidly admitting he did not pay close enough attention to the searches. Given the sergeant's rank and 25 years of service to the Department, COPA recommends Sergeant Sellers receive a **5-day suspension**.

⁴⁷ Officer Diaz received a reprimand for failing to complete a required report in March 2019 (Log 2019-585). He has received a total of 31 awards, including one problem solving award, one Department commendation, one special commendation, and 24 honorable mentions. Att. 33.

⁴⁸ Officer Diaz received a 1-day suspension for failing to properly secure an arrestee in January 2019 (Log 1092158), and he received a reprimand for a preventable traffic accident in February 2022 (SPAR 563980). He has received a total of 26 awards, including one problem solving award, one Department commendation, one special commendation, and 19 honorable mentions. Att. 33.

⁴⁹ Sergeant Sellers has received a total of 190 awards, including one Superintendent's Award of Tactical Excellence, one life saving award, eight complimentary letters, eight Department commendations, and 142 honorable mentions. Att. 33.

Approved:



4/19/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date