

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	April 7, 2019
Time of Incident:	12:37 pm
Location of Incident:	1734 W. Garfield Blvd., Chicago, IL
Date of COPA Notification:	June 12, 2019
Time of COPA Notification:	3:12 pm

During a traffic stop, [REDACTED] (driver) and his passenger, [REDACTED] were stopped by Officers Raymond Dunker and Jeffrey Weber, due to expired registration. The officers approached and asked [REDACTED] and [REDACTED] for their identifications, recognized [REDACTED] as a habitual criminal who carries a firearm and believing that [REDACTED] may be armed asked the occupants to exit the vehicle. [REDACTED] exited the vehicle and Officer Weber handcuffed him then patted him down. Officer Weber searched [REDACTED] vehicle and located a firearm under the passenger seat where [REDACTED] was located. Officers Duncker and Weber conducted a search of [REDACTED] person, locating narcotics and zip lock baggies on his person. [REDACTED] denied being in possession of the narcotics or the recovered firearm. [REDACTED] was placed under arrest.

During his statement to COPA, [REDACTED] denied all of the facts listed in his arrest report and made the below allegations. COPA’s investigation revealed that [REDACTED] allegations are Exonerated. COPA brought allegations against the responding officers for failing to timely activate or deactivate their body worn cameras which was met with a Sustained finding.

II. INVOLVED PARTIES

Involved Officer #1:	Raymond Duncker / Star #10388 / Employee ID#[REDACTED] / DOA: Feb 2, 2015 / Unit: 016/714 / DOB: [REDACTED], 1967 / Male / White – *Resigned January 15, 2022.
Involved Officer #2:	Jeffrey E. Weber / Star #13854 / Employee ID#[REDACTED] / DOA: Sep 11, 2000 / Unit: 009 / DOB: [REDACTED], 1975 / Male / White
Involved Officer #3:	Joshua R. Bernson / Star #15360 / Employee ID#[REDACTED] / DOA: Sep 30, 2002 / Unit: 009 / DOB: [REDACTED], 1979 / Male / White
Involved Officer #4:	Rodolfo Martinez / Star #12495 / Employee ID#[REDACTED] / DOA: April 6, 2015 / Unit: 009/620 / DOB: [REDACTED], 1987 / Male / Hispanic

Involved Individual #1: [REDACTED] / DOB: [REDACTED], 1968 / Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
1. Officer Raymond Dunker	1. Stopped and detained [REDACTED] without justification; and	Exonerated
	2. Arrested [REDACTED] without probable cause, in violation of Rule 6.	Exonerated
2. Officer Jeffrey Weber	1. Stopped and detained [REDACTED] without justification; and	Exonerated
	2. Arrested [REDACTED] without probable cause, in violation of Rule 6.	Exonerated
3. Officer Rodolfo Martinez	1. Violation of Special Order 03-14, failing to activate your body worn camera in a timely manner; and	Sustained/Violation Noted
	2. Violation of Special Order 03-14, terminating the body worn camera too quickly.	Sustained/Violation Noted
4. Officer Joshua Bernson	1. Violation of Special Order 03-14, failing to activate your body worn camera in a timely manner; and	Sustained/Violation Noted
	2. Violation of Special Order 03-14, terminating the body worn camera too quickly.	Sustained/Violation Noted

IV. APPLICABLE RULES AND LAWS

Rules

- 1. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.

Special Orders

- 1. SO 03-14 – Body Worn Cameras – effective June 9, 2017.

V. INVESTIGATION¹

a. Interviews

In a **statement to COPA**² on August 7, 2019, ██████████ stated he was the passenger in ██████████ vehicle which was stopped for expired plates by Officers Duncker and Weber. ██████████ alleged the officers stopped and detained him for no reason, searched him and ██████████ then searched the vehicle, all without justification. ██████████ accused the officers of retaliating against him due to a previous arrest and a lawsuit he filed against CPD in 2017, where the charges against him were dismissed. During the traffic stop, ██████████ and ██████████ were asked to exit the vehicle and ██████████ was handcuffed. Officer Weber searched the vehicle and found narcotics and a gun under the passenger seat in the vehicle. ██████████ was charged for the narcotics and the gun that was found in the vehicle. ██████████ denied being in possession of the narcotics or the gun. ██████████ said that ██████████ was driving with a suspended license and no insurance, and the officers did not arrest ██████████ denied making any movements as described in the Department reports. ██████████ stated that he did not initially recognize Officers Weber or Duncker during the traffic stop nor did the officers indicate to him that they recognized him from any prior encounters. ██████████ further alleged that he was transported to the 009th District Station, while ██████████ was released. ██████████ denied being in possession of narcotics or a firearm.

In a **statement to COPA**³ on March 16, 2021, **Officer Raymond Duncker** stated that during this incident he was assigned to the Gang Enforcement Unit and their unit was not assigned body worn cameras. Officer Duncker was working with Officer Weber, and they were on patrol in a high crime area in Garfield. Officer Duncker observed a vehicle with expired plates and proceeded to curb the vehicle. As he and Officer Weber curbed the vehicle, they observed the passenger, now known as ██████████ lift his butt off the seat and make furtive movements consistent with someone hiding something. Officer Duncker approached the driver, ██████████ while Officer Weber approached ██████████ whom he recognized from a prior incident back in 2017. They asked the occupants to exit the vehicle, and as ██████████ exited the vehicle, Officer Weber immediately took out his handcuffs and told him, “Ray that’s going to be a king.” Officer Duncker explained that the code “king” indicates that there’s going to be an arrest and that there is a gun in the vehicle. They escorted ██████████ and ██████████ to the rear of the vehicle and Officer Weber located narcotics on ██████████ person. Officer Duncker stated that ██████████ was not handcuffed. Officer Weber returned to the passenger side of the vehicle, immediately retrieved a firearm from under the seat and displayed it for all of them to see. Immediately, ██████████ started to complain to ██████████ and stated words to the effect of, “Why do you have a gun in my car?” Officer Duncker eventually called for a second unit to assist them, and Officers Bernson and Martinez responded to the scene. However, Officer Duncker could not recall in what manner these officers assisted with the traffic stop. Officer Duncker could not recall specific conversations with ██████████ or ██████████ Officer Duncker related that he conducted a second search of ██████████ and recovered another bag with baggies and narcotics. A transport unit responded and transported ██████████ to the 009th District. Officer Duncker denied the allegations made against him, related

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 Att. 13.

³ Att. 44.

that [REDACTED] was found guilty of the narcotics charges and asserted that he had probable cause to conduct the traffic stop, then to search and arrest [REDACTED]. Officer Duncker stated that because Officer Weber observed the firearm sticking out from under the passenger seat and had located narcotics on [REDACTED] he had justification in searching the vehicle.

In a **statement to COPA**⁴ on October 25, 2021, **Officer Jeffrey Weber** related a similar account as Officer Duncker for the reasons of the traffic stop and further added that he observed a furtive movement from the passenger, who he later learned to be [REDACTED]. Officers Weber and Duncker asked the occupants to exit the vehicle believing that they were hiding a firearm. As [REDACTED] was exiting the vehicle, Officer Weber observed the butt of a handgun under the passenger seat. Officer Weber informed Officer Duncker by using a police code "19-King" to let him know of the handgun and arrest of [REDACTED]. Officer Weber patted down [REDACTED] handcuffed him, and located narcotics on his person. Officer Duncker handled the driver, [REDACTED] who was not handcuffed. Officer Weber related that Officer Duncker conducted a second search of [REDACTED] and located a black bag with baggies with additional suspect narcotics. Officer Weber searched the vehicle as Officers Bernson and Martinez responded to the scene. Officer Weber could not recall the manner that these officers assisted them in the traffic stop other than guarding [REDACTED] and [REDACTED]. Officer Weber recalled that [REDACTED] made a statement that the handgun was not his and that he did not know that [REDACTED] had a gun. [REDACTED] further related that when they were stopped by the officers, he saw [REDACTED] with the gun. [REDACTED] was arrested and charged with the narcotics and the recovered firearm. The vehicle was impounded and [REDACTED] was released. Officer Weber denied the allegations against him and related that he had probable cause to conduct the traffic stop, search the occupants, search the vehicle and place [REDACTED] under arrest.

In a **statement to COPA**⁵ on March 16, 2021, **Officer Joshua Bernson** stated that he was working with Officer Martinez when they assisted in the traffic stop being conducted by Officers Duncker and Weber. Officer Bernson did not have an independent recollection of the incident and referred to Officer Martinez's BWC and Department Reports to refresh his memory during his COPA statement. Upon arrival, he recalled the occupants of the vehicle standing outside of the vehicle, however Officer Bernson could not recall the occupants to be handcuffed or being placed in handcuffs. Officer Bernson assisted Officers Duncker and Weber in guarding the occupants and conducting a second search of the vehicle. Officer Bernson could not recall having any verbal or physical contact with [REDACTED] or [REDACTED]. Officer Bernson related that he did not activate his body worn camera upon arrival and admitted that the recording was deactivated too early.

In a **statement to COPA**⁶ on March 16, 2021, **Officer Rodolfo Martinez** related a similar account as Officer Bernson regarding his assistance to Officers Duncker and Weber. Officer Martinez did not have an independent recollection of the incident and referred to his BWC and Department Reports to refresh his memory during his COPA statement. Officer Martinez could not recall any conversations or interactions between any of the officers at the scene with [REDACTED] or [REDACTED]. Officer Martinez indicated that he activated his body worn camera when he thought it was safe and practical to do so, and could not recall why he did not activate his BWC upon arrival.

⁴ Atts. 48 – 49.

⁵ Att. 50.

⁶ Atts. 48 – 49.

Officer Martinez terminated the recording when he felt the scene and the offender were secure, although he, the officers and ██████ were still at the scene. Officer Martinez denied the allegations against him.

b. Digital Evidence

The **Body Worn Camera (BWC)**⁷ of Officer Martinez was activated while they were at the scene and it depicts Officer Duncker holding ██████ by the arm. ██████ was wearing a black sweater with a white T-shirt and was placed against the rear passenger side of a vehicle. ██████ appeared to be handcuffed and Officer Duncker was observed using his police radio. ██████ wearing a light blue jean jacket, was on the rear driver's side of the vehicle. Although the BWC did not capture ██████ initial statements, he appeared to be upset and uncuffed. ██████ can be heard telling the officers to search his trunk, that he had nothing but beers, debit cards and he was clean. Officer Duncker proceeded to conduct a search of ██████ and upon lifting his T-shirt, he located a black bag on ██████ waistband. Officer Duncker asked ██████ what was in the bag, but ██████ did not answer. Officer Duncker can be heard asking ██████ if he had anything else on him, to which ██████ said no. Officer Weber is in and out of the vehicle which he appears to be searching the vehicle. ██████ was asked to move towards the squad car as Officer Weber proceeded to open the trunk of the vehicle. The BWC recording was terminated at 2:54 minutes and no other interaction was recorded.

The **BWC of Officer Bernson**⁸ was not activated during the incident, however the buffering of approximately 36 seconds captured Officer Bernson conducting a search of ██████ vehicle. No other image, conversation or interaction regarding this incident was captured.

c. Documentary Evidence

████████ **Arrest and Case Reports**⁹ detailed that the officers were patrolling a high crime area known for gang violence when they observed a Lexus with expired IL registration. Officers Duncker and Webber curbed the vehicle and observed the front passenger raise himself out of the seat and reach toward his right side and near the floor of the vehicle. The officers spoke with the driver, ██████ and observed the passenger to be ██████ a known convicted felon, known to carry a firearm. Officers believing a firearm to be in the vehicle or in the possession of the occupants asked them all to exit the vehicle. As ██████ exited the vehicle, Officer Weber observed the handle of a black handgun directly under ██████ seat. A pat down was conducted of ██████ which revealed a plastic baggy containing a rock like substance. ██████ was placed in custody and during a second search by Officer Duncker, a black plastic baggy containing two clear zip lock baggies each with numerous smaller plastic baggies were located in his pocket as another baggy fell to the ground containing a blue pill (suspect ecstasy). Officer Weber removed the firearm (9mm Smith & Wesson SD-9) from under the seat ██████ occupied with a round in the chamber and numerous live rounds in the magazine. At this time, ██████ stated, not verbatim, "Man, what are you doing with a gun in my car!" When ██████ was asked if he knew ██████ had a gun, ██████ responded, "Yeah, I didn't see him have it when he

⁷ Att. 20.

⁸ Att. 19.

⁹ Atts. 4 and 5.

got in the car, but when you pulled up, I saw him with it.” The Lexus was impounded, [REDACTED] was released and [REDACTED] was placed under arrest for the gun and narcotics.

The **Vehicle Impoundment/Seizure Report**¹⁰ documented that more than two grams of controlled substance was located in the vehicle. In addition, the report noted that [REDACTED] was the passenger in the vehicle and had a firearm, suspect crack cocaine and suspect cannabis in his pocket.

The **Property Inventory Receipts**¹¹ documented the recovered handgun, the suspect crack cocaine, the blue pill suspect ecstasy, several Ziplock baggies and personal jewelry.

Numerous **attempts** were made to contact and interview [REDACTED]¹² First and certified letters were mailed and returned unclaimed. A personal visit was made, but no one answered. Messages were left with [REDACTED] for [REDACTED] failed to contact COPA and failed cooperate with this investigation.

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

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

¹⁰ Att. 24.

¹¹ Att. 7.

¹² Atts. 26 and 54.

VII. ANALYSIS

COPA finds that the allegations against Officers Duncker and Weber to be **Exonerated**. An officer must have probable cause to arrest a subject.¹³ “Probable cause exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject has committed it.”¹⁴ The reasonable basis for an arrest “should be considered from the perspective of a reasonable officer at the time” of the arrest.¹⁵

Here, Officers Duncker and Weber explained their reasons for conducting the traffic stop, and the reasons for placing ██████████ under arrest. During the traffic stop, the officers recognized ██████████ as a known habitual criminal to carry firearms, and believing that ██████████ or the occupants had a weapon, asked them to exit the vehicle. While Weber was justified in his pat down of ██████████ based upon the furtive movements he observed as he approached the vehicle, he was further justified based upon his observation of what he believed to be the butt of a handgun protruding from under the passenger seat where ██████████ was seated. Therefore, the pat down of ██████████ person and the search of the immediate area where ██████████ was seated were justified. A search of the vehicle confirmed the Officers’ suspicions as a 9mm handgun was recovered from under the passenger seat. Finally, a subsequent search of ██████████ person revealed narcotics on his person.

Moreover, ██████████ upset behavior and comments toward ██████████ supported the fact that the firearm belonged to ██████████ who was then placed under arrest. Furthermore, the BWC of Officer Martinez, who responded as an assist unit, captured Officer Duncker searching ██████████ and recovering another bag with narcotics that was in his waistband. Although the court did not find ██████████ guilty of the firearm, it did find ██████████ guilty of the narcotics. However, notwithstanding the finding of the Court, a reasonable officer in the position of the accused officers would have reasonably believed that a crime was afoot, based on all of the circumstances. Therefore, Officers Duncker and Weber had probable cause to stop, search and arrest ██████████ ██████████

COPA finds that the allegations against Officers Bernson and Martinez are **Sustained**. Per Special Order 03-14 - Body Worn Cameras, officers are mandated to record any and all law-enforcement-related encounters. A Department member will activate the system at the beginning of an incident and will record the entire incident. These law-enforcement-related activities include all investigatory and traffic stops, arrests, seizure of evidence, searches – including searches of people, items, vehicles, buildings and places, the statements made by individuals in the course of an investigation and any other instance when enforcing the law. Department members will not deactivate event mode unless the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity, including when the member has cleared the assignment, the member has left the scene and the arrestee has been transferred to another Department member for transport.

¹³ *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964).

¹⁴ S04-13-09 II(D).

¹⁵ S04-13-09 II(D).

Here, Officers Bernson and Martinez responded to the traffic stop being conducted by Officers Duncker and Weber, who were at the time assigned to the Gang Enforcement Unit which was not equipped with body worn cameras. Upon arrival, Officers Bernson and Martinez failed to activate their BWCs in a timely manner missing critical information and activity that transpired during the traffic stop. Officers Bernson and Martinez also deactivated their BWCs before the incident concluded, while they were still at the scene conducting the investigation and prior to the offender being secure or taken from the scene. Therefore, Officers Bernson and Martinez violated Special Order 03-14 when they failed to timely activate and deactivate their body worn cameras.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Joshua Benson

i. Complimentary and Disciplinary History

Officer Benson's complimentary history consists of the following: (1) 2004 Crime Reduction Ribbon (1) 2009 Crime Reduction Award, (1) 2019 Crime Reduction Award, (4) Attendance Recognition Award, (4) Complimentary Letter, (11) Department Commendation, (126) Honorable Mention, (1) Honorable Mention Ribbon Award, (1) Nato Summit Service Award, (1) Police Officer of the Month Award, (2) Presential Election Deployment Award 2008, (1) Problem Solving Award.

No SPAR's or sustained complaint history as of March 15, 2022.

ii. Recommended Penalty, by Allegation

For the allegations that Officer Benson failed to activate his BWC in a timely manner and deactivated it too quickly, COPA recommends a violation noted.

b. Officer Rodolfo Martinez

i. Complimentary and Disciplinary History

Officer Martinez's complimentary history consists of the following: (1) 2004 Crime Reduction Award, (1) Attendance Recognition Award, (1) Department Commendation, (2) Emblem of Recognition, (34) Honorable Mention, (1) Superintendent's Award of Tactical Excellence.

No SPAR's or sustained complaint history as of March 15, 2022.

ii. Recommended Penalty, by Allegation

For the allegations that Officer Martinez failed to activate his BWC in a timely manner and deactivated it too quickly, COPA recommends a violation noted.

Approved:



Sharday Jackson
Deputy Chief Administrator – Chief Investigator

March 30, 2022

Date