

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 19, 2019
Time of Incident:	5:51 P.M.
Location of Incident:	6117 S. Ashland Avenue, Chicago, IL 60636
Date of COPA Notification:	July 19, 2019
Time of COPA Notification:	7:02 P.M.

On July 19, 2019, at approximately 7:02 P.M., Chicago Police Department (“CPD”) officers initiated a traffic stop on the complainant, [REDACTED] ([REDACTED] in the parking lot at 6117 South Ashland Avenue. Subsequently, [REDACTED] was issued citations for passing on the right and no valid insurance. [REDACTED] alleges that CPD officers detained him, searched his person and vehicle without justification.

II. INVOLVED PARTIES

Involved Officer #1:	Officer Ryan A. Chulumovich, Star #4513, Employee No. [REDACTED], Date of Appointment: April 25, 2016, Rank: Police Officer, Unit of Assignment: 007, DOB: [REDACTED], 1992, Gender: Male, Race: White
Involved Officer #2:	Officer Kevin Hasenfang, Star #15085, Employee No. [REDACTED], Date of Appointment: December 12, 2016, Rank: Police Officer, Unit of Assignment: 007, DOB: [REDACTED], 1994, Gender: Male, Race: White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1984, Gender: Male Race: Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Ryan Chulumovich	<p>It is alleged by the complainant, [REDACTED] that on or about July 19, 2019, at approximately 6:00 pm, at or near 6117 S. Ashland Avenue, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] person. 2. Searched [REDACTED] vehicle without justification. 3. Detained [REDACTED] without justification. 	<p>Sustained Sustained Sustained</p>
Officer Kevin Hasenfang	<p>It is alleged by the complainant, [REDACTED] that on or about July 19, 2019, at approximately 6:00 pm, at or near 6117 S. Ashland Avenue, Chicago, IL, the accused committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] person. 2. Searched [REDACTED] vehicle without justification. 3. Detained [REDACTED] without justification. 	<p>Sustained Sustained Sustained</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. Disobedience of an order or directive, whether written or oral.

Special Orders

1. S04-13-09: Investigatory Stop System (eff. 7/10/2017)
2. S04-14-05: Traffic Violators, Name Checks, and Bonding (eff. 9/3/2015)

Federal Law

1. U.S. Constitution, Fourth Amendment

INVESTIGATION¹

a. Interviews

COPA interviewed complainant, ██████████ on July 29, 2019. The following is a summary of the interview.

██████████ was driving his vehicle on the roadway and took evasive actions to avoid potholes. When he stopped at the traffic light, an unknown driver in a SUV pulled up next to him and displayed offensive gestures by showing him his middle finger as he banged on his horn. When he turned right at the traffic light, the SUV followed him, turning right from the left lane. ██████████ said he passed vehicles on the right to get away from the SUV and then observed a CPD marked squad car as he made his way to 59th and Ashland Avenue. When he turned left onto Ashland Avenue, he saw the emergency lights activated on the squad car and pulled over into the parking lot across the street from a gas station, located at 6117 South Ashland Avenue.

Officer Chulumovich approached his vehicle on the driver's side and Officer Hasenfang approached on the passenger side. Officer Chulumovich asked him for his driver's license and insurance card. He asked Officer Chulumovich why he was pulled over and was told he passed vehicles on the right. ██████████ said he explained to Officer Chulumovich why he passed the vehicles on the right and provided him his driver's license and insurance.³ Officer Chulumovich and Officer Hasenfang returned to their squad for a short period of time, when they returned, Officer Chulumovich asked him to "pop" out of the car. ██████████ said he complied and exited the vehicle. Officer Chulumovich grabbed his arm and placed his hands on the hood. He was patted down, and his wrists were secured with handcuffs. When he asked Officer Chulumovich why he put handcuffs on him, Officer Chulumovich told him it was for their safety. Officer Chulumovich then asked if he had his concealed carry, ██████████ said he responded by asking if he was under arrest. Officer Chulumovich told him he was being detained and escorted him to the rear driver's side of his vehicle. ██████████ said during the time Officer Chulumovich placed him in handcuffs, Officer Hasenfang opened the passenger side door and started searching his vehicle.⁴ ██████████ observed Officer Hasenfang open the arm rest and searched the contents and stated, "What the hell are you doing, why are you going through my stuff." Officer Hasenfang continued to search the vehicle. At this time two female CPD officers arrived on location. He told them Officer Chulumovich and Officer Hasenfang pulled him over illegally and his vehicle was being searched without his consent. ██████████ said CPD officers pull him over all the time because they run his license plate and find out he has a revoked concealed carry license. His concealed carry license has been revoked for two years and he surrendered it to the Illinois State Police.

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. #4 ██████████ Interview (Audio)

⁴ Att. #14 at T22: 2:51 began searching the vehicle.

██████████ identified Officer Chulumovich as a short white male, wearing a red shirt, jeans and a hat, as the officer that approached him from the driver's side and handcuffed him. He identified Officer Hasenfang as a tall white male in his 30's, wearing a blue short sleeve CPD uniform shirt. ██████████ said he felt Officer Chulumovich followed Officer Hasenfang lead because he stood by with him and did not say too much.

Officer Chulumovich handed him over to one of the female officers while Officer Hasenfang continued to search his vehicle. At one-point Officer Hasenfang walked over to him with a tray in his hand from the middle console of his vehicle and said, "What's this?" ██████████ said he responded, "Dude, that's a razor blade I use to clean my window." ⁵He explained that the razor blade was old and was in his vehicle to clean off city stickers. He further said, it is not a crime to have a razor blade in the car, and he did not commit a crime that warranted Officer Hasenfang to search his vehicle. ██████████ said he watched Officer Hasenfang search all the contents inside his vehicle including his bookbag.

After Officer Hasenfang continued searching the vehicle, he walked back over to them and said, "His glove box is locked, I know there is something in the car."⁶ At this time, Officer Hasenfang removed ██████████ car keys from his waistband and then entered his locked glove box and trunk. ██████████ said he wanted to fight Officer Hasenfang from taking his car keys, but he knew there would have been more trouble and they were going to do what they wanted to do anyway. ██████████ said almost all the contents from his vehicle was removed and searched without his permission.

██████████ said he feels that the traffic stop was racially motivated because there was no other reason for the officers to stop him. He was told by Officer Hasenfang after he concluded searching his vehicle that his insurance was expired.⁷ ██████████ said the insurance did not expire until September 2019. Officer Hasenfang did not reveal there was an issue with his insurance until after he completed searching his vehicle twice. He was not allowed to call his insurance company and was issued citations.⁸

██████████ said he was detained unnecessarily for several minutes and remained in handcuffs until Officer Hasenfang finished searching his vehicle and issuing him citations.⁹

COPA interviewed accused Officer Kevin Hasenfang¹⁰ on January 8, 2020. He reviewed from his BWC [before the interview]. The following is a summary of his interview.

Officer Hasenfang said he and his partner, Officer Chulumovich observed a vehicle passing on the right, westbound 59th Street approaching Ashland Ave., and stopped the car at 6117 S. Ashland Ave. in the parking lot. Officer Hasenfang said, the driver, ██████████ had originally stopped

⁵ Att. #14 at T, 5:15 walks over to ██████████ with tray from middle console.

⁶ Att. #14 at T, 6:16 glove box is locked, I know there is narcotics in the car.

⁷ Att. #14 at T, 10:52 search of vehicle concludes.

⁸ Att. #14 at T, 25:11 completed writing citations.

⁹ Att. #14 BWC Hasenfang, 25:52 ██████████ released from handcuffs.

¹⁰ Att. #19 (Audio) and Att. #21 (Transcript)

in the middle of the street and appeared frustrated and made a hand gesture out the window before he was directed to pull into the parking lot.

Prior to stopping the vehicle, he used the computer to run the license plate to obtain the name of the registered owner. He then obtained the driver's license number of the registered owner by running a name query via Soundex through National Crime Interstate Computer (NCIC), Law Enforcement Access Data System (LEADS) and the Secretary of State (SOS). He obtained the driver's license number of the registered owner. The information received appeared to match the driver's sex or age, who was later identified as [REDACTED]. The information also revealed a revoked conceal carry license.¹¹ Officer Hasenfang said he kept this in mind as something to be aware of as he approached the vehicle.

During the traffic stop he acted as a cover officer (back up). When he and Officer Chulumovich approached the vehicle, he was on the passenger side looking for anything in plain view that would cause concern, such as, seeing a firearm or a weapon, narcotics and other violations of kids not seat belted, and he was there to protect his partner. Officer Hasenfang said he did not observe anything in plain view that would have caused concern.¹²

Officer Hasenfang said he conducted a protective sweep of the vehicle due to his training experience and [REDACTED] behavior. He knew that after citations were issued for a municipal code and no insurance he would be released.¹³ He had knowledge [REDACTED] had access to firearms in the past because he had a revoked conceal carry and at one time had a FOID card. In his experience individuals in the area have concealed carry licenses that are revoked, and they usually have different addresses for FOID cards, conceal carry license and driver's license. Officer Hasenfang said, the State Police may have notified him to a wrong address advising his conceal carry was revoked and [REDACTED] may have thought he had a right to legally carry a weapon. Officer Hasenfang said it was his opinion that because [REDACTED] was so hostile and irate, he was not going to allow him to take possession of the vehicle and drive away because he could have access to firearms or other weapons.¹⁴

When Officer Hasenfang was asked to explain a protective sweep, he said, the manner of how he conducts protective sweep is based off his understanding of the law at that time, experience, the academy, field training and more experienced officers. He also learned about Terry stops and protective pat downs.¹⁵ It was his understanding that the law was expanding by the Supreme Court via Michigan v. Long, which was restrictive, and Arizona v. Gant which allows a protective pat down of a car if you have reason to believe that the subject is possibly armed and a danger to either himself or others. He went on to say that this is where Gant was distinguished from Long. Because of his understanding of Long, eventually they had to let [REDACTED] go because he was not under arrest and was going to have access to his vehicle. Officer Hasenfang said [REDACTED] was screaming the whole time about him being a racist white boy.¹⁶

¹¹ Att. #21 p. 12, lines 3-15.

¹² Att. #21 p. 13, lines 13-15.

¹³ Att. #21 p. 16, lines 14-20.

¹⁴ Att. #21 p. 17, lines 10-14.

¹⁵ Att. #21 p. 20, lines 4-9.

¹⁶ Att. #21 p. 21, lines 21-34 and p. 22, line 1.

Officer Hasenfang made statements to the fact, “It was hateful, I was stressed, and I was getting shaky.”¹⁷ He said, “I knew from the get-go that we had to do a protective sweep of the car based on not knowing why it was revoked.”¹⁸ Officer Hasenfang said he did not understand why the Illinois State Police did not return that type of information via LEADS. All he knew is a person could be revoked for failure to renew their FOID card, which is scary for a police officer. A person could also be revoked for committing an aggravated battery or having a pending felony indictment. He said he did not have time to conduct a query via CLEAR database.¹⁹

Officer Hasenfang was asked to explain a protective pat down, in which he relayed, “When you have reasonable articulable suspicion a subject is armed or presents a danger, you can conduct a protective pat down briefly of their outer garments without going into any pockets or anything.”

When Officer Hasenfang was asked what factors led him to believe that [REDACTED] was armed. He said, “Starting from the get-go with the nature of the specific traffic violation. He said passing on the right alone, could infer he had to pee, or you can make the inference that he committed a shooting.”²⁰

Officer Hasenfang said they were in an area with an intense amount of gang activity, and that since it was July, he was sure there was a lot of shootings in the area. He said, “That’s why we were on aggressive patrol pulling cars over.”²¹ He added that [REDACTED] speeding suggested to him, that he could have been in a hurry to get to work but then he could have equally or likely have committed a robbery.²²

Officer Hasenfang said when [REDACTED] stopped in the middle of the street, he felt it could have been his intentions to make the traffic stop occur in an unsafe area because it was rush hour, or maybe facilitate flight. He had to direct [REDACTED] into the parking lot via loudspeaker.²³

Officer Hasenfang said additional factors that led him to believe [REDACTED] was armed, “The fact that he had a conceal carry meant he had legal access to firearms.”²⁴ “The fact that he didn’t respond to his partner when asked if he had a concealed carry.”²⁵ He said, “The law in Illinois is, if you have a conceal carry you do not have to disclose until the officer asks.”²⁶ When his partner asked [REDACTED] about his conceal carry, he failed to answer, and he had the [REDACTED] and duty to answer.²⁷ He was not sure if the conceal carry being revoked bound [REDACTED] to answer.²⁸ But since he did not respond at all suggested “He was exercising his right to remain silent as to not

¹⁷ Att. #21 p. 21, lines 2-5.

¹⁸ Att. #21 p. 21, line 5-7.

¹⁹ Att. #21 p. 21, lines 15-16.

²⁰ Att. #21 p. 22, lines 10-14.

²¹ Att. #21 p. 22, lines 17-20.

²² Att. #21 p. 22, lines 21-24.

²³ Att. #21 p. 23, lines 1-6.

²⁴ Att. #21 p. 23, lines 22-24.

²⁵ Att. #21 p. 23, line 24 and p. 24, line 1.

²⁶ Att. #21 p. 24, lines 1-4.

²⁷ Att. #21 p. 24, lines 6-7.

²⁸ Att. #21 p. 24, lines 7-8.

incriminate himself.”²⁹ This was a strong indicator for him because if he answered in the affirmative that he had his concealed carry he would have been in violation of a class 4 felony, aggravated unlawful use of a weapon.³⁰

He told ██████████ that he empathized and understood about him being stopped all the time but, his behavior led him to believe that he could have been armed.

He said another indicator was the fact that when he started searching the car, ██████████ started screaming, he did not have consent to enter his car.³¹ In his experience, in the district it only comes up if there is something in the car.³² He respected ██████████ wish for him not to search the car, but he started screaming, “Don’t search my car!”, “Don’t search my car,” or “Something to that fact.”³³

When he was asked what areas of the vehicle, he was justified searching, he said, “The areas allowed to search were areas immediately accessible to him that could contain weapons.” The areas included, under and around the driver and passenger side seats, and a backpack on the rear seat. He noticed the backpack was heavy and had hard objects in it and believed they could possibly be weapons, or a gun box, ammunition or whatever, so he opened the bag and moved on.³⁴

When he was asked why he looked in the backpack twice, Officer Hasenfang said during the initial protective sweep he was looking for weapons in places weapons could be found.³⁵ When he opened the middle console during his weapon search, he found a small bag containing less than a tenth of a gram, “remnants of cannabis.”³⁶ In his experience the small bag was consistent with a bag to transport narcotics, in which there was trace amounts of cannabis, he also found a razor blade.³⁷ This indicated to him that the search had extended from probable cause to reasonable suspicion, that there was narcotics in the car, in which a narcotics search was conducted.³⁸ He went back to the backpack and looked in places where narcotics could be put which included the trunk and glovebox.³⁹

Officer Hasenfang further said, finding the “cannabis residue” in the center console was odd, and suggested that he did not necessarily smoke in the car. He did not smell an odor of cannabis when they approached the car and immediately say, it stinks. He said there was no residue on the floorboards, which would have suggested they rolled blunts or prepared narcotics in the car.⁴⁰ Officer Hasenfang said nothing of evidentiary value was collected, “Because it was just residue.”

²⁹ Att. #21 p. 24, lines 9-11.

³⁰ Att. #21 p. 24, lines 12-16.

³¹ Att. #21 p. 28, lines 16-19.

³² Att. #21 p. 28, lines 20-22.

³³ Att. #21 p. 28, lines 23-24 and p. 29, lines 1-2.

³⁴ Att. #21 p. 26, lines 12-24 and p. 27, lines 1-5.

³⁵ Att. #21 p. 29, lines 4-8.

³⁶ Att. #21 p. 29, lines 13-14.

³⁷ Att. #21 p. 29, lines 9-14.

³⁸ Att. #21 p. 29, lines 15-20.

³⁹ Att. #21 p. 29, lines, 21-24.

⁴⁰ Att. #21 p. 32, lines 3-10.

Officer Hasenfang was aware that [REDACTED] was in handcuffs until he finished searching his vehicle and issuing the citations, in which [REDACTED] was detained approximately 26 minutes. When he was asked if a handcuffed detainee would have immediate access to their vehicle, Officer Hasenfang said, “I have never seen anybody try to access the vehicle.” He said further, he told [REDACTED] “I have no reason to keep you in handcuffs at this point, but I don’t feel comfortable taking them off, but I have to.”⁴¹

COPA interviewed accused Officer Ryan Chulumovich⁴² on January 28, 2020. The following is a summary of his interview.

Officer Chulumovich corroborated Officer Hasenfang’s account as to why [REDACTED] was stopped for the traffic violation. He also said that after PO Hasenfang ran [REDACTED] registration, and the returned information revealed he had a revoked concealed carry license, his mind was made up to remove [REDACTED] from his vehicle and conduct a pat down for safety.⁴³ Officer Chulumovich said in his experience people with revoked conceal carry license are not aware they are revoked and still carry weapons.⁴⁴

Officer Chulumovich said when he asked [REDACTED] if he had a gun on him, and or his concealed carry license, he did not answer.⁴⁵ He said, “It heightened my awareness and I thought that was very odd.”⁴⁶ He said further, “As by law, they are supposed to tell me whether or not they have it.”⁴⁷ Officer Chulumovich said for those reasons is why he wanted [REDACTED] to step out of the car. To his knowledge he is unaware of any policies or directives that governs persons who have a revoked conceal carry license. When he was asked if there were any factors that led him to detain [REDACTED] Officer Chulumovich said, “Yes, just the fact that his CCL was revoked, and that in my experience, there have been people with—they have handguns on them while their CCL is revoked.”⁴⁸

b. Digital Evidence

The Body Worn Camera (“BWC”) footage of Officer Kevin Hasenfang and Officer Chulumovich captures most of the incident which lasted approximately 27 minutes.

Officer Hasenfang’s BWC⁴⁹ shows Officer Chulumovich driving the squad car and dressed in plain clothes.⁵⁰ Officer Chulumovich pulls into a parking lot and exits the squad wearing blue jeans, red t shirt and a baseball cap, and approach a white Chrysler on the driver’s side of the vehicle, then activates his BWC. Officer Chulumovich says, “What’s up man, can you drop these

⁴¹ Att. #21 p. 31, lines 9-11.

⁴² Att. #18 (Audio) and Att. #20 Transcript.

⁴³ Att. #20 p. 10, lines 13-16.

⁴⁴ Att. #20 p. 11 lines, 11-15.

⁴⁵ Att. #20 p. 11 lines, 17-19.

⁴⁶ Att. #20 p. 11 lines 19-20.

⁴⁷ Att. #20 p.11 lines, 11-14.

⁴⁸ Att. #20 p. 13 lines, 10-13.

⁴⁹ All references to specific times within a BWC video correspond to the time stamped on the upper righthand corner of the video.

⁵⁰ Att. 14 at T22:53:33Z.

back windows bro?" [REDACTED] complies, while handing Officer Chulumovich what appears to be an identification card and a piece of paper, and says, "Here is my insurance card and my I.D."⁵¹

Officer Chulumovich takes the items and brings them upwards towards his chest area out of view of the BWC. [REDACTED] motions with his left hand towards the driver's side window and said, "I go through this all the time."⁵² Officer Chulumovich immediately asks [REDACTED] to step out of the car, [REDACTED] asked why he was stepping out.⁵³ Officer Chulumovich responded, "Because I am asking you to." [REDACTED] asked, "What did I do?" Officer Chulumovich responded, "I am asking you to step out."⁵⁴ [REDACTED] motions downward and told Officer Chulumovich he was taking his seatbelt off. Officer Chulumovich tells him to go ahead. [REDACTED] asked if he could open his door, Officer Chulumovich responded, yes, you absolutely can.

[REDACTED] exits the vehicle without assistance with his hands up. Officer Chulumovich tells him, "You were passing on the right that's why I stopped you."⁵⁵ BWC shows Officer Chulumovich with the identification and insurance card in his right hand. He motions for [REDACTED] to face the car and place his hands-on top of the car, he complied.⁵⁶ Officer Chulumovich asked, "Do you have your concealed carry on you?"⁵⁷ BWC shows Officer Hasenfang at the front passenger side window bent slightly looking inside the vehicle with a flashlight illuminated.⁵⁸ [REDACTED] asked, "What did you pull me over for?" Officer Chulumovich responded, "Yes, or no?", "Alright, you're not---." BWC shows Officer Chulumovich reach towards [REDACTED] front pant pocket and squeeze, he then conducted a pat down on the right leg, left leg, waist area and torso.⁵⁹ While Officer Chulumovich conducted the pat down, [REDACTED] voice becomes elevated and said, "You didn't see that dude, I was trying to get away from him." Officer Chulumovich secures [REDACTED] wrists in handcuffs behind his back.⁶⁰ [REDACTED] continued to explain that there was road rage, and he was trying to get away from it. The BWC shows [REDACTED] body bend downward slightly to the left. His voice becomes elevated as he states, "Why are you searching my car?", "I didn't give you consent to search my car."⁶¹ The BWC shows [REDACTED] move closer to the opening of the front driver's side door. Officer Hasenfang is seen inside the passenger front of the vehicle facedown towards the floorboard.⁶² Officer Chulumovich pulls [REDACTED] right arm backwards slightly facing him. [REDACTED] voice becomes more elevated as he states, "Why is he searching my car!" Officer Chulumovich is heard saying, "I'm going to ask you again, do you have you conceal carry you?" [REDACTED] responds, "No I don't!" "Why is he searching my car!"⁶³ Officer Chulumovich responded, "Because you didn't

⁵¹ Att. 14 at T22:54:22Z.

⁵² Att. 14 at T22:54:25Z.

⁵³ Att. 14 at T22:54:27Z.

⁵⁴ Att. 14 at T22:54:24Z.

⁵⁵ Att. 14 at T22:54:38Z.

⁵⁶ Att. 14 at T22:54:40Z.

⁵⁷ Att. 14 at T22:54:41Z.

⁵⁸ Att. 14 at T22:54:43Z.

⁵⁹ Att. 14 at T22:54:45Z.

⁶⁰ Att. 14 at T22:55:01Z.

⁶¹ Att. 14 at T22:55:08Z.

⁶² Att. 14 at T22:55:09Z.

⁶³ Att. 14 at T22:55:10Z.

answer when I asked originally.” ██████████ said, “I didn’t give consent to search my car.”⁶⁴ Officer Hasenfang makes a statement that is indiscernible.

The BWC shows Officer Chulumovich escort ██████████ towards the rear of the vehicle. ██████████ said he wanted their badge numbers and continues to ask what he did. Officer Chulumovich responded again, “You passed people on the right, that’s your violation.”⁶⁵ ██████████ responded again, “This dude, he blew his horn and stuck his middle finger up at me, so I was trying to get away from him.” Officer Chulumovich responded, “That’s not what I saw”.⁶⁶

The BWC shows Officer Hasenfang still on the passenger side of the vehicle. ██████████ continues to explain that he is pulled over all the time. He motions his body towards Officer Hasenfang and aid, “And he is searching my car.” Officer Chulumovich responded, “I asked you twice if you had your CCL on you and you didn’t answer.”⁶⁷ ██████████ said, “You pulled my information up and it said revoked.”⁶⁸ Officer Chulumovich asked him why he would not just tell him that. ██████████ voice was still elevated, he said, “But, you already know that why are you asking me that!”⁶⁹ Officer Chulumovich said, “We have caught people with guns,” ██████████ responded, “That’s not me.” The BWC shows Officer Hasenfang at the rear passenger side of the vehicle. ██████████ said again, “You pulled my information up and it says it’s revoked, you asked me a question you already have the answer to.” ██████████ body turns slightly in the direction of Officer Hasenfang’s. He states, “He is searching my car without consent, I did not give him consent!”⁷⁰ Officer Hasenfang response is indiscernible, he still at the rear passenger side of the vehicle. It appears he is searching something, he steps away from the vehicle and says to ██████████ “It’s got to be frustrating and I understand that.” ██████████ responds, “It is frustrating because I did not do nothing.”⁷¹ Officer Hasenfang walks in a diagonal direction away from ██████████ off camera. He stated him, “The thing is you had a concealed carry and at some point, it got revoked.”⁷² ██████████ continues to complain about being stopped and his car being searched without his permission. He told Officer Hasenfang he did not want to talk to him anymore and would communicate with Officer Chulumovich. He asked for his badge number and Officer Chulumovich provided it to him.

██████████ stated, “Ya’ll always do this shit, he’s got to have consent to search my car!”, “That’s illegal!” Officer Chulumovich responded, “No he doesn’t.” ██████████ responded, “Yes, he does!” The BWC shows Officer Hasenfang leaning the front driver’s side of the vehicle.⁷³ Officer Chulumovich said again that he does not. ██████████ responded, “He does!” Officer Chulumovich said, “There are many ways around that.”⁷⁴ ██████████ said because you guys are the police, right? Officer Chulumovich responded, no, because the law says. Officer

⁶⁴ Att. 14 at T22:55:13Z.

⁶⁵ Att. 14 at T22:55:21Z.

⁶⁶ Att. 14 at T22:55:24Z.

⁶⁷ Att. 14 at T22:55:48Z.

⁶⁸ Att. 14 at T22:55:52Z.

⁶⁹ Att. 14 at T22:55:54Z.

⁷⁰ Att. 14 at T22:56:06Z.

⁷¹ Att. 14 at T22:56:14Z.

⁷² Att. 14 at T22:56:19Z.

⁷³ Att. 14 at T22:56:50Z.

⁷⁴ Att. 14 at T22:56:51Z.

Chulumovich then told [REDACTED] he was not going to talk to him anymore. [REDACTED] said, do not talk to me anymore, talk to COPA. He said further there was nothing in his car and he was not worried about searching his car. He turns his body in the direction of Officer Hasenfang and said, "Have fun searching my car because there is nothing fucking in there."⁷⁵ [REDACTED] went on to say that he was not going anywhere, and he was going to sit there and take it because it happens all the time. He said, "Ya'll see this car and a black man in it, ya'll automatically think its drugs and guns, I work."⁷⁶

The BWC shows Officer Hasenfang approach [REDACTED] with watch appears to be a black tray.⁷⁷ He said to [REDACTED] "I know you are upset," "The basis of the search immediately was a protective sweep of the car, pursuant to the fact that we know you have a revoked CCL."⁷⁸ Officer Hasenfang told [REDACTED] that he had a problem with the contents inside the black tray he was holding.

c. Documentary Evidence

PDT Messages Report documented that [REDACTED] had a revoked concealed carry license issued by the State of Illinois.

Investigatory Stop Report documented the location of the traffic stop at 6117 South Ashland Avenue, on July 19, 2019, at approximately 7:02 P.M. The responding officers conducted a name query via LEADS, and it revealed the registered owner of the vehicle conceal carry license # [REDACTED] was revoked. The driver of the vehicle ([REDACTED]) matched the description of the name query. [REDACTED] provided officers with his driver's license and insurance card, which officers later learned the insurance card had expired. Officer Chulumovich asked [REDACTED] if he had his concealed carry on his person and [REDACTED] failed to respond. Officer Hasenfang conducted a protective sweep of the vehicle for weapons with negative results. Officer Hasenfang then recovered a small Ziploc plastic bag used in narcotics, a razor blade, suspected cannabis that was less than a tenth of a gram. Officer Hasenfang then conducted a broader narcotic search of the vehicle including a locked glove compartment and trunk. [REDACTED] received two citations and an investigatory stop receipt.

OEMC Number Plate Search documented on [REDACTED] address and the make of his vehicle, a 2016 Chrysler Sedan, which was search by Officer Hasenfang via LEADS.

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;

⁷⁵ Att. 14 at T22:57:07Z.

⁷⁶ Att. 14 at T22:57:18Z.

⁷⁷ Att. 14 at T22:57:32Z.

⁷⁸ Att. 14 at T22:57:34Z.

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 a proposition is proved.⁷⁹ If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, 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.⁸⁰ 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.”⁸¹

VI. ANALYSIS

The Fourth Amendment to the United States Constitution provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”⁸² As noted by the United States Supreme Court, “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”⁸³ The Fourth Amendment protects an individual’s reasonable expectation of privacy against unreasonable government intrusion.⁸⁴

The initial threshold inquiry to answer is whether the officers had a reasonable basis to stop and/or detain [REDACTED]. The officers observed [REDACTED] passing multiple vehicles on the right in violation of Municipal Code of Chicago section 9-36-020A. During his interview with COPA, [REDACTED] admitted to investigators that he passed on the right to avoid a disgruntled driver. However, as discussed more fully below, COPA finds that Officers Chulumovich and Hasenfang detained [REDACTED] for an unreasonable amount of time and unreasonably searched [REDACTED] person and vehicle.

a. Officer Chulumovich protective pat down of [REDACTED] person was not justified.

⁷⁹ 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.”).

⁸⁰ See, e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

⁸¹ *Id.* at ¶ 28.

⁸² U.S. Const., amend. IV.

⁸³ *Union Pac. R. v. Botsford*, 41 U.S. 250, 251 (1891),

⁸⁴ *Terry v. Ohio*, 392 U.S. 1, 8 (1968).

Protective pat downs are limited searches “during an investigatory stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member and others in the area.”⁸⁵ Officers may conduct pat downs after developing a “reasonable articulable suspicion” that the person presents a danger of attack to the officer or another person.⁸⁶ The Department defines “Reasonable Articulable Suspicion” as:

[A]n objective legal standard that is less than probable cause but more substantial than a hunch or general suspicion. Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member’s training and experience. Reasonable Articulable Suspicion can result from the combination of particular facts, which may appear innocuous in and of themselves, but taken together amount to reasonable suspicion.⁸⁷

Pat downs are analyzed separately from the initial stop.⁸⁸ This is necessary because pat downs are “a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment.”⁸⁹ As noted by the Supreme Court, “it is simply fantastic to urge that [a pat down] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’”⁹⁰

Due to the severity of the intrusion, courts require individualized suspicion before sanctioning a pat down.⁹¹ Being “generally suspicious” is not sufficient, an officer must articulate a reasonable basis for believing the person is “armed and dangerous.”⁹²

He then stated ██████ did not immediately respond to his questions as an initial factor. But Officer Chulumovich search of ██████ began within seconds of the initiation of the traffic stop. During this brief time, ██████ repeatedly asked

Officer Chulumovich also told COPA he searched ██████ because, in his experience, people with revoked conceal carry licenses are not aware they are revoked and still carry weapons. This vague statement amounts to nothing more than a generalized suspicion. Officer Chulumovich search of

⁸⁵ CPD Special Order S04-13-09 Investigatory Stop System (effective date: July 10, 2017), Section II (B); VI.

⁸⁶ CPD Special Order S04-13-09, Section VI.A.1; *see also* 725 ILCS/108-1.01 (“When a peace officer has stopped a person . . . and reasonably suspects that he or another is in danger of attack, he may search the person for weapons.”)

⁸⁷ CPD Special Order S04-13-09, Section II.C.

⁸⁸ U.S. v. Williams, 731 F.3d 678, 686 (7th Cir. 2013); *see also* CPD Special Order S04-13-09, Section II.C.2 (“An Investigatory Stop and a Protective Pat Down are two distinct actions – both require independent, Reasonable Articulable Suspicion . . .”).

⁸⁹ Williams, 731 F.3d at 686 (citing Terry v. Ohio, 392 U.S. at 27).

⁹⁰ Terry v. Ohio, 392 U.S. 1, 15 (1967)

⁹¹ Williams, F.3d at 687; *see also* Ybarra v. Illinois, 444 U.S. 85, 91 (1979) (“a search or seizure of a person must be supported by probable cause particularized with respect to that person.”)

⁹² Williams, 731 F.3d at 686, 687 (“Most people, when confronted by a police officer, are likely to act nervous, avoid eye contact, and even potentially shift their bodies as if to move away from the area . . . making such behaviors of very little import to a reasonable suspicion determination.”).

██████████ therefore did not meet the standard required to conduct a pat down. For these reasons, COPA finds this allegation is **SUSTAINED**.

b. Officer Chulumovich and Officer Hasenfang detained ██████████ without justification.

A traffic stop is a seizure of a person under the Fourth Amendment.⁹³ A seizure for a traffic violation justifies police investigation of the violation.⁹⁴ The occupants of a vehicle are lawfully seized when a police officer initiates a traffic stop of the vehicle based on probable cause.⁹⁵ A traffic stop that is lawful at inception can become unlawful if subsequent police action violates the Fourth Amendment's reasonableness standard.⁹⁶ Police conduct that unreasonably prolongs the duration of the stop constitutes an unreasonable seizure.⁹⁷ The appropriate duration of a traffic stop depends on the seizure's "mission" to address the traffic violation and address related safety concerns.⁹⁸

An officer may conduct checks during a traffic stop so long as the stop is not prolonged, absent reasonable suspicion demanded to justify detaining an individual.⁹⁹ Beyond deciding whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop" such as checking the driver's license, searching for outstanding warrants, and checking registration and insurance.¹⁰⁰ Investigations into the possibility of other crimes deviates from that mission and must be supported by individualized suspicion of wrongdoing.¹⁰¹

As noted above, COPA does not contest that the traffic stop was valid when initiated as ██████████ himself admits to having passed on the right.

Notwithstanding the basis of the traffic stop, we find that the officers prolonged the detention for an unreasonable amount of time by completing multiple searches of ██████████ vehicle and contents without probable cause.

Officer Chulumovich and Officer Hasenfang conducted a vehicle registration query via SOS/LEADS prior to making the traffic stop, which revealed ██████████ Concealed Carry License to have been revoked. It is for this reason that Officer Chulumovich and Officer Hasenfang detained ██████████ for approximately 30 minutes, to conduct a protective search of the vehicle, and then a broader search for narcotics.

⁹³ See e.g., *Brendlin v. California*, 551 U.S. 249, 255-56, 168, L. Ed. 2d 132, 138-39, 127 S. Ct. 2400, 2406 (2007); *Whren v. United States*, 517 U.S. 806, 809-10, 135 L. Ed. 89, 95, 116 S. Ct. 1769, 1772 (1996); *People v. Harris*, 228 Ill. 2d 222, 231-2 (2008).

⁹⁴ *Rodriguez v. United States*, 575 U.S. 348, 354 (2015).

⁹⁵ See *Brendlin*, 551 U.S. at 255; *People v. Baldwin*, 904 N.E. 2d 1193, 1196 (Ill. 2009).

⁹⁶ See, e.g., *Illinois v. Cabales*, 543 U.S. 405 (2005).

⁹⁷ *Baldwin*, 904 N.E. 2d at 1198; *United States v. Lewis*, 920 F.3d 483, 490 (7th Cir. 2019) ("An officer who reasonably starts a traffic stop, however, might violate the Constitution if he exceeds the scope or unreasonably prolongs the stop.").

⁹⁸

⁹⁹ *Rodriguez v. United States*, 575 US 348, 355 (2015).

¹⁰⁰ *Rodriguez*, 575 U.S. at 355.

¹⁰¹ See *Rodriguez*, 575 U.S. at 357; *Lewis*, 920 F.3d at 490.

According to the Firearm Concealed Carry Act, a concealed firearm licensee “shall disclose to the officer that he or she is in possession of a concealed firearm under this Act or present the license upon the request of the officer” if an officer initiates an investigatory stop and/or traffic stop.¹⁰² In addition, “a licensee whose license is revoked, suspended or denied shall, within, 48 hours of receiving notice of the revocation, suspension, or denial, surrender his or her concealed carry license to the local law enforcement agency where the person resides.”¹⁰³

The BWC footage depicts Officer Chulumovich asking ██████ if he had a concealed carry license on his person during this traffic stop.¹⁰⁴ ██████ told officers that he does not have a concealed carry license on him and was aware that his license was revoked.¹⁰⁵ According to the Firearm Concealed Carry Act, ██████ had no duty to disclose to the officers whether he had a revoked concealed firearm license. Furthermore, ██████ complied under the Act when he surrendered his concealed carry license to the Illinois State Police Department.¹⁰⁶ ██████ specifically asked why he was being questioned about his concealed carry license when the officers were already aware it had been revoked.

Additionally, if ██████ had no duty to disclose, it would suggest that Officer Hasenfang had no justifiable reason to perform a protective sweep of the vehicle for firearms where he searched the areas immediately accessible to ██████.¹⁰⁷ It also is not a reasonable basis to detain ██████ as he was fully compliant with Illinois law and there was no information available to the officers suggesting otherwise.

With respect to the second search of ██████ vehicle, Officer Hasenfang indicates a belief that ██████ is in possession of narcotics despite a lack of any justification for this assertion. As the bedrock of the Fourth Amendment is reasonableness, and as Officer Hasenfang at no point during or after the traffic stop offers an explanation as to why he believed there to be narcotics, there is no justification to detain ██████ for that reason.

Thus, with respect to the suspected firearms and narcotics, we find that the officers unjustifiably and improperly detained ██████ beyond the scope of the traffic stop in violation of ██████ rights under the Fourth Amendment. Accordingly, COPA finds the allegation is **SUSTAINED**.

c. Officer Hasenfang searched ██████ vehicle without justification.

The United States Supreme Court has stated the basic rule that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.”¹⁰⁸ Many of those exceptions apply to vehicles because, courts reason, people have a diminished expectation of privacy in vehicles.

¹⁰² 430 ILCS 66/10(h).

¹⁰³ 430 ILCS 66/70(g).

¹⁰⁴ Att. 8 at T02:27.

¹⁰⁵ *Id.* at T02:57.

¹⁰⁶ Att. 12.

¹⁰⁸ *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted).

The Supreme Court cautioned that permitting a search of a vehicle and containers therein “whenever an individual is caught committing a traffic offense... creates a serious and recurring threat to the privacy of countless individuals.”¹⁰⁹

Ultimately, the most common test for determining if a search violated the Fourth Amendment is rooted in the legitimate expectation of privacy.¹¹⁰ There is a diminished expectation of privacy in cars but the law does not permit “police officer unbridled discretion to rummage at will among a person’s private effects” and requires probable cause that a vehicle contain evidence of criminal activity.¹¹¹ The standard for the search of a vehicle, absent an arrest or a warrant, is governed by the “automobile exception.”¹¹² This exception permits a search of a vehicle in the small subset of cases where an officer has a reasonable belief that evidence of a crime might be found in the vehicle.¹¹³

For the reasons discussed above, COPA finds that the officers did not have reason to believe ██████ had committed a crime beyond the initial traffic violation. Accordingly, COPA finds there was no reasonable basis to search ██████ vehicle.

However, even had the initial search of ██████ vehicle been valid, Officer Hasenfang conducted a second search of ██████ vehicle that was also without justification. After conducting his initial sweep of ██████ vehicle, Officer Hasenfang comes back and asks for ██████ keys to search the locked glove box. Officer Hasenfang does not indicate an intent to search for a firearm, but rather for narcotics. He verbalizes this clearly, stating that he “knows” there to be narcotics in ██████ vehicle.¹¹⁴ Although ██████ tells Officer Hasenfang where to get his keys and states in substance “go ahead and look,” ██████ previous and subsequent protests to the search and insistence that Officer Hasenfang has no right to search his car clearly indicate that ██████ did not, and was not, giving consent for the search.¹¹⁵ As consent to search is determined by a totality of the circumstances test, ██████ angry and confrontational statement, followed by repeated statements that the officers weren’t permitted to search his vehicle without consent, cannot be deemed consent to search.¹¹⁶ ██████ proceeds to repeatedly ask Officer Hasenfang what the justification for the search is, to which Officer Hasenfang only statement is his alleged knowledge that there are narcotics in the locked glove compartment of ██████ vehicle.¹¹⁷ Officer Hasenfang at no point provides any explanation, either during the traffic stop or subsequently with COPA, as

¹⁰⁹ *Arizona v. Gant*, 556 U.S. at 345.

¹¹⁰ *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *see also* *Byrd v. United States*, 138 S. Ct. 1518, 1526-7 (2018).

¹¹¹ *Arizona v. Gant*, 556 U.S. at 345; *see also* *California v. Acevedo*, 500 U.S. 565, 579, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991), *United States v. Paige*, 870 F.3d 693, 702-3 (7th Cir. 2017), *United States v. Edwards*, 769 F.3d 509, 514 (7th Cir. 2014).

¹¹² *See e.g.*, *United States v. Paige*, 870 F.3d at 702-3, *United States v. Edwards*, 769 F.3d at 514; *People v. Contreras*, 2014 IL App (1st) 131889, p. 28; *People v. Jones*, 215 Ill. 2d 261, 271 (2005).

¹¹³ *See* *Arizona v. Gant*, 556 U.S. at 343; *see also* *United States v. Paige*, 870 F.3d at 702-3, *United States v. Edwards*, 769 F.3d at 514.

¹¹⁴ Att. 14 at T22:58:19Z.

¹¹⁵ Att. 14 at T22:55:06Z

¹¹⁶ *See* *Ohio v. Robinette*, 519 U.S. 33, 36, 40, 136 L. Ed. 2d 347, 353, 355, 117 S. Ct. 417, 419-21 (1996); *People v. Brownlee*, 186 Ill. 2d 501, 514 (1999).

¹¹⁷ Att. 14 at T22:58:24Z.

to why he believed there may be narcotics in [REDACTED] vehicle. For these reasons, COPA finds the allegation is **SUSTAINED**.

a. Officer Chulumovich is also responsible for the improper search of [REDACTED] vehicle.

An officer can be liable for another officer's constitutional violation if, they had reason to know that a constitutional violation has been committed by a law enforcement official and they had a realistic opportunity to intervene to prevent the harm from occurring.¹¹⁸ COPA finds Officer Chulumovich had ample to opportunity to intervene and prevent violation of [REDACTED] constitutional rights. The entire incident lasted approximately 30 minutes. During that time, Officer Chulumovich stood by guarding [REDACTED] while Officer Hasenfang searched [REDACTED] vehicle without justification. Accordingly, COPA finds this allegation is **SUSTAINED**.

b. Officer Hasenfang is also responsible for the unlawful search of [REDACTED] person.

For the reasons discussed above, COPA finds that Officer Hasenfang failed to intervene and prevent Officer Chulumovich from violating [REDACTED] Fourth Amendment rights. Officer Hasenfang had ample time and opportunity to prevent the illegal searches and detention of [REDACTED]. Therefore, COPA finds that this allegation against Officer Hasenfang is **SUSTAINED**.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Ryan Chulumovich

i. Complimentary and Disciplinary History

Officer Chulumovich does not have a complimentary history. Officer Chulumovich disciplinary history is preventable accident SPAR February 2021.

ii. Recommended Penalty

COPA recommends that Officer Ryan Chulumovich receive a 15-day suspension and Fourth Amendment, Procedural Justice and Concealed Carry Training.

b. Officer Kevin Hasenfang

i. Complimentary and Disciplinary History

¹¹⁸ *Lanigan v. Village of East Hazelcrest*, 110 F.3d 467, 477 (7th Cir. 1997); see also *Yang v. Hardin*, 37 F.3d 282,285 (7th Cir. 1994) (citing cases); *Davis v. Vill. Of Fox Lake*, 2005 U.S. Dist. Lexis 30892, at *22-23 (N.D. Ill. Nov. 30, 2005)(holding that officers who exited vehicle as their partner conducted an unlawful *Terry* stop could be held liable); *Pearce v. Thiry*, 2009 U.S. Dist. Lexis 92204 at *21-23 (N.D. Ill. Oct. 1, 2009)(officer who guarded house perimeter during execution of search warrant and officer who prepared search warrant papers but was not present during search could both be held liable for fourth amendment complaints stemming from the execution of the search warrant).

Officer Hasenfang does not have a complimentary history. Officer Hasenfang’s disciplinary history is a preventable accident SPAR in May 2019 and a preventable accident SPAR in July 2019.

ii. Recommended Penalty

COPA recommends that Officer Kevin Hasenfang receive a 15-day suspension Fourth Amendment, Procedural Justice and Concealed Carry Training.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Ryan Chulumovich	<p>It is alleged by the complainant, [REDACTED] that on or about July 19, 2019, at approximately 6:00 pm, at or near 6117 S. Ashland Avenue, Chicago, Illinois, Officer Ryan Chulumovich, Star #4513 committed misconduct through the following acts or omissions in violation of Department policy.</p> <p>1.Searched [REDACTED]</p> <p>2.Searched [REDACTED] vehicle without justification.</p> <p>3.Detained [REDACTED] without justification.</p>	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p>
Officer Kevin Hasenfang	<p>It is alleged by the complainant, [REDACTED] that on or about July 19, 2019, at approximately 6:00 pm, at or near 6117 S. Ashland Avenue, Chicago, Illinois, Officer Kevin Hasenfang Star #15085 committed misconduct through the following acts or omissions in violation of Department policy.</p> <p>1.Searched [REDACTED] without justification.</p> <p>2.Searched [REDACTED] vehicle without justification.</p> <p>3.Detained [REDACTED] without justification.</p>	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p>

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

11-28-2021

Date

Appendix A

Assigned Investigative Staff

Squad#:	11
Investigator	Khristian Wills
Supervising Investigator:	Valiza Nash
Deputy Chief Administrator:	Angela Hearts-Glass