

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 29, 2019
Time of Incident:	5:12 PM
Location of Incident:	11800 S. Wallace Street, Chicago, IL 60628
Date of COPA Notification:	July 17, 2019
Time of COPA Notification:	5:08 PM

While on patrol, Officer Thomas Fennel (“Officer Fennel”) and Officer Luke Opoka (“Officer Opoka”) observed [REDACTED] (“Mr. [REDACTED] driving with a passenger, [REDACTED] [REDACTED] (“Mr. [REDACTED] riding in the front seat. The officers initiated a traffic stop after observing that Mr. [REDACTED] and Mr. [REDACTED] were not wearing their seatbelts. During the stop, Officer Fennel said that he smelled the odor of marijuana, and he ordered Mr. [REDACTED] and Mr. [REDACTED] to exit the vehicle. Mr. [REDACTED] initially protested and asked for a supervisor. Officer Fennel refused to call a supervisor and reiterated his order to exit the car. Ultimately, Mr. [REDACTED] and Mr. [REDACTED] acquiesced. Then, Officer Fennel and Officer Opoka handcuffed both men and placed them in the back seat of their patrol car.

The officers proceeded to search Mr. [REDACTED] vehicle. They found a pill bottle with a green, leafy residue that they suspected was cannabis. The officers continued their search, and they accessed the trunk by pulling down the rear seat, where they found a Sentry Safe lockbox. The officers retrieved two sets of keys that Mr. [REDACTED] dropped on the front passenger-side floor while exiting the car. Officer Opoka opened the lockbox using one of those keys and discovered a handgun. The officers completed searching the vehicle and requested that OEMC check whether Mr. [REDACTED] had a valid FOID card. OEMC found no FOID card in Mr. [REDACTED] name. The officers concluded the stop by releasing Mr. [REDACTED] and issuing him multiple citations. Mr. [REDACTED] remained in the back seat of the patrol car. The officers transported him to the Fifth District and placed him under arrest.

This investigation was initiated pursuant to a complaint by Mr. [REDACTED] against Officer Fennel and Officer Opoka. Mr. [REDACTED] alleged that the officers searched his vehicle without justification and failed to record the incident in full on their body worn cameras (BWCs). However, COPA determined that the officers had probable cause to search Mr. [REDACTED] vehicle and that the officers recorded the incident in full.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Fennel; Star #15220; Employee ID # [REDACTED]; Appointed: October 31, 2012, Police Officer, Unit of
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	Assignment: 005/193, <sup>1</sup> Date of Birth: [REDACTED], 1986; Male; White
Involved Officer #2:	Luke Opoka; Star #18952; Employee ID # [REDACTED]; Appointed: December 14, 2015, Police Officer, Unit of Assignment: 005/193, <sup>2</sup> Date of Birth: [REDACTED], 1994; Male; White
Subject #1:	[REDACTED] Date of Birth: [REDACTED], 1994; Male; Black
Subject #2:	[REDACTED] Date of Birth: [REDACTED], 1995; Male; Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer Thomas Fennel	It is alleged by [REDACTED] that on or about June 29, 2019, at approximately 5:12 PM, at or near W. 119th Street and S. Wallace Street, Officer Thomas Fennel #15220 committed misconduct through the following acts or omissions, by:	
	1. Searching [REDACTED] car without justification.	Exonerated
	2. Failing to comply with S03-14 by failing to timely activate your body worn camera.	Unfounded
Officer Luke Opoka	It is alleged by [REDACTED] that on or about June 29, 2019, at approximately 5:12 PM, at or near W. 119th Street and S. Wallace Street, Officer Luke Opoka #18952 committed misconduct through the following acts or omissions, by:	
	1. Searching [REDACTED] car without justification.	Exonerated
	2. Failing to comply with S03-14 by failing to timely activate your body worn camera.	Unfounded

<sup>1</sup> Officer Fennel was assigned to Unit 005 (the Fifth District) at the time of the incident under investigation. As of February 7, 2022, Officer Fennel remains assigned to Unit 005, but he has been detailed to Unit 193, the Gang Investigations Division.

<sup>2</sup> Officer Opoka was assigned to Unit 005 at the time of the incident under investigation. As of February 7, 2022, Officer Opoka remains assigned to Unit 005, but he has been detailed to Unit 193.

#### IV. APPLICABLE RULES AND LAWS

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##### Special Orders

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1. S04-13-09: Investigatory Stop System, Effective July 10, 2017
  2. S03-14: Body Worn Cameras, Effective April 30, 2018
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##### Federal Laws

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1. Fourth Amendment of the United States Constitution
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##### State Laws

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1. 720 ILCS 5/24-1(a): Unlawful Use of Weapons
2. 625 ILCS 5/12-603.1(a): Driver and Passenger Required to Use Safety Belts, Exceptions and Penalty

#### V. INVESTIGATION<sup>3</sup>

##### a. Interviews

**Complainant** ██████████ provided a statement to COPA investigators on July 26, 2019.<sup>4</sup> Mr. ██████████ provided an account of a traffic stop that occurred on June 29, 2019, at approximately 5:12 PM. Immediately prior to the stop, Mr. ██████████ came to a stop at West 119<sup>th</sup> Street and South Wallace Street for a stop sign. A marked police vehicle stopped at the intersection at about the same time, across from Mr. ██████████ car. The police drove through the intersection and past Mr. ██████████ car. Mr. ██████████ saw one of the officers look into his car, and the officer appeared to take notice that Mr. ██████████ and a passenger in the front seat of his car, now known to be Mr. ██████████ were not wearing seatbelts. After the officer passed, Mr. ██████████ and Mr. ██████████ put on their seatbelts.<sup>5</sup> Mr. ██████████ then saw that the police car turned around and activated its emergency lights. Mr. ██████████ turned onto South Wallace Street and pulled over.

One of the officers, now known to be Officer Fennel, approached Mr. ██████████ window. Officer Fennel told Mr. ██████████ that he was stopped for failing to wear a seatbelt but noted that Mr. ██████████ and Mr. ██████████ were now wearing their seatbelts. Officer Fennel asked Mr. ██████████ for his driver's license and proof of insurance. Mr. ██████████ provided his license and insurance, and he began to explain that he had an SR-22 insurance endorsement and might not be covered for the vehicle he was driving.

Then, Officer Fennel said that he smelled marijuana. Mr. ██████████ denied having any marijuana in the car or having smoked recently. He asked Officer Fennel to call a police supervisor. Officer Fennel refused and asked Mr. ██████████ to exit the car. Mr. ██████████ refused to exit the car and asked

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

<sup>4</sup> Attachment 3.

<sup>5</sup> *Id.* at 4:48.

again for a supervisor. Officer Fennel again refused, opened the front driver's side door, and reached into the car to remove Mr. ██████ seatbelt. Officer Fennel placed a handcuff on Mr. ██████ right wrist and began to pull Mr. ██████ out of the car. Once Mr. ██████ was out of the car, Officer Fennel handcuffed Mr. ██████ hands behind his back and patted him down. Officer Fennel walked Mr. ██████ to his police car and put Mr. ██████ into the back seat. At the same time, Officer Fennel's partner, now known to be Officer Opoka, placed Mr. ██████ in the back seat of the patrol car with Mr. ██████. The officers proceeded to search Mr. ██████ car without seeking or receiving permission to conduct the search.

The officers searched the front-seat area of the car first, but they moved to the rear of the car after a short time. Mr. ██████ saw them searching the rear of his car for a longer time, and he believed that they pulled down the rear seat to access the trunk. Mr. ██████ saw Officer Fennel exit the rear-seat area and retrieve Mr. ██████ keys from the front seat. Mr. ██████ believed that Officer Fennel was trying to open a lockbox that was in the trunk. Mr. ██████ saw the officers retrieve Mr. ██████ keys from the front of the car and successfully open the lockbox with those keys.

Next, Mr. ██████ saw Officer Fennel return to the patrol car, where the officer ran his name and Mr. ██████ name through a computer while Officer Opoka continued to search the car. Officer Opoka completed the search, and Mr. ██████ heard Officer Fennel say to Officer Opoka that "this already happened before."<sup>6</sup> Mr. ██████ believed the comment was in reference to Mr. ██████ because Officer Fennel had Mr. ██████ record on the portable data terminal ("PDT") screen at that time. The officers then exited the police vehicle and continued to speak with each other.

After the officers finished speaking, they allowed Mr. ██████ to exit the vehicle. The officers issued Mr. ██████ tickets for failing to wear a seatbelt and for operating a car without insurance. The officers began to discuss the details of the citations and the court date with Mr. ██████. Mr. ██████ then asked why Mr. ██████ was not being allowed to exit the police vehicle. The officers told him that Mr. ██████ was being arrested, but they refused to provide further details. Mr. ██████ saw Officer Fennel take the lockbox and Mr. ██████ wallet out of his car and carry them to the police vehicle. Mr. ██████ asked again why Mr. ██████ was being arrested, but the officers refused to share any further information.

The officers continued to discuss the citations with Mr. ██████ and provided Mr. ██████ with each of their star numbers. Officer Fennel showed Mr. ██████ where his star number was on the ticket and wrote Officer Opoka's star number in the margin. The officers then left the scene.

Mr. ██████ admitted to COPA investigators that he smokes marijuana, but he denied having any marijuana on his person during his encounter with the officers. He also denied smoking marijuana in the hours preceding the stop. Mr. ██████ stated he had an ashtray in the car but that it did not contain any ashes from marijuana. Mr. ██████ admitted that the officers discovered a pill bottle in his car and that the pill bottle contained marijuana residue.

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<sup>6</sup> *Id.* at 09:00.

**b. Digital Evidence**

COPA obtained and reviewed **Officer Fennel's BWC video**<sup>7</sup> related to this incident. Officer Fennel activated his BWC at 4:58:50 PM as he exited his patrol car. The recording shows Officer Fennel approaching the driver's side front window of a stopped car. Another police officer, now known to be Officer Opoka, approaches the front passenger-side window. The stopped car is running, and the front driver's-side and passenger-side windows are down. The car is occupied by its driver and a front-seat passenger, now known to be Mr. [REDACTED] and Mr. [REDACTED]. Both occupants are wearing seatbelts. Officer Fennel asks Mr. [REDACTED] to turn the car off, and he complies. Officer Fennel asks Mr. [REDACTED] for his driver's license and proof of insurance, and Mr. [REDACTED] hands his documents to Officer Fennel. At the same time, Mr. [REDACTED] reaches into his back pocket and retrieves his identification, handing it to Officer Opoka. Next, Officer Fennel asks Mr. [REDACTED] if he has any weapons in his car. Mr. [REDACTED] doesn't directly respond; instead, he asks why he was pulled over. Officer Fennel responds that he saw Mr. [REDACTED] and Mr. [REDACTED] not wearing their seatbelts and notes that they are now both wearing their seatbelts.<sup>8</sup>

Next, Officer Fennel and Mr. [REDACTED] briefly discuss Mr. [REDACTED] insurance. Officer Fennel interrupts the conversation and asks Mr. [REDACTED] and Mr. [REDACTED] when they last smoked. They both say they don't smoke. Officer Fennel opens the front driver's side door and orders Mr. [REDACTED] to exit the vehicle. Mr. [REDACTED] asks Officer Fennel to call a supervisor. Officer Fennel refuses to call a supervisor and again orders Mr. [REDACTED] to exit the car. Mr. [REDACTED] asks why he is being ordered to exit the car and Officer Fennel says, "Because I smell weed coming from your car."<sup>9</sup> Mr. [REDACTED] continues to refuse to exit the car, requests a supervisor again, and denies that the officers can smell marijuana, explaining that he and Mr. [REDACTED] did not smoke and were not in possession of marijuana. Officer Fennel continues to decline to call a supervisor and repeats his order to exit the vehicle.

Officer Fennel reaches into the car and removes Mr. [REDACTED] seatbelt and places one handcuff on Mr. [REDACTED] left wrist. Mr. [REDACTED] then exits the vehicle, and Officer Fennel finishes handcuffing Mr. [REDACTED] hands behind his back. Officer Fennel pats down Mr. [REDACTED] and then leads him to the patrol car and places him in the back seat. As Officer Fennel was walking with Mr. [REDACTED] towards the patrol car, Mr. [REDACTED] asks Officer Fennel for his name and star number. Officer Fennel tells Mr. [REDACTED] that he will give him that information later. As this is occurring, Mr. [REDACTED] can be seen exiting the vehicle. Officer Opoka pats Mr. [REDACTED] down, handcuffs him, and leads him to the patrol car.

After Mr. [REDACTED] is in the backseat of the patrol car, Officer Fennel returns to Mr. [REDACTED] car and begins searching the front driver-side area. After placing Mr. [REDACTED] in the back seat of the patrol car, Officer Opoka joins in searching Mr. [REDACTED] car. Officer Opoka says to Officer Fennel that Mr. [REDACTED] was in possession of about twelve hundred dollars in cash.

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<sup>7</sup> Attachment 2.

<sup>8</sup> *Id.* at 2:30.

<sup>9</sup> *Id.* at 2:56; 3:17.

Officer Fennel completes searching the front area and begins to search the back seat of the car. As he enters the back seat, he says in response to something discovered by Officer Opoka, “Yeah that’d probably be what I was smelling. Little bit of shake right there.”<sup>10</sup> As Officer Fennel searches the back seat area, he pulls down the back seat to access the trunk. His camera is facing the door frame during this time, which obscures the video. Rattling is audible and he says, “Guessing this is a firearm.”<sup>11</sup> He exits the vehicle and takes the keys from the ignition. He returns to the back seat and appears to hand the keys to Officer Opoka, but his video is obscured. Officer Fennel returns to the front seat, and for a moment, Officer Opoka can be seen in the back seat handling a lockbox. Officer Opoka says, “I’d like to get that open. It’s got a laser or extended magazine or something.”<sup>12</sup> Officer Fennel then leans against the driver’s seat and his BWC appears to be pressed up against the seat for about fifty seconds.

As Officer Fennel leans back and begins to exit the vehicle, he says, “Let me make sure he has a valid firearm identification card,”<sup>13</sup> and he asks Officer Opoka if he has Mr. [REDACTED] ID. Officer Fennel returns to the patrol car and begins to run Mr. [REDACTED] and Mr. [REDACTED] names on his PDT. After running both names, the officers walk to the back of the car. Officer Opoka says that Mr. [REDACTED] key opened the lockbox, and he begins to discuss the appropriate charge. Officer Opoka says that Mr. [REDACTED] does not have a FOID card. Officer Fennel says he’s going to check to be sure and asks the OEMC dispatcher to check a name for a valid FOID card. Officer Fennel provides Mr. [REDACTED] name, and the dispatcher reports finding no results. Officer Opoka says he is going to see if Mr. [REDACTED] has anything in his wallet and walks back towards Mr. [REDACTED] car. Officer Opoka can be seen looking through Mr. [REDACTED] wallet and appears to find nothing.

Officer Fennel returns to the driver’s seat and begins writing tickets. Once he is finished, he exits the car and asks Officer Opoka if he took the shake out of the car. Officer Opoka says he did. Officer Fennel says to let them slide on the container.

Officer Fennel walks to the rear driver’s side of the patrol car, opens the door, and asks Mr. [REDACTED] to step out. He leads Mr. [REDACTED] still handcuffed, to the hood of the patrol car. He puts the tickets in Mr. [REDACTED] pocket and briefly discusses the citations and court date. He shows Mr. [REDACTED] where his name and star number are written on the ticket, and he writes Officer Opoka’s star number on the margin of the ticket. Mr. [REDACTED] asks why Mr. [REDACTED] is still in the car, and Officer Fennel says that Mr. [REDACTED] is going to jail. Mr. [REDACTED] asks why, but the officers refuse to discuss the details of the arrest with him. Mr. [REDACTED] asks if the officer’s BWCs are recording, and they reply that their cameras are activated. Mr. [REDACTED] begins to return to his car, and the officers return to their patrol car and begin to drive away. Officer Fennel’s BWC video ends with him parking his patrol car, assisting Mr. [REDACTED] in exiting the car, and walking into the police station with him.

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<sup>10</sup> *Id.* at 6:22.

<sup>11</sup> *Id.* at 6:38.

<sup>12</sup> *Id.* at 8:20.

<sup>13</sup> *Id.* at 9:17.

COPA obtained and reviewed **Officer Opoka's BWC video**<sup>14</sup> related to this incident. Officer Opoka activated his BWC as he exits his patrol car at 4:58:49 PM. Officer Opoka's BWC video is substantially similar to Officer Fennel's. Notable differences include that Officer Opoka's camera captures his attempts to open the lockbox recovered from the trunk. He initially attempts to open the box with Mr. [REDACTED] keys and a knife unsuccessfully. He then retrieves a set of keys from the front passenger-side floor and successfully opens the lock box with one of those keys. He examines the gun and places it back in the lockbox.

Officer Opoka's BWC recording shows Officer Opoka search under the hood of Mr. [REDACTED] car and conduct a second search of Mr. [REDACTED] trunk while Officer Fennel is in the patrol car writing tickets. Officer Opoka also takes the lockbox and Mr. [REDACTED] wallet and keys from Mr. [REDACTED] car and loads them into the patrol car just before Officer Fennel takes Mr. [REDACTED] out of the back of the patrol car. Officer Opoka's BWC video ends as he is exiting the patrol car at the fifth district.

COPA obtained and reviewed **dashboard camera video**<sup>15</sup> from Officer Fennel and Opoka's patrol vehicle. The video begins with the vehicle stopped on the south side of W. 119<sup>th</sup> Street, facing west. The patrol vehicle pulls away from the curb and travels west for about a block. After passing a car heading east on W. 119<sup>th</sup> Street, now known to be driven by Mr. [REDACTED] the patrol vehicle performs a U-turn and accelerates towards Mr. [REDACTED] car.<sup>16</sup> As the patrol vehicle approaches, Mr. [REDACTED] turns left onto S. Wallace Street. The patrol vehicle follows, and Mr. [REDACTED] pulls over soon after completing his turn. The patrol vehicle stops behind Mr. [REDACTED] car.

The remainder of the dashboard camera video is substantially similar to the videos from the officers' BWCs. The dashboard camera shows the officers approach Mr. [REDACTED] car and open the front driver- and passenger-side doors. Mr. [REDACTED] and Mr. [REDACTED] exit their car, the officers handcuff and pat them down, and the officers search Mr. [REDACTED] car. The dashboard camera provides a better prospective of Officer Fennel discovering the prescription bottle containing marijuana residue. When Officer Fennel begins searching in the rear of Mr. [REDACTED] vehicle, he leans into the back seat. He almost immediately leans out and straightens. When he does, he is holding the prescription bottle, which he opens and holds to his nose.<sup>17</sup>

COPA obtained and reviewed the **in-car camera video**<sup>18</sup> from Officer Fennel and Opoka's patrol vehicle. The video begins with Mr. [REDACTED] sitting in the backseat of the patrol vehicle alone. The video shows the backseat of the patrol vehicle only, but Officer Fennel and Officer Opoka can be heard entering the car about one minute into the video. As they do, Mr. [REDACTED] can be heard asking, "So, what's up?" The officers don't respond. Officer Fennel can be heard calling the dispatcher and saying, "Show us going to the fifth district with one, please," and the patrol vehicle begins moving. Mr. [REDACTED] asks several times what the officers are doing and complains that they did not allow him to get his phone or to give his

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<sup>14</sup> Attachment 4.

<sup>15</sup> Attachment 1.

<sup>16</sup> *Id.* at 0:32.

<sup>17</sup> *Id.* at 5:31.

<sup>18</sup> Attachment 5.

money to Mr. [REDACTED]. The officers don't respond, and Mr. [REDACTED] asks why the officers won't speak to him. They tell Mr. [REDACTED] that he has not been *Mirandized* yet, and they can speak at the station. Mr. [REDACTED] also says that he believes the officers are only bothering him because he was previously in trouble.

### c. Documentary Evidence

COPA obtained and reviewed the **arrest report for [REDACTED]** from June 29, 2019. The report lists two charges for Mr. [REDACTED] unlawful use of a weapon and not wearing a seatbelt. The incident narrative documents that the reporting officers observed Mr. [REDACTED] riding in the front passenger seat of a Chevrolet Impala without wearing a seatbelt. The reporting officers stopped the Impala. They began conducting a field interview and during that interview detected the odor of marijuana emanating from the Impala. The officers asked Mr. [REDACTED] to exit the vehicle. Prior to exiting the car, Mr. [REDACTED] removed a set of keys from his pocket and placed the keys on the floorboard. The keys were attached to a keychain reading [REDACTED]. The officers proceeded to search the Impala. The officers discovered a prescription bottle between the driver's seat and console. The bottle contained a green leafy residue the officers suspected to be marijuana. The officers continued searching, and they located a Sentry Safe lockbox behind the rear passenger seat. The officers reported that the type of lockbox was commonly used to store firearms. The officers opened the lockbox using one of the keys from the set that Mr. [REDACTED] left in the car. Inside the box, the officers discovered a Taurus model PT99 9mm semi-automatic handgun. The handgun was loaded with one live round in the chamber and an unknown number of rounds in the magazine.

## 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 reviewed did not comply with CPD policy.<sup>20</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct violated CPD policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

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<sup>19</sup> Attachment 8. COPA also obtained a copy of the Original Case Incident Report related to Mr. [REDACTED] arrest, RD No. [REDACTED], which contains substantially the same information as the arrest report. Attachment 7.

<sup>20</sup> See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.").



**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.<sup>21</sup> 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."<sup>22</sup>

## VII. ANALYSIS

### a. The accused officers had reasonable suspicion to stop the complainant because he was not wearing his seatbelt while driving

The dashboard camera from Officer Fennel and Opoka's patrol vehicle shows the officers pass Mr. ██████ car going in the opposite direction and immediately turn around. When the officers stopped Mr. ██████ car, Officer Fennel noted that Mr. ██████ and Mr. ██████ were wearing their seatbelts at that time but were not wearing their seatbelts when he observed them driving prior to the stop. Mr. ██████ acknowledged in his statement to COPA that he and Mr. ██████ fastened their seatbelts after seeing the officers perform a U turn.

The Illinois Vehicle Code provides in relevant part, "Each driver and passenger of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat safety belt."<sup>23</sup> The officers were justified in stopping Mr. ██████ and Mr. ██████ based on their failure to wear their seatbelts, and it is uncontested that the circumstances were sufficient to satisfy the reasonable suspicion standard.

### b. The accused officers had probable cause to search the complainant's car based on the odor of marijuana

Mr. ██████ alleged that the officers had no justification to search his car. After questioning Mr. ██████ for a brief time in relation to the traffic violation, Officer Fennel stated that he detected the odor of marijuana. The officers relied on that observation as their basis for searching Mr. ██████ car. During the search, the officers discovered a prescription pill bottle containing marijuana residue. The patrol car dashboard camera shows Officer Fennel open the bottle and smell the contents. This appears to be contemporaneous with Officer Fennel statement recorded on the audio of his BWC video identifying the source of the odor of marijuana. Despite the legalization of medical marijuana and decriminalization of marijuana in small amounts, marijuana is still contraband,<sup>24</sup> and the odor of marijuana, detected by an experienced police officer, is sufficient to support a finding of probable cause.<sup>25</sup> Once probable cause was established, the officers could search every part of the vehicle and its contents that could conceal the object of the search, including the trunk and containers in the trunk.<sup>26</sup> While the lock box in the trunk was ultimately found to contain a firearm, there is no doubt that the container was large enough to potentially contain marijuana.

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<sup>21</sup> See, e.g., *People v. Coan*, 2016 IL App (2d) 151036.

<sup>22</sup> *Id.* ¶ 28.

<sup>23</sup> 625 ILCS 5/12-603.1(a).

<sup>24</sup> *People v. Hill*, 2020 IL 124595, ¶33-34.

<sup>25</sup> *Id.* at ¶15 (citing *People v. Stout*, 106 Ill. 2d 77, 87 (1985)).

<sup>26</sup> See *United States v. Ross*, 456 U.S. 798, 825 (1982).

Mr. ██████ disputes whether the officers smelled marijuana. During the stop, Mr. ██████ disputed that Officer Fennel was able to smell marijuana because he had not smoked recently and did not have marijuana in his car. However, in his statement to COPA, Mr. ██████ acknowledged the presence of the prescription bottle containing marijuana residue in his car, even though he did not believe the officers could have smelled the marijuana. Mr. ██████ also admitted to being a marijuana smoker.

The officers' conduct when the incident began was consistent with a traffic stop. Officer Fennel told Mr. ██████ the reason for the stop, asked for Mr. ██████ license and proof of insurance, and conducted a basic field investigation. Before the officers ordered Mr. ██████ and Mr. ██████ to exit the car, Officer Fennel said that he smelled marijuana, a facially valid basis to conduct a search. This statement, prior to beginning the search, and the subsequent discovery of marijuana residue in Mr. ██████ car, taken together, suggests that this was the actual basis for the search rather than a pretext. This conclusion is further supported by Mr. ██████ admission that he was a marijuana smoker, even though he denied smoking in the hours prior to the stop. It is true that the officers discovered only a small amount of marijuana, but even a small amount of marijuana is sufficient to generate a detectable odor. Based on these circumstances, it is highly probable that Officer Fennel did detect the odor of marijuana coming from Mr. ██████ car and that the officers conducted the search for that reason. COPA finds that **the allegation that Officer Fennel and Officer Opoka conducted an unjustified search is Exonerated.**

**c. The officers timely activated their BWCs**

Mr. ██████ alleged that the officers did not record the incident in its entirety. Officers are required to record all law-enforcement activities related to an incident in their entirety, and law-enforcement activities include traffic stops and searches of vehicles.<sup>27</sup> Officer Fennel and Officer Opoka's BWC recordings show that both officers activated their BWCs as they exited their patrol car after curbing Mr. ██████ vehicle. Their BWCs remained activated and recorded the initial traffic stop, the handcuffing and pat down of Mr. ██████ and Mr. ██████ the search of Mr. ██████ car, and the conversation between Mr. ██████ and the officers after the search. The officers both deactivated their BWCs as they arrived at the fifth district police station after transporting Mr. ██████<sup>28</sup> Thus, the officers timely activated their BWCs and recorded the entirety of this incident. COPA finds that **the allegation that Officer Fennel and Officer Opoka failed to timely activate their BWCs to be Unfounded.**

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<sup>27</sup> Special Order S03-14, Body Worn Cameras § III.A.1-2 (effective April 30,2018).

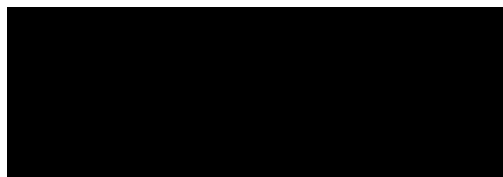
<sup>28</sup> Attachment 23 and Attachment 30.

**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officer Thomas Fennel	<p>It is alleged by [REDACTED] that on or about June 29, 2019, at approximately 5:12 PM, at or near W. 119th Street and S. Wallace Street, Officer Thomas Fennel #15220 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Searching [REDACTED] car without justification.</li> <li>2. Failing to comply with S03-14 by failing to timely activate your body worn camera.</li> </ol>	<p>Exonerated</p> <p>Unfounded</p>
Officer Luke Opoka	<p>It is alleged by [REDACTED] that on or about June 29, 2019, at approximately 5:12 PM, at or near W. 119th Street and S. Wallace Street, Officer Luke Opoka #18952 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Searching [REDACTED] car without justification.</li> <li>2. Failing to comply with S03-14 by failing to timely activate your body worn camera.</li> </ol>	<p>Exonerated</p> <p>Unfounded</p>

Approved:



2/14/2022

\_\_\_\_\_  
 Matthew Haynam  
 Deputy Chief Administrator – Chief Investigator

\_\_\_\_\_  
 Date