

**SUMMARY REPORT OF INVESTIGATION**

Date/Time/Location of Incident:	January 9, 2019 / 5:44 pm / 7128 S. Hoyne Ave., Chicago, IL 60636.
Date/Time of COPA Notification:	February 6, 2019 / 11:06 am.
Involved Member #1:	Officer Jason Banning / Employee ID# [REDACTED] / DOA: June 27, 2016 / Unit: 007 / Male / White. <sup>1</sup>
Involved Member #2:	Officer Michael Filetti / Star# [REDACTED] / Employee ID#119637 / DOA: December 12, 2016 / Unit: 007 / Male / White.
Involved Member #3:	Officer Kevin Hasenfang / Star# 15085 / Employee ID# [REDACTED] / DOA: December 12, 2016 / Unit: 007 / Male / White. <sup>2</sup>
Involved Member #4:	Officer Michael O'Brien / Star# 16827 / Employee ID# [REDACTED] / DOA: December 12, 2016 / Unit: 007 / Male / White.
Involved Member #5:	Officer Demaine Rhodes / Star# 7070 / Employee ID# [REDACTED] / DOA: September 18, 2017 / Unit: 007/195 / Male / Black.
Involved Individual #1:	[REDACTED] / Male / Black.

**I. ALLEGATIONS<sup>3</sup>**

Member	Allegation	Finding / Recommendation
Officers Banning, Filetti, O'Brien, Hasenfang, and Rhodes	1. Stopped [REDACTED] without justification.	Exonerated.
	2. Detained [REDACTED] without justification.	Exonerated.
	3. Searched [REDACTED] without justification.	Exonerated.
	4. Arrested [REDACTED] without justification.	Exonerated.
	5. Searched [REDACTED] vehicle without justification.	Exonerated.
	6. Failed to return personal property in the vehicle to [REDACTED] without justification	Unfounded.

**II. SUMMARY OF EVIDENCE**

<sup>1</sup> On September 10, 2020, Officer Banning separated from the Department prior to providing COPA a statement. Att. 34.

<sup>2</sup> On May 6, 2022, Officer Hasenfang separated from the Department. Att. 52.

<sup>3</sup> During his statement, [REDACTED] alleged that he was not permitted to make a telephone call while in custody, however, both his and [REDACTED] Arrest Reports detail they both placed a phone call. Att. 14, pg. 4; Att. 15, pg. 4.

On January 9, 2019, at approximately 5:44 pm, Officers Jason Banning and Kevin Hasenfang were on patrol when they observed a vehicle passing vehicles on the right near W. 71<sup>st</sup> St. and S. Damen Ave.<sup>4</sup> The officers decided to stop the vehicle. As the vehicle slowed the officers observed the driver, [REDACTED] reaching for the floorboard of the vehicle.<sup>5</sup> Once the vehicle stopped, the officers approached and ordered the occupants to exit the vehicle.<sup>6</sup> However, neither [REDACTED] or [REDACTED] complied.<sup>7</sup>

In response to [REDACTED] non-compliance, Officer Hasenfang applied a handcuff to [REDACTED] right wrist and then escorted him from the vehicle.<sup>8</sup> Once [REDACTED] was out of the vehicle, Officer Hasenfang attempted to secure [REDACTED] however, he resisted efforts by tensing and moving his hands away from Officer Hasenfang and towards his waist.<sup>9</sup> Officers Hasenfang and Michael Filetti took [REDACTED] to the ground and secured him in handcuffs, searched him, and secured him in a Department vehicle.<sup>10</sup>

Simultaneously to Officer Hasenfang's interaction with [REDACTED] refused orders to exit the vehicle. Officer Banning opened the driver's door and [REDACTED] attempted to close the door.<sup>11</sup> As [REDACTED] was being escorted from the vehicle, [REDACTED] exited the vehicle pushed Officer Banning while moving his head forward consistent with an attempted headbutt.<sup>12</sup> Officers Banning, Michael O'Brien, and Demaine Rhodes took [REDACTED] to the ground and secured him in handcuffs.<sup>13</sup> Once [REDACTED] was secured he was searched. During the search a prescription bottle containing suspected cannabis was recovered.

Once [REDACTED] and [REDACTED] were secured, the officers searched [REDACTED] vehicle, recovering a firearm case, ammunition, and hearing protection. Following the search, [REDACTED] was provided an opportunity to obtain her personal property from the vehicle and was released. The vehicle was impounded.

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<sup>4</sup> Municipal code prohibits drivers from overtaking a vehicle on the right, unless the vehicle they are passing is making a turn and/or the roadway is designed for two lanes of traffic traveling in the same direction. MCC 9-36-020. Att. 20 at 00:26.

<sup>5</sup> Att. 20 at 01:10.

<sup>6</sup> [REDACTED] was the driver. Mr. Christopher Willams was the front seat passenger. Ms. [REDACTED] was the rear seat passenger.

<sup>7</sup> Att. 20 at 02:40; Att. 24 at 02:10.

<sup>8</sup> Att. 20 at 03:00; Att. 24 at 02:22

<sup>9</sup> Att. 20 from 03:10 to 03:26; Att. 24 from 02:23 to 02:49.

<sup>10</sup> Att. 24 from 04:30 to 05:06.

<sup>11</sup> Att. 22 at 02:01.

<sup>12</sup> Att. 20 at 03:14; Att. 22 at 02:28; Att. 26 at 00:47.

<sup>13</sup> Att. 20 at 03:28

### III. LEGAL STANDARD

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

1. Sustained - where it is determined, by a preponderance of the evidence, that the allegation in fact occurred;<sup>14</sup>
2. Unfounded - where it is determined, by clear and convincing evidence, that an allegation is not supported by the facts;<sup>15</sup>
3. Exonerated - where it is determined, by clear and convincing evidence, that the conduct described in the allegation occurred, but it is lawful and proper; or
4. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence.

### IV. ANALYSIS AND CONCLUSION<sup>16</sup>

COPA finds Allegations #1, 2, and 4 against the Officers, that they improperly stopped, detained, and arrested ██████ are **exonerated**. Department members are permitted to conduct a traffic stop when there is “at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law.”<sup>17</sup> “Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observed and the reasonable inferences that are drawn based on the sworn member’s training and experience.”<sup>18</sup> Additionally, a Department member must have probable cause to arrest a subject.<sup>19</sup> “Probable cause to arrest 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 had committed it.”<sup>20</sup> The reasonable basis of any arrest “should be considered from the perspective of a reasonable officer at the time” of the arrest.<sup>21</sup>

Here, ██████ passed vehicles on the righthand side, creating reasonable suspicion (arguably probable cause) that ██████ violated the law. Therefore, the stop of his vehicle was not misconduct.

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<sup>14</sup> **Preponderance of evidence** is described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. 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. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

<sup>15</sup> **Clear and convincing evidence** is described a more that preponderance of the evidence but lower than beyond-a-reasonable doubt required to convict a person of a criminal offense. Clear and Convincing is described as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable” there was no misconduct. *See People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>16</sup> COPA’s preliminary investigation revealed there was no reasonable basis to serve any allegations related to the force used to arrest ██████ or ██████

<sup>17</sup> *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

<sup>18</sup> S04-13-09 II(C), Investigatory Stop System (effective July 10, 2017 to current).

<sup>19</sup> *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)).

<sup>20</sup> S04-13-09 II(D), Investigatory Stop System (effective July 10, 2017 to current).

<sup>21</sup> S04-13-09 II(D), Investigatory Stop System (effective July 10, 2017 to current).

Additionally, as the vehicle was slowing, Officers Banning and Hasenfang observed [REDACTED] moving in a manner that caused them to believe that [REDACTED] was attempting to conceal something.

Once [REDACTED] and [REDACTED] failed to comply with orders to exit the vehicle, probable cause was established that both [REDACTED] and [REDACTED] resisted and/or obstructed a peace officer.<sup>22</sup> Additionally, once [REDACTED] exited the vehicle and pushed Officer Banning probable cause was established that [REDACTED] committed a battery on a peace officer.<sup>23</sup> Therefore the arrest of [REDACTED] and [REDACTED] were reasonable and proper.

COPA finds Allegations #3 and 5 against the Officers, that they improperly searched [REDACTED] and his vehicle, are **exonerated**. “Department members [who] tak[e] an individual into custody or [are] accepting custody from other members [are] responsible for conducting a thorough search and ensuring that the persons are appropriately restrained to prevent escape or injury.”<sup>24</sup> The search Department members are required to complete is a custodial search which is in part intended “to keep contraband and weapons out of jail, to preserve any possible evidence and to protect the officer.”<sup>25</sup> Additionally, Department members are permitted to search a vehicle when a vehicle is being impounded by the Department.<sup>26</sup>

Here, as discussed above, [REDACTED] was properly arrested and therefore a custodial search of his person was required. Therefore, the officers search of [REDACTED] was reasonable and proper. Additionally, since the officers impounded [REDACTED] vehicle as prisoner property, they were required to complete an inventory search of the vehicle.

COPA finds Allegation #6 against the Officers, that they failed to return [REDACTED] personal property, is **unfounded**. Inventory sheets contain evidence [REDACTED] personal property was returned to him.<sup>27</sup> Allegation is **unfounded**.<sup>28</sup>

Approved:

[REDACTED]

10/28/2022

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date

<sup>22</sup> 720 ILCS 5/31-1(a).

<sup>23</sup> 720 ILCS 5.0/12-3.05(a)(3).

<sup>24</sup> G06-01-02 IV(B), Restraining Arrestees (effective December 8, 2017 to current).

<sup>25</sup> G06-01-02 IV(A), Restraining Arrestees (effective December 8, 2017 to current).

<sup>26</sup> G07-03 IV(G), Vehicle Towing and Relocation Operations (effective November 1, 2014 to current).

<sup>27</sup> Att. 41, pg. 2.

<sup>28</sup> COPA notes that [REDACTED] was not the registered owner of the vehicle, therefore he was not eligible to retrieve it from impound.