

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	January 14, 2020
Time of Incident:	9:16 pm
Location of Incident:	543 W. 127 <sup>th</sup> Street
Date of COPA Notification:	January 15, 2020
Time of COPA Notification:	10:42 am

██████████ (██████████) was stopped by Officers Angelo Dicera (Officer Dicera) and Axel Gallardo (Officer Gallardo) for not having his front plate affixed to the vehicle. Officers Jennifer Burmistrz (Officer Burmistrz), Thomas Fennell (Officer Fennell), and Sergeant Brian Gunnell (Sergeant Gunnell) assisted with the traffic stop. During the traffic stop, ██████████ alleged that the involved officers detained him, handcuffed him, searched his vehicle, smacked his phone out of his hand, and directed profanities at him during the stop. COPA finds the allegations are Not Sustained.

**II. INVOLVED PARTIES**

Involved Officer #1:	Angelo Dicera, star# 14902, emp.# ██████████, Date of Appointment: July 27, 2018, Officer, 005/211, DOB: ██████████, 1992, Male, White Hispanic
Involved Officer #2:	Axel Gallardo, star# 12210, emp.# ██████████, Date of Appointment: May 16, 2018, Officer, 005/211, DOB: ██████████, 1994, Male, White Hispanic
Involved Officer #3:	Jennifer Burmistrz, star# 14060, emp.# ██████████, Date of Appointment: October 31, 2005, Officer, 006/189, DOB: ██████████, 1981, Female, White
Involved Officer #4:	Thomas Fennell, star# 15220, emp.# ██████████, Date of Appointment: October 31, 2012, Officer, 005/193, DOB: ██████████, 1986, Male, White

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Angelo Dicera	<p>It is alleged by [REDACTED] that on or about January 14, 2020, at approximately 9:16 pm, at or near 543 W. 127th Street, Officer Angelo Dicera, star# 14902, committed misconduct through the following acts or omissions by:</p> <p>1. detained [REDACTED] without justification.</p>	Exonerated
Officer Axel Gallardo	<p>It is alleged by [REDACTED] that on or about January 14, 2020, at approximately 9:16 pm, at or near 543 W. 127th Street, Officer Axel Gallardo, star# 12210, committed misconduct through the following acts or omissions, by:</p> <p>1. detained [REDACTED] without justification.</p>	Exonerated
Officer Jennifer Burmistrz	<p>It is alleged by [REDACTED] that on or about January 14, 2020, at approximately 9:16 pm, at or near 543 W. 127th Street, Officer Jennifer Burmistrz, star# 14060, committed misconduct through the following acts or omissions, by:</p> <p>1. detained [REDACTED] without justification.</p> <p>2. searched [REDACTED] vehicle without justification.</p> <p>3. used profanities during your encounter with [REDACTED] without justification.</p>	Exonerated
Officer Thomas Fennell	<p>It is alleged by [REDACTED] that on or about January 14, 2020, at approximately 9:16 pm, at or near 543 W. 127th Street, Officer Thomas Fennell, star# 15220, committed misconduct through the following acts or omissions, by:</p> <p>1. detained [REDACTED] without justification.</p> <p>2. handcuffed [REDACTED] without justification.</p> <p>3. smacked [REDACTED] phone out of his hand without justification.</p>	Exonerated
		Exonerated
		Unfounded

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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Rule 2- Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 8- Disrespect to or maltreatment of any person, while on or off duty.

Rule 9- Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

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##### Federal Laws

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1. Fourth Amendment of the U.S. Constitution

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##### State Laws

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1. 625 ILCS 5/3-413 (a)

#### I. INVESTIGATION<sup>1</sup>

##### a. Interviews

COPA interviewed ██████████ on April 10, 2020.<sup>2</sup> According to ██████████ on January 14, 2020, he was pulled over by a marked police vehicle, and then an unmarked police vehicle pulled in front of his vehicle and blocked the car in. ██████████ described two sets of officers that stopped him; one set of officers was in uniform, and the other was in civilian dress. Both groups of officers exited their vehicles and approached ██████████ vehicle. The officers asked ██████████ some questions and then asked for his license. ██████████ did not initially produce his license because he could not find it due to his vehicle being messy. According to ██████████ the officers never informed him why he was being pulled over. ██████████ asserted that the officers started to get very aggressive with him and began cursing<sup>3</sup> at him. ██████████ pulled out his cell phone to record them, but the male civilian-dressed officer knocked the phone out of his hand. According to ██████████ that same officer reached his hand inside his window and unlocked his door and told ██████████ to exit the vehicle. Then, he grabbed ██████████ arm to pull him out of the vehicle.

██████████ exited the vehicle, and the uniformed officers placed handcuffs on him and walked him to the back of his vehicle. The officers started asking ██████████ questions about where he lived and what his brother's name was. According to ██████████ officers also searched his car. The officers searched ██████████ vehicle and found his driver's license. ██████████ was the only person in the vehicle when he was stopped. ██████████ stated that two to three officers were in the marked squad vehicle. ██████████ stated that he does not recall how many officers were in the unmarked vehicle, but he does

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<sup>1</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>2</sup> Att. 10.

<sup>3</sup> According to ██████████ officers were saying word to effect of shut the fuck up and motherfucker.

recall one white female officer and one white male officer. ██████ stated that the female was the one that was aggressive to him.

COPA interviewed **Officer Angelo Dicera** on February 15, 2022.<sup>4</sup> On January 14, 2020, Officer Dicera was partnered with Officer Axel Gallardo. Officer Dicera performed a traffic stop on ██████ for not having a front license plate affixed to the vehicle.<sup>5</sup> Officer Dicera approached ██████ vehicle on the driver's side, and ██████ was the sole occupant in the car. Officer Dicera informed ██████ of the reason for the stop, and he requested a driver's license. Instead of a driver's license, ██████ provided him with a state identification card. Officer Dicera returned to the squad car to perform a LEADS inquiry on ██████. Officer Dicera checked the status of ██████ license and verified if he had any active warrants.

According to Officer Dicera, there were other officers on the scene, but he does not recall who the officers were. Officer Dicera did not remember who asked ██████ to exit the vehicle or handcuffed him. Officer Dicera also did not recall if ██████ vehicle was searched. ██████ was released once the officers determined he had no warrants. Officer Dicera completed a TSS<sup>6</sup> card for the stop.

COPA interviewed **Officer Axel Gallardo** on February 15, 2022.<sup>7</sup> Officer Gallardo was working in the 5<sup>th</sup> district with his partner Officer Angelo Dicera. Officer Gallardo performed a traffic stop of ██████ but he did not remember the actual traffic violation.<sup>8</sup> He approached ██████ vehicle on the passenger side and asked him about a state identification card in the glove compartment. According to Officer Gallardo, ██████ appeared agitated or frustrated during the stop. Other officers were present, but Officer Gallardo only remembers seeing Officer Fennell on the scene. ██████ exited his vehicle and was handcuffed, but Officer Gallardo does not recall who handcuffed him. Officer Gallardo also does not recall if ██████ vehicle was searched.

COPA interviewed **Officer Jennifer Burmistrz** on February 23, 2022.<sup>9</sup> On January 14, 2020, Officer Burmistrz was partnered with Officer Thomas Fennell and Sergeant Brian Gunnell.<sup>10</sup> Officer Burmistrz approached ██████ vehicle on the passenger side, and he was the only person in the vehicle. Officer Burmistrz did not interact with ██████ while inside the vehicle, but she observed ██████ reaching around inside the vehicle.<sup>11</sup> ██████ was subsequently assisted out of the vehicle by Officer Fennell and handcuffed.

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<sup>4</sup> Att. 48.

<sup>5</sup> Officer Dicera has no independent recollection of the incident, and he based all his answers off his body worn camera footage.

<sup>6</sup> TSS stands for traffic stop summary.

<sup>7</sup> Att. 49.

<sup>8</sup> According to Officer Gallardo, he has no independent knowledge of the stop and based all his answers off the body worn camera video.

<sup>9</sup> Att. 50.

<sup>10</sup> Officer Burmistrz did not have any independent recollection of the incident and her answers were based off her review of Officer Gallardo's body worn camera footage.

<sup>11</sup> Officer Burmistrz stated ██████ was reaching on the passenger side, the door panel, under his seat and towards the back seat.

Officer Burmistrz searched the immediate area where she previously observed [REDACTED] reaching. According to Officer Burmistrz, she searched [REDACTED] vehicle because it was a safety concern. Officer Burmistrz also stated that after she had started searching the vehicle, [REDACTED] gave her permission to search a pink bag inside the car to retrieve his license. Officer Burmistrz subsequently found [REDACTED] license while she was searching the vehicle. Once [REDACTED] was outside the vehicle, Officer Burmistrz asked [REDACTED] to calm down and stated that he should have his driver's license. Officer Burmistrz admitted to using profanity during the encounter with [REDACTED]. Officer Burmistrz insisted that she was not directing profanity at him and instead just using profanity when she was having a conversation with him.

COPA interviewed **Officer Thomas Fennell** on March 1, 2022.<sup>12</sup> Officer Fennell was partnered with Officer Jennifer Burmistrz and Sergeant Brian Gunnell. Officer Axel Gallardo and Officer Angelo Dicera were also present on the scene. Officer Fennell was at the location to assist with a traffic stop.<sup>13</sup> Officer Fennell approached [REDACTED] vehicle on the driver's side and talked with him about his license.<sup>14</sup> According to Officer Fennell, [REDACTED] was hostile and annoyed during the stop and did not cooperate fully with the officers. [REDACTED] ignored the officers during the stop and focused on his cell phone.

[REDACTED] was subsequently asked out of his vehicle. [REDACTED] had his cell phone in his hand, and Officer Fennell took it from him and tossed it to the passenger seat. According to Officer Fennell, he took [REDACTED] phone out of his hand for safety reasons. Officer Fennell stated that [REDACTED] was placed in handcuffs for safety reasons. Officer Fennell stated that [REDACTED] was making movements in the vehicle before he was asked out. Officer Fennell also stated that [REDACTED] was placed into handcuffs to prevent him from attempting to flee and from going back inside the vehicle to try to get a weapon.

#### b. Digital Evidence

**Officers Dicera<sup>15</sup> and Gallardo<sup>16</sup>** had their body-worn cameras activated during the stop of [REDACTED]. Officer Dicera's video begins with him driving the squad vehicle. Officer Dicera exits the car and walks up to the driver's side of [REDACTED] vehicle. [REDACTED] rolls the windows down, and Officer Dicera tells [REDACTED] that he pulled him over because his front plate must be affixed to the front of his vehicle. Officer Dicera asks [REDACTED] for his license, and then asks [REDACTED] if he has a conceal and carry card and if he has a FOID card. [REDACTED] searches his pockets and then searches around his vehicle for his license. [REDACTED] looks around the backseat area and opens the glove compartment box. Officer Dicera asks his name, and [REDACTED] responds with his name. [REDACTED] hands Officer Dicera an old identification card. Officer Dicera takes the card, returns to his squad vehicle, and runs [REDACTED] information through the PDT. Officer Dicera says something about his brother that has a warrant to another officer on the scene. Officer Burmistrz tells Officer Dicera that she has [REDACTED] license, and Officer Dicera asks her if it is the same name. Officer Dicera tells

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<sup>12</sup> Att. 53.

<sup>13</sup> Officer Fennell has no independent knowledge of the incident, and all his answers were based on the viewing of Officer Gallardo's body worn camera footage.

<sup>14</sup> Officer Fennell does not recall the exact conversation but stated that it appeared the conversation was about [REDACTED] license.

<sup>15</sup> Att. 19.

<sup>16</sup> Att. 26.

Officer Burmistrz that his brother has the warrant. Officer Burmistrz and Officer Dicera continue to look at the PDT to ascertain if [REDACTED] has a warrant. Officer Dicera exits the squad car, walks over to [REDACTED] and gives him his license, and [REDACTED] is released.

Officer Gallardo's body-worn camera video begins with him riding on the passenger side of the squad vehicle. Officer Gallardo exits the squad vehicle and approaches the passenger side of [REDACTED] vehicle. Another unmarked police vehicle pulls in front of [REDACTED] vehicle. [REDACTED] reached around the center console, the back seat, and inside the glove compartment, searching for his license. Officer Gallardo asks [REDACTED] whose ID is in the glove compartment, and [REDACTED] tells Officer Gallardo that it is his ID. Officer Gallardo tells [REDACTED] to get the ID out and give it to Officer Dicera. [REDACTED] hands the ID to Officer Dicera. [REDACTED] picks up his cell phone and starts doing something on it. Officer Fennell takes the cell phone from [REDACTED] hands and tosses it to the vehicle's passenger side. Officer Fennell then places [REDACTED] into handcuffs and hands him off to Officer Gallardo. Sergeant Gunnell asks [REDACTED] if he has a license, and [REDACTED] tells him that he does, but he does not have it with him.

Officer Burmistrz starts speaking with [REDACTED] about his license. Officer Burmistrz starts to look inside [REDACTED] vehicle, and [REDACTED] tells her that she can search inside a pink bag behind the passenger's seat. Sergeant Gunnell asks [REDACTED] what his brother's name is. Sergeant Gunnell then walks over to [REDACTED] and speaks to [REDACTED] about his license and tattoos. [REDACTED] asks the officers if they found his license. Officer Burmistrz finds [REDACTED] license inside the vehicle, and then she closes the vehicle door and starts to speak<sup>17</sup> with [REDACTED] again about his license. Sergeant Gunnell speaks to [REDACTED] again about his license. The handcuffs are removed from [REDACTED] and he is released.

### c. Documentary Evidence

A **Traffic Stop Summary (TSS)** was completed for the stop of [REDACTED]<sup>18</sup>

## II. 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.

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<sup>17</sup> Officer Burmistrz did use expletives when she was speaking with [REDACTED]

<sup>18</sup> Att. 36.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the 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. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.” *Id.* at ¶ 28.

### III. ANALYSIS AND CONCLUSIONS

#### A. The detainment of ██████

COPA finds **Allegation #1** against all involved officers, that they detained ██████ without justification, is **Exonerated**. ██████ alleged that the officers improperly detained him. Traffic stops are seizures under the Fourth Amendment and thus subject to the Fourth Amendment reasonableness requirement.<sup>19</sup> A lawful traffic stop requires at least articulable and reasonable suspicion that the particular person stopped is breaking the law, including traffic law.<sup>20</sup> A traffic stop must last no longer than is required for law enforcement to effectuate its mission, which is to address the violation that warranted the stop and attend to related safety concerns.<sup>21</sup> Such inquiries include performing outstanding warrant and criminal history checks, as well as examining driver’s licenses, vehicle registrations, and proof of insurance.<sup>22</sup>

Officers Axel and Gallardo stopped ██████ for not having his front plate affixed to the front of his vehicle, which is required in Illinois.<sup>23</sup> Officers Burmistrz and Fennell assisted with the traffic stop. After stopping ██████ Officers checked to see if he had any warrants, and once it was determined that he had none, he was released. Officers were justified in the stop and the detention of ██████ and as such, COPA finds the allegation is exonerated.

#### B. Searching ██████ vehicle

COPA finds **Allegation #2** against Officer Burmistrz, that she searched ██████ vehicle without justification, is **Exonerated**. Officers performing a traffic stop may search the passenger compartment for weapons if they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.<sup>24</sup> In the present case, Officer Burmistrz observed ██████ reaching around inside his vehicle, and she subsequently searched those areas where ██████ reached.

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<sup>19</sup> *Whren v. United States*, 517 U.S. 806, 809-10 (1996).

<sup>20</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>21</sup> *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

<sup>22</sup> *Id.* See also *People v. Cummings*, 2016 IL 115769, ¶ 14 (2016).

<sup>23</sup> 625 ILCS 5/3-413 (a).

<sup>24</sup> *Michigan v. Long*, 463 U.S. 1032, 1051 (1983).

According to Officer Burmistrz, she searched [REDACTED] vehicle because it was a safety concern. Sergeant Gunnell also commented to another officer on the scene that he should not have let [REDACTED] reach around in the vehicle. Officer Burmistrz also searched a bag inside [REDACTED] car, but [REDACTED] gave her permission to search the bag. [REDACTED] can also be seen on a body-worn camera reaching around multiple places inside the vehicle after Officer Dicera asks for his license. As such, COPA finds this allegation **Exonerated**.

### C. Using profanities during the stop

COPA finds **Allegation #3** against Officer Burmistrz, that she used profanity without justification during the encounter with [REDACTED] is **Not Sustained**. According to Officer Burmistrz, she used profanity during the encounter with [REDACTED] but never directed anything at him. The video footage supports that Officer Burmistrz [REDACTED] did not direct any profanities towards [REDACTED] though she did use profanity. COPA finds this allegation is **Not Sustained**.

### D. Handcuffed without justification

COPA finds **Allegation #2** against Officer Fennell, in that he handcuffed [REDACTED] without justification, is **Exonerated**. There are situations in which concerns for safety of the police officer or the public justify handcuffing the detainee for the brief duration of an investigatory stop.<sup>25</sup> The critical question is whether the use of such restraints is reasonably necessary for the safety under the specific facts of the case.<sup>26</sup> Officer Fennell stated that [REDACTED] was placed in handcuffs for safety reasons. [REDACTED] was reaching around inside the vehicle before he was asked out. Officer Fennell also stated that [REDACTED] was placed into handcuffs to prevent him from attempting to flee and from going back inside the vehicle to try to get a weapon. As such, COPA finds this allegation **Exonerated**.

### E. Smacked the phone out of [REDACTED] hand

COPA finds **Allegation #3** against Officer Fennell in that he smacked [REDACTED] cell phone out of his hand without justification, is **Unfounded**. [REDACTED] picked up his cell phone as Officer Fennell opened the vehicle door to get him out. The body-worn camera footage depicted Officer Fennell grabbing the phone out of [REDACTED] hand and tossing it to the passenger seat. According to Officer Fennell, he took [REDACTED] phone out of his hand for safety reasons. Officer Fennell stated that in his experience, cell phones are used as a distraction measure. While Officer Fennell did take the cell phone out of [REDACTED] hand, he did not smack it out of his hands, and as such, COPA finds this allegation **Unfounded**.

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<sup>25</sup> *People v. Arnold*, 394 Ill. App. 3d 63, 71 (2009).

<sup>26</sup> *Id.*

Approved:

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Sharday Jackson  
*Deputy Chief Administrator – Chief Investigator*

October 31, 2022

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Date