

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	May 4, 2019
Time of Incident:	5:32 pm
Location of Incident:	1958 W. 59 <sup>th</sup> Street, Chicago, IL 60636
Date of COPA Notification:	May 6, 2019
Time of COPA Notification:	2:10 pm

Police Officers Gabriela Santana (Officer Santana) and Juan Hernandez (Officer Hernandez) stopped a car occupied by complainant ██████████ (██████████) and her husband, ██████████ (██████████). The original basis for the stop, as articulated by the officers, was a visual obstruction created by a Global Positioning System (GPS) unit or cellphone attached to Ms. ██████████’s windshield. After the car was stopped, Officer Santana announced that she smelled the odor of marijuana coming from inside the car. The officers removed both Ms. ██████████ and Mr. ██████████ from the car and handcuffed them. Officer Santana patted down both ██████████ and searched the interior of their car for marijuana. Officer Santana did not find any marijuana in the car, and she released both ██████████ after providing Ms. ██████████ with a receipt for the stop. Officer Santana documented the stop by completing Investigatory Stop Reports for both ██████████ Ms. ██████████ filed a complaint with the Civilian Office of Police Accountability (COPA) alleging that the officers stopped her car without justification, that Officer Santana searched her car without justification, and that Officer Santana (a female) patted down her husband (a male) even though a male police officer (Officer Hernandez) was on scene.

COPA’s investigation determined that the officers were justified in stopping the car based on the visual obstruction they observed on Ms. ██████████’s windshield, which was evident in the body-worn camera (BWC) recordings of the stop. COPA was not able to determine if Officer Santana smelled the odor of marijuana coming from the vehicle, and COPA was therefore unable to determine if Officer Santana’s search of the vehicle was justified. COPA also determined that Officer Santana violated CPD directives by patting down a male subject when a same-sex officer was immediately available to perform the pat-down, and Officer Hernandez violated CPD Rules by failing to report Officer Santana’s misconduct.

**II. INVOLVED PARTIES**

Involved Officer #1:	Gabriela Santana; Star #16129; Employee ID # ██████████; Date of Appointment: October 26, 2015; Police Officer; Unit of Assignment: 011; <sup>1</sup> DOB: ██████████, 1985; Female; White Hispanic
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<sup>1</sup> At the time of the incident under investigation, Officer Santana was assigned to Unit 007, the Seventh District. As of January 24, 2021, Officer Santana has been detailed to Unit 189, the Narcotics and Vice Division.

Involved Officer #2: Juan Hernandez; Star #10378; Employee ID # [REDACTED]; Date of Appointment: April 25, 2016; Police Officer; Unit of Assignment: 007; DOB: [REDACTED], 1995; Male; White Hispanic

Involved Individual #1: [REDACTED]; DOB: [REDACTED], 1975; Female; White

Involved Individual #2: [REDACTED]; DOB: [REDACTED], 1985; Male; Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Gabriela Santana	<p>It is alleged by [REDACTED] that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Gabriela Santana #16129 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Stopping [REDACTED]'s vehicle without justification; and</li> <li>2. Searching [REDACTED]'s vehicle without justification; and</li> <li>3. Performing a protective pat down of [REDACTED], a male, even though a male Police Officer was immediately available, in violation of Special Order S04-13-09.</li> </ol>	<p>Exonerated</p> <p>Not Sustained</p> <p>Sustained / 5-Day Suspension</p>
Officer Juan Hernandez	<p>It is alleged by [REDACTED] that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Juan Hernandez #10378 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Stopping [REDACTED]'s vehicle without justification.</li> </ol> <p>It is alleged by the Civilian Office of Police Accountability that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Juan Hernandez #10378 committed misconduct through the following acts or omissions, by:</p>	<p>Exonerated</p>

2. Failing to report to the Department any violation of Rules and Regulations or other conduct which is contrary to policy, orders, or directives of the Department, to wit, that Police Officer Gabriela Santana performed a protective pat down of ██████████, a male, even though a male Police Officer was immediately available.

Sustained /  
Reprimand

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral.
2. Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

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##### Special Orders

1. Special Order S04-13-09: Investigatory Stop System (effective July 10, 2017).<sup>2</sup>

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##### State Laws

1. 625 ILCS 5/12-503(c): “No person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield . . . which materially obstructs the driver’s view.”
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#### V. INVESTIGATION<sup>3</sup>

##### a. Interviews

1. ██████████ was interviewed by COPA investigators on July 11, 2019.<sup>4</sup> Ms. ██████████ told investigators that on May 4, 2019, at about 5:30 pm, she was driving on 59<sup>th</sup> Street near Damen with her husband, ██████████. Ms. ██████████ was driving, and Mr. ██████████ was in the front passenger seat. Ms. ██████████ saw a marked police vehicle parked on the north side of 59<sup>th</sup> Street. After she passed the police vehicle, it began to follow her, and she pulled to the side of the road when the emergency lights in the police vehicle activated. The police vehicle pulled over behind Ms. ██████████’s car, and two officers, one male and one female, exited. The female

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<sup>2</sup> Attachment 18.

<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 1. Ms. ██████████ initially contacted COPA by filing an online complaint using the COPA website. In her written description of the incident on the web complaint form, Ms. ██████████ also alleged that she believed the officers targeted her because she was a White woman driving in a predominately Black neighborhood. (Web complaint, Attachment 4). Ms. ██████████ did not repeat this complaint during her COPA interview.

officer approached Ms. [REDACTED] on the driver's side of her car, and the male officer approached Mr. [REDACTED] on the passenger's side. Ms. [REDACTED] gave the female officer her driver's license, and the female officer returned to the police vehicle while the male officer remained on the passenger's side of Ms. [REDACTED]'s car. The female officer returned and asked the [REDACTED] if they had been smoking. Mr. [REDACTED] replied that they had been smoking cigarettes, and the female officer said that she smelled a strong odor of marijuana coming from the car. Ms. [REDACTED] denied smoking marijuana, but the female officer ordered both Mr. and Ms. [REDACTED] to step out of their car. Mr. [REDACTED] told the officers he was not comfortable exiting the car and requested that a K-9 unit or other police officers come to the scene. However, Mr. [REDACTED] complied when ordered to step out of the car.

The female officer handcuffed Ms. [REDACTED] as soon as she exited the car and patted down Ms. [REDACTED]'s clothing. The female officer told Ms. [REDACTED] that she was going to impound Ms. [REDACTED]'s car, but if Ms. [REDACTED] told her where the marijuana was, the officer could help Ms. [REDACTED] avoid more serious consequences. Ms. [REDACTED] again denied the presence of marijuana in the car and denied having ever used marijuana. Mr. [REDACTED] then exited the car and was handcuffed by the male officer. The female officer then patted down Mr. [REDACTED] while the male officer stood by. Mr. [REDACTED] asked why they had been pulled over, and the female officer pointed towards their front windshield and said, "obstruction of view." Ms. [REDACTED] admitted that there was a cell-phone holder with a suction cup attached to the windshield underneath the rear-view mirror, along with a rosary hanging from the rear-view mirror, although Ms. [REDACTED] denied that either of these items obstructed her view. Ms. [REDACTED] also did not believe the officers could have seen the cell-phone holder from where the police vehicle was initially parked.

The female officer searched inside the car, including inside the glove compartment and Ms. [REDACTED]'s purse, while the male officer stood with the [REDACTED], but nothing was found. The female officer also opened and searched the trunk. After completing the search, the female officer asked the [REDACTED] if they wanted stop receipts. They replied "yes," and the male officer retrieved the receipts from the police vehicle and gave the receipts to the [REDACTED]. The officers then removed the handcuffs from the [REDACTED], and they were allowed to go on their way.

**2. Officer Gabriela Santana was interviewed by COPA investigators on March 9, 2021.**<sup>5</sup> After reviewing her body-worn camera recording, Officer Santana recalled stopping a vehicle driven by [REDACTED] at about 5:30 p.m. on May 4, 2019, near 1958 West 59<sup>th</sup> Street. Officer Santana explained that she and her partner, Officer Juan Hernandez, observed an object hanging from the rear-view mirror of [REDACTED]'s vehicle, along with a very large GPS unit or phone mounted on the center of the vehicle's windshield. Officer Santana then initiated a traffic stop based on the obstruction of view, which she believed violated the vehicle code. As Officer Santana spoke with Ms. [REDACTED] and explained the reason for the stop, she smelled a strong odor of marijuana coming from inside the vehicle. Officer Santana asked Ms. [REDACTED] if she had been smoking, and Ms. [REDACTED] replied that she had only been smoking cigarettes. Officer Santana obtained identification from Ms. [REDACTED] and from her passenger, [REDACTED], and checked them through the Law Enforcement Agencies Data System (LEADS). Officer Santana then returned to the vehicle and ordered Ms. [REDACTED] to step out, explaining that she was conducting a narcotics investigation. Ms. [REDACTED] complied with the order and exited the vehicle, and Officer Santana handcuffed Ms. [REDACTED] and searched her pockets, but did not recover any contraband. Officer Hernandez then ordered Mr. [REDACTED] out of the vehicle, and Mr. [REDACTED] complied. After Mr. [REDACTED]

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<sup>5</sup> Attachment 17.

was out of the vehicle, Officer Hernandez placed him in handcuffs and Officer Santana patted him down.

Officer Santana explained that she patted down Mr. [REDACTED] because she was the senior officer on scene, and she wanted to assure that the pat-down was thorough. After assuring herself that Mr. [REDACTED] was not armed, Officer Santana searched the [REDACTED]' vehicle for narcotics, but she found none. Officer Santana then provided the [REDACTED] with a receipt for the stop and allowed them to leave. Officer Santana further explained that the smell of marijuana was her only reason for ordering Mr. and Ms. [REDACTED] out of the vehicle, as smoking marijuana while driving is unlawful. Officer Santana also suspected that the [REDACTED] might be armed both because of the odor of marijuana and because Ms. [REDACTED] had initially been hesitant to exit the vehicle when ordered to do so, leading Officer Santana to believe that the [REDACTED] might be concealing weapons or contraband.

Officer Santana acknowledged that CPD Special Order S04-13-09, which was in effect on May 4, 2019, required that pat-downs be conducted by a CPD member of the same gender as the person stopped, absent extenuating circumstances. While acknowledging that her actions were governed by this order, Officer Santana explained that she had not thoroughly studied the order and had been under the mistaken impression, based on training that she had received in 2015 in the police academy, that she was allowed to conduct pat-downs and searches of male subjects during street stops. Officer Santana also explained that she had not worked with Officer Hernandez prior to May 4, 2019, and she did not know how proficient he was at performing protective pat downs. As the senior officer, she took the lead during the incident to make sure that everyone was safe. Officer Santana also stated that she had worked almost exclusively with a female partner during her career prior to May of 2019, and she was not used to having a male officer immediately available during a traffic stop. Officer Santana added that, knowing what she knows now, she will no longer search male subjects if a male officer is available.

**3. Officer Juan Hernandez was interviewed by COPA investigators on July 15, 2021.**<sup>6</sup> Officer Hernandez did not recall stopping a vehicle driven by [REDACTED] at about 5:30 p.m. on May 4, 2019, near 1958 West 59<sup>th</sup> Street, but acknowledged having done so after viewing his body-worn camera recording. Officer Hernandez was partnered with Officer Gabriela Santana, although she was not his regular partner, and he had never been partnered with her prior to that day. The basis for the traffic stop was a visual obstruction, which Officer Hernandez described as a GPS holder attached to the front windshield and a necklace hanging from the rear-view mirror. After the vehicle was stopped, Officer Santana said that she smelled the odor of marijuana. Officer Hernandez did not remember if he also smelled the odor.

After Officer Santana took the female driver, [REDACTED], out of the vehicle, Officer Hernandez ordered to male passenger, [REDACTED], to exit, and he complied. Officer Hernandez placed Mr. [REDACTED] in handcuffs, but Officer Santana then took over and searched Mr. [REDACTED].<sup>7</sup> Officer Hernandez explained that he was junior in seniority to Officer Santana and that he had recently returned from a year-long period of duty disability in which he had not been working. Officer Hernandez estimated that he was within a few feet of Officer Santana and Mr. [REDACTED] and that he could see what Officer Santana was doing.

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<sup>6</sup> Attachment 25.

<sup>7</sup> Officer Hernandez described Officer Santana's actions vis-à-vis Mr. [REDACTED] as a search rather than a protective pat-down, but Officer Hernandez acknowledged that CPD directives require a member of the same gender as the person searched to perform both protective pat-downs and searches that go beyond a protective pat-down.

Officer Hernandez acknowledged that CPD Special Order S04-13-09, which was in effect on May 4, 2019, required that pat-downs be conducted by a CPD member of the same gender as the person stopped, absent extenuating circumstances, and that other CPD directives governing searches also require these actions to be performed by a CPD member of the same gender as the person stopped or arrested. Officer Hernandez explained that he always understood that male officers should not search a female subject, absent extenuating circumstances, but he never knew that a female officer should not search a male subject. Officer Hernandez further explained that he had almost always worked with male partners, and the issue of a female officer searching a male subject had never arisen. Officer Hernandez also acknowledged that no extenuating circumstances existed during his encounter with the [REDACTED] and that he could have performed the pat-down or search of Mr. [REDACTED]. Officer Hernandez never reported this violation of a CPD order because he did not realize – until reviewing the relevant directive during his interview at COPA – that a violation had occurred. Officer Hernandez then emphasized that he would conform his conduct to the requirements of the directive going forward.

### b. Digital Evidence

The traffic stop and subsequent search was audio- and video-recorded on **body-worn cameras (BWC) by both Officer Santana and Officer Hernandez.**<sup>8</sup> The recordings depict Officer Santana approaching the stopped vehicle on the driver's side, while Officer Hernandez approached on the passenger's side. Prior to approaching the vehicle, Officer Santana remarks to Officer Hernandez, "That thing right in the middle, it's blocking their view." After requesting [REDACTED]'s driver's license and insurance, Officer Santana says that she smells "a little weed" and asks if the [REDACTED] have been smoking. Both say that they have smoked cigarettes but deny smoking marijuana. After checking Ms. [REDACTED]'s license, Officer Santana orders her to exit the vehicle, again explaining that she smells marijuana. Ms. [REDACTED] asks why she was stopped, and Officer Santana explains that electronic equipment attached to [REDACTED]'s windshield via a suction device is obstructing her view. Ms. [REDACTED] then steps out of the vehicle, and Officer Santana places her in handcuffs. Officer Santana pats down Ms. [REDACTED]'s outer clothing and reaches into her pockets. Officer Santana walks Ms. [REDACTED] to the rear of her vehicle, and then Officer Hernandez asks [REDACTED] to step out. Mr. [REDACTED] complies, and Officer Hernandez places him in handcuffs and walks him to the rear of the vehicle, next to Officer Santana and Ms. [REDACTED]. Officer Santana then pats down Mr. [REDACTED]'s outer clothing, including his pants from his waist to his ankles. She then searches the passenger compartment and trunk of the [REDACTED] vehicle, including Ms. [REDACTED]'s purse, Mr. [REDACTED]'s wallet, and the glove compartment, leaving the [REDACTED] at the rear of the vehicle with Officer Hernandez. After completing the search, Officer Santana asks [REDACTED] if she wants a receipt. Officer Hernandez retrieves a blank receipt from the patrol vehicle, and Officer Santana fills out the receipt and hands it to Ms. [REDACTED] after both [REDACTED] have been un-handcuffed. Both officers then return to their patrol vehicle and terminate their BWC recordings.

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<sup>8</sup> Attachments 7, 8. No in-car camera (ICC) recordings associated with this stop were found. Attachments 9, 11–13.

### c. Documentary Evidence

Two **Investigatory Stop Reports**<sup>9</sup> authored by Officer Santana document that Officer Santana and Officer Hernandez stopped a vehicle occupied by ██████████ (driver) and ██████████ (passenger) at 5:32 pm on May 4, 2019, at 1958 West 59<sup>th</sup> Street, based on a traffic violation. Officer Santana smelled a strong odor of cannabis coming from the vehicle, and the officers ordered the occupants to exit the vehicle. Officer Santana further documented that “a search beyond a protective pat down” was conducted of the ██████████’ effects, and that the search was not consensual. The search did not result in the recovery of any contraband, and the ██████████ were released after being given ISR receipts.

## 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>10</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.

**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>11</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>12</sup>

## VII. ANALYSIS

First, it has been alleged that Officers Santana and Hernandez stopped ██████████’s vehicle without justification. The officers contend that the stop was based on the presence of an object or objects that blocked the driver’s view, in violation of the Illinois Vehicle Code.<sup>13</sup> Ms. ██████████ did not believe it was possible for the officers to see the alleged obstruction prior to

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<sup>9</sup> Attachments 2, 3. Both reports were authored by Officer Santana, with Officer Hernandez listed as the second officer involved.

<sup>10</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.”).

<sup>11</sup> See, e.g., *People v. Coan*, 2016 IL App (2d) 151036.

<sup>12</sup> *Id.* ¶ 28.

<sup>13</sup> See 625 ILCS 5/12-503(c).

stopping her vehicle. However, the available BWC recordings demonstrate conclusively that Officer Santana did observe the object prior to approaching the vehicle, as she remarked, “That thing right in the middle, it’s blocking their view.” It is also undisputed that this stop occurred during daylight hours, and by Ms. ██████’s own admission the police vehicle was initially facing her vehicle. Under these circumstances, the officers would have a clear view of Ms. ██████’s windshield. Further, the available BWC recordings show both a necklace hanging from Ms. ██████’s rear-view mirror and a piece of electronic equipment attached to her windshield with a suction-type device.

The vehicle code does not categorically prohibit the suspension or placement of an object between a driver and her windshield. Instead, the code “prohibits the suspension or placement of an object in a window *which materially obstructs the driver’s view*. . . . Size alone does not determine whether an object materially obstructs the driver’s view.”<sup>14</sup> Instead, Illinois courts conduct a fact-specific inquiry to determine if a particular object could materially obstruct a driver’s view.<sup>15</sup> Further, an officer who observes an object he or she reasonably believes could obstruct a driver’s view can initiate a traffic stop to further investigate the obstruction and to determine if, in fact, the object creates a material obstruction under the vehicle code.<sup>16</sup> An officer does not require probable cause to initiate the stop – only reasonable, articulable suspicion that a driver has committed a traffic violation.<sup>17</sup>

Based on the officers’ statements to COPA, their Investigatory Stop Reports, and the available BWC recordings, COPA finds it highly probable that Officer Santana and Officer Hernandez were justified in stopping Ms. ██████’s vehicle based on seeing the electronic device attached to her windshield, which they reasonably believed could be a material obstruction of her view. As such, COPA finds that **Allegation 1 against Officer Santana is Exonerated** and **Allegation 1 against Officer Hernandez is Exonerated**.

Second, it has been alleged that Officer Santana searched Ms. ██████’s vehicle without justification. The odor of burnt marijuana, on its own, can provide an experienced police officer with the probable cause necessary to conduct a search of a motor vehicle.<sup>18</sup> This remains the case even after the legalization of medical marijuana, as medical marijuana users are prohibited from possessing marijuana within a motor vehicle, except in a sealed, tamper-evident container.<sup>19</sup> The only question, then, is whether Officer Santana did, in fact, smell the odor of burnt marijuana. Officer Santana contends that she smelled marijuana, while Ms. ██████ contends that no one was smoking marijuana in her vehicle and that Officer Santana fabricated the odor as a pretext for conducting a search. Officer Santana did not find any marijuana after searching the ██████ and their vehicle, and there is no other direct evidence to indicate whether someone was smoking marijuana in the vehicle prior to the traffic stop. Therefore, COPA must make a finding based on the parties’ credibility.

The credibility of an individual relies primarily on two factors: 1) the individual’s truthfulness; and 2) the reliability of the individual’s account. The first factor addresses the

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<sup>14</sup> *People v. Dunmire*, 2019 IL App (4<sup>th</sup>) 190316, ¶ 83 (emphasis added) (citations and internal quotation marks omitted).

<sup>15</sup> *Id.* ¶¶ 83–85 (collecting cases).

<sup>16</sup> *People v. Lomeli*, 2017 IL App (3d) 150815, ¶ 14 (citing *People v. Little*, 2016 IL App (3d) 130683, ¶ 18).

<sup>17</sup> *See id.*, ¶ 16.

<sup>18</sup> *People v. Hill*, 2020 IL 124595, ¶15 (citing *People v. Stout*, 106 Ill. 2d 77, 87 (1985)).

<sup>19</sup> *Id.*, ¶¶ 25–36. The same logic applies to the possession of small amounts of marijuana for personal consumption. *Id.*

honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. The BWC recordings show that Officer Santana noted the smell of marijuana during the traffic stop, while Ms. ██████ denied the presence of marijuana during the stop, and neither party has significantly changed their version of events when completing subsequent reports or interviews. Ms. ██████ does not have a known history of marijuana possession or other criminal conduct,<sup>20</sup> and Officer Santana has no disciplinary history implicating dishonesty. The other officer on scene, Officer Hernandez, does not remember if he smelled marijuana. The other civilian on scene, ██████, was not interviewed – but he does have a lengthy history of arrests and convictions for marijuana-related offenses.<sup>21</sup> However, Mr. ██████'s past use of marijuana does not prove that he possessed or used marijuana on the day of the incident under investigation. Giving equal weight to Officer Santana's statement and Ms. ██████'s statement and noting the lack of other evidence to corroborate or contradict their statements, COPA can find neither sufficient evidence to prove the allegation against Officer Santana by a preponderance of evidence nor sufficient evidence to disprove the allegation by clear and convincing evidence. Therefore, COPA finds that **Allegation 2 against Officer Santana is Not Sustained.**

Finally, it is alleged that Officer Santana violated Special Order S04-13-09 by patting down ██████, a male, even though a male officer was immediately available to conduct the pat-down. Likewise, it is alleged that Officer Hernandez failed to report Officer Santana's violation of this special order. Special Order S04-13-09, which governs investigatory stops conducted by CPD members, requires that:

Protective Pat Downs will be conducted by a member who is the same gender as the person that is the subject of the Investigatory Stop. If a member of the same gender is not immediately available, officer and public safety is compromised, and it is imperative that an immediate *search* be conducted, members will not endanger themselves or the public to comply with this requirement. Members will exercise caution when patting down outer garments of persons of the opposite sex.<sup>22</sup>

It is undisputed that Special Order S04-13-09 was in effect on the date of the incident under investigation and that it governed the accused officers' conduct. It is also undisputed that Officer Santana is female and that ██████ is male. Officer Santana categorized her actions vis-à-vis Mr. ██████ as a search rather than a pat-down, but the language of Special Order S04-13-09 applies to both pat-downs and searches performed by CPD members during an investigatory stop. Also, the available BWC recordings show that Officer Santana's actions were consistent with a pat-down of Mr. ██████.

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<sup>20</sup> Attachment 26.

<sup>21</sup> Attachment 24. Mr. ██████'s criminal history report indicates 16 prior arrests, dating between 2002 and 2015, for marijuana-related offenses, including 3 convictions.

<sup>22</sup> Special Order S04-13-09, Investigatory Stop System, § VI.A.2 (effective July 10, 2017) (emphasis added). Attachment 18.

Officer Santana contends that her actions were proper because she believed that public safety could be compromised if she did not perform the pat-down or search personally. This contention is based on Officer Santana's position as the senior officer in the patrol vehicle and her partner's relative lack of experience. It is true that Officer Santana was senior to her partner, Officer Hernandez. At the time of the incident under investigation, Officer Santana had been a CPD member for approximately 3 and ½ years, while Officer Hernandez had been a CPD member for approximately 3 years. Officer Hernandez had also recently returned from a year-long leave after being injured. Under these circumstances, particularly where the subjects who had been stopped were cooperative, it would have been reasonable for Officer Santana to monitor Officer Hernandez while he performed a search or pat-down of the male subject. If Officer Santana believed that Officer Hernandez was not searching or patting down properly, she could intervene by either providing direction or by taking over. But it was not reasonable for Officer Santana to simply perform the pat-down or search herself while Officer Hernandez stood by. There was no *immediate* threat to officer or public safety, and a male CPD member was *immediately* available to perform the search or pat-down. COPA therefore finds it more likely than not that Officer Santana violated Special Order S04-13-09 by performing a protective pat-down of [REDACTED] when a male officer was immediately available, and **Allegation 3 against Officer Santana is Sustained.**

It is undisputed that Officer Hernandez was present when Officer Santana performed a search or pat-down of [REDACTED] and that Officer Hernandez knew what Officer Santana was doing. It is also undisputed that Officer Hernandez did not report Officer Santana's conduct to the Department. Rule 22 required Officer Hernandez to report any violation of Department orders or directives. Officer Hernandez credibly stated that he was unaware Special Order S04-13-09's requirement for same-sex pat-downs and searches, at least as applied to a female police officer searching or patting down a male subject. However, as a CPD member, Officer Hernandez was required to be familiar with Department directives, and he remained accountable for recognizing and reporting any violation that he observed. COPA therefore finds it more likely than not that Officer Hernandez failed to report Officer Santana's misconduct to the Department, and **Allegation 2 against Officer Hernandez is Sustained.**

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

### a. Officer Gabriela Santana

COPA has reviewed and considered Officer Santana's disciplinary and complimentary history.<sup>23</sup> Officer Santana performed a pat-down of a male subject in violation of Department directives. While Officer Santana should have allowed the available male officer to perform the pat-down, there is no reason to believe that the pat-down was otherwise inappropriate or that Officer Santana acted from any inappropriate motive. COPA further credits Officer Santana's statement that she performed the pat-down while attempting to exercise responsibility as the senior officer in her patrol vehicle and out of concern – however misguided – that her inexperienced male partner might not perform the pat-down in a safe or effective manner. Under these circumstances and considering Officer Santana's own relative lack of experience as a 4-year Department member, COPA finds that a **5-Day Suspension** is the appropriate penalty.

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<sup>23</sup> Attachment 44.

**b. Officer Juan Hernandez**

COPA has reviewed and considered Officer Hernandez’s disciplinary and complimentary history.<sup>24</sup> Officer Hernandez failed to report misconduct that he observed, likely because he did not recognize the misconduct due to his ignorance of the relevant Department directive. The underlying misconduct in question was not egregious, and it is understandable – though not excusable – that a relatively junior CPD member such as Officer Hernandez would not take the appropriate action under these circumstances. Given that Officer Hernandez’s misconduct was an unintentional violation of policy, COPA finds that a **Reprimand** is the appropriate outcome for this sustained allegation.

**IX. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer Gabriela Santana	<p>It is alleged by ██████████ that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Gabriela Santana #16129 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Stopping ██████████’s vehicle without justification; and</li> <li>2. Searching ██████████’s vehicle without justification; and</li> <li>3. Performing a protective pat down of ██████████, a male, even though a male Police Officer was immediately available, in violation of Special Order S04-13-09, thereby violating Rule 6.</li> </ol>	<p>Exonerated</p> <p>Not Sustained</p> <p>Sustained / 5-Day Suspension</p>
Officer Juan Hernandez	<p>It is alleged by ██████████ that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Juan Hernandez #10378 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. Stopping ██████████’s vehicle without justification.</li> </ol>	<p>Exonerated</p>

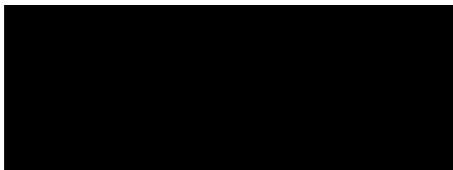
<sup>24</sup> Attachment 43.

It is alleged by the Civilian Office of Police Accountability that on May 4, 2019, at approximately 5:30 pm, at or near 1958 W. 59<sup>th</sup> Street, that Police Officer Juan Hernandez #10378 committed misconduct through the following acts or omissions, by:

2. Failing to report to the Department any violation of Rules and Regulations or other conduct which is contrary to policy, orders, or directives of the Department, to wit, that Police Officer Gabriela Santana performed a protective pat down of [REDACTED], a male, even though a male Police Officer was immediately available, thereby violating Rule 22.

Sustained /  
Reprimand

Approved:



8/24/2021

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

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	2
<b>Major Case Specialist:</b>	Greg Masters
<b>Supervising Investigator:</b>	Robert Coleman
<b>Deputy Chief Administrator:</b>	Matthew Haynam