

**SUMMARY REPORT OF INVESTIGATION**

Date/Time/Location of Incident:	June 22, 2019/ 10:04 p.m./ 6143 S. Kimbark Avenue
Date/Time of COPA Notification:	June 27, 2019/ 2:30 p.m.
Involved Officer #1:	Sergeant Marvin Coleman, star #2503, Emp # [REDACTED]
Involved Officer #2:	PO Andrew Braun, star #4076, Emp # [REDACTED]
Involved Officer #3:	PO Arturo Fonseca, star #10736, Emp # [REDACTED]
Involved Officer #4:	PO Darryl Parker, star #15032, Emp. # [REDACTED]
Involved Individual #1:	[REDACTED], DOB: [REDACTED], 1996, male, Black
Case Type:	4 <sup>th</sup> Amendment Violation

**I. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Sergeant Robert Colman	It is alleged by [REDACTED], that on or about June 22, 2019, at approximately 11:00 p.m., at or near 6143 S. Kimbark, Sergeant Robert Coleman:  1. Struck the driver’s side window of [REDACTED]’s vehicle with a flashlight without justification.	Exonerated
Officer Andrew Braun	It is alleged by [REDACTED], that on or about June 22, 2019, at approximately 11:00 p.m., at or near 6143 S. Kimbark, Officer Andrew Braun:  1. Detained and searched [REDACTED] without justification;  2. Told [REDACTED] to, “Shut the fuck up;”  3. Struck the driver’s side window of [REDACTED]’s vehicle with a flashlight without justification;  4. Searched [REDACTED]’s vehicle without justification;  5. Arrested [REDACTED] without justification;  6. Slapped [REDACTED] across the head at the 3 <sup>rd</sup> District; and	Exonerated  Unfounded  Unfounded  Exonerated  Exonerated  Unfounded

	7. Stated to █████, “Bitch you do know who was the kid.”	Unfounded
Officer Arturo Fonseca	It is alleged by █████, that on or about June 22, 2019, at approximately 11:00 p.m., at or near 6143 S. Kimbark, Officer Arturo Fonseca:  1. Detained and searched █████ without justification;  2. Searched █████’s vehicle without justification; and  3. Arrested █████ without justification.	Exonerated  Exonerated  Exonerated
Officer Darryl Parker	It is alleged by █████, that on or about June 22, 2019, at approximately 11:00 p.m., at or near 6143 S. Kimbark, Officer Darryl Parker:  1. Detained and searched █████ without justification;  2. Told █████ to, “Shut the fuck up;”  3. Searched █████’s vehicle without justification; and  4. Arrested █████ without justification	Exonerated  Unfounded  Exonerated  Exonerated

**II. SUMMARY OF EVIDENCE**

█████ filed a complaint with the Civilian Office of Police Accountability (COPA) alleging that while parked at the location of the incident, Chicago Police Officers (CPD) unjustifiably searched and seized his person and vehicle without justification.

In a COPA interview<sup>1</sup> on June 27, 2019, █████ (“█████”) related the incident occurred on June 22, 2019, at approximately 10:00 p.m. After attending a funeral, █████ went to the area of 6143 S. Kimbark Ave, where he and a group of individuals congregated. Members of the group asked █████ to drive a teenage boy to 47<sup>th</sup> Street and Cottage Grove Avenue.<sup>2</sup> █████ allegedly did not know the boy, but he agreed to drive him and received gas money to do so. █████ and the boy walked to █████’s vehicle, and the boy entered the rear passenger’s seat. Simultaneously, tactical officers arrived with their firearms displayed. █████, who had not yet entered his vehicle, closed the driver’s door and walked toward the officers. He told them he had his license and insurance, and they had no right to stop him or check his vehicle. However, █████ also admitted his car was parked away several feet away from the street curb and that he locked the car before he walked toward the officers. The officers then searched █████, emptied out his pockets, and threw his belongings (cell phone, car keys, and vehicle documents) on the ground.

<sup>1</sup> Attachment 8.

<sup>2</sup> █████ stated he did not know the boy’s name, and he refused to identify anyone else who was present during the incident.

An officer stated, “We’ve got one,”<sup>3</sup> and █████ overheard the boy, who was still inside his vehicle, say that he was getting out. The boy exited the car and ran from the officers. While officers pursued the fleeing boy, █████ was handcuffed and escorted to a marked police vehicle. █████ stated that a female, whom he knows as “██████████” (“██████”),<sup>4</sup> was arrested because she told the officers that their actions were illegal.

According to █████, an officer asked him for his car keys, but he denied knowing the location of the keys because the officers threw his belonging on the ground. As █████ waited inside the marked police vehicle, he observed an officer, now identified as Sgt. Coleman, use his flashlight to shatter the driver’s side window of █████’s vehicle. █████ then observed four tactical officers search his vehicle, but he could not tell if the interior compartments or the trunk were searched. Officers transported █████ to the police station, where he alleged that an officer, later identified as Officer Braun, harassed him by continually asking about the boy. When █████ responded negatively, Officer Braun stated, “Bitch, you do know who was the kid,”<sup>5</sup> and slapped █████ across the back of the head.

COPA interviewed **Officers Braun,<sup>6</sup> Parker,<sup>7</sup> and Fonseca<sup>8</sup>** on March 18, 2021, April 23, 2021, and May 3, 2021, respectively. On the date and time of the incident, the officers were on routine patrol in an unmarked police vehicle.<sup>9</sup> Officer Fonseca was the driver, Officer Braun was the front passenger, and Officer Parker was seated in the rear of the police vehicle. As the officers drove eastbound on 62<sup>nd</sup> Street, they observed a white-colored Toyota parked on Kimbark Avenue approximately three to four feet from the curb, obstructing traffic.<sup>10</sup> The officers turned onto Kimbark Avenue and stopped in front of the Toyota at approximately 6143 S. Kimbark Avenue. They observed █████ in the driver’s seat and a young black male in the rear seat of the Toyota. As the officers exited their police vehicle, █████ exited the Toyota and locked the doors, leaving the keys in the ignition. The boy, who remained in the rear seat, looked at the officers, pulled up his coat with two hands, and reached into the front area of his waistband. The officers were concerned he was reaching for a firearm, and they gave verbal commands for the boy to show his hands, but he did not comply. Officer Fonseca also ordered █████ to unlock the vehicle, but █████ refused.

The officers decided to detain █████ in handcuffs so they could safely remove the boy from the vehicle; however, █████ stiffened his body and arms and pulled away from them. As the officers struggled with █████, the boy again reached under his jacket and into his front waistband. He then climbed into the front seat, opened the driver’s door, and exited the Toyota. Officer Braun was able to grab the boy’s arm, but he pulled away and fled eastbound on Kimbark Avenue, then southbound in the alley. Officer Braun gave chase on foot while Officers Fonseca and Parker remained with █████. As Officer Braun pursued the boy in the alley, someone behind the officer fired one shot in his direction, causing Officer Braun to duck for cover near a building. He did not

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<sup>3</sup> Attachment 8 at 3:46 minutes.

<sup>4</sup> Mr. █████ inaccurately identified █████ as █████.

<sup>5</sup> Attachment 8 at 14:30 minutes.

<sup>6</sup> Attachment 19.

<sup>7</sup> Attachment 21.

<sup>8</sup> Attachment 23.

<sup>9</sup> The vehicle was not equipped with an in-car camera and the officers, who were assigned to Area Central Gang Enforcement, were not wearing body worn cameras (BWCs).

<sup>10</sup> Kimbark Avenue is a one-way street with southbound traffic.

see anyone in the alley and did not know who fired the shot. Officer Braun then continued to pursue the boy until he ran into an apartment building at the end of the alley, across 62<sup>nd</sup> Street.

When Officers Fonseca and Parker heard the gunshot, Officer Parker ran to check on Officer Braun. Officer Fonseca remained with [REDACTED] and requested backup as a crowd of people began to form around [REDACTED]'s vehicle. One member of the crowd, [REDACTED], ignored Officer Fonseca's verbal commands to move away from the vehicle. Instead, she entered the driver's side of the vehicle, grabbed the keys from the ignition, locked the doors, and threw the keys to an unknown individual in the crowd. When Sgt. Coleman arrived at the scene, the officers related what happened and their concern there might be a firearm in [REDACTED]'s vehicle. Sgt. Coleman struck the driver's window with a flashlight to gain access to the vehicle. The officers then performed a protective search for a weapon, with negative results. The officers arrested both [REDACTED] and [REDACTED], and the Toyota was towed as arrestee property.

**Department Reports (Arrest Reports, Original Case Incident Report, and Investigatory Stop Report)**<sup>11</sup> relate essentially the same information that Officers Braun, Fonseca, and Parker told COPA, with fewer details. Additionally, the reports reveal the officers arrested [REDACTED] for resisting/obstructing a peace officer, and they issued him a citation for double parking/no standing. [REDACTED] was arrested for resisting/obstructing a peace officer, and for an outstanding warrant for failure to appear.

The **OEMC Radio Transmissions, 911 Calls, and Event Query**<sup>12</sup> record the event as it related to the traffic stop, foot pursuit, gunshot, and the tow of [REDACTED]'s vehicle. At 10:04:58 pm, Beat 6171E (Officer Fonseca) reports a traffic stop at 6147 S. Kimbark. Approximately thirty seconds later, the officer requests additional units, then announces, "He's running."<sup>13</sup> At 10:05:40 pm, a 911 caller reports hearing three gunshots near 61st and Kimbark.<sup>14</sup> The caller further states there is a male outside arguing, and the police have been in the area all day. The dispatcher announces the report of shots fired, and Beat 368 responds that a gang unit was conducting a traffic stop when someone fired a shot in the air. He reports the subject fled eastbound from the traffic stop and is not in custody. Approximately ten minutes later, Beat 368 requests the emergency tow of a white Toyota ([REDACTED]'s vehicle) for a full investigation. He states, "The owner locked the doors. We had to, uh, break the window, exigent circumstances. We believe that might be the shooter."<sup>15</sup>

The 911 calls also document a phone call placed by a man identifying himself as [REDACTED]'s roommate. At 10:11:26 pm, the man calls 911 to complain that police officers are harassing [REDACTED] and they "have run up to his car while he's parked."<sup>16</sup> The roommate then requests to speak to the district, and the dispatcher transfers him.

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<sup>11</sup> Attachments 1-2, 4-5.

<sup>12</sup> Attachments 11-16.

<sup>13</sup> Attachment 16 at 4:50 minutes.

<sup>14</sup> A search of ShotSpotter revealed that no gunshots were recorded vis ShotSpotter at or near 6100 S. Kimbark Avenue. See CMS Notes 75504 and 75709.

<sup>15</sup> Attachment 16 at 17:08 minutes.

<sup>16</sup> Attachment 13 at 18 seconds.

COPA investigators searched for and requested **video footage of the incident**, including body worn camera (BWC) video, in-car camera (ICC) video, and Chicago Housing Authority (CHA) video from nearby residences. All searches returned negative results.<sup>17</sup>

### III. 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 complied with Department policy.<sup>18</sup> 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. 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>19</sup>

### IV. ANALYSIS AND CONCLUSIONS

#### a. Credibility Analysis

COPA finds that, on balance, Officers Braun, Fonseca, and Parker provided more credible accounts of the incident than [REDACTED]. [REDACTED] was evasive during his COPA statement, refused to identify the boy or any other witnesses, and offered no explanation as to why the boy fled from his vehicle. Additionally, as discussed below, [REDACTED] made numerous admissions to COPA that undermined his claims of misconduct by the officers. On the other hand, the three officers provided statements that were consistent with one another, with the arrest and case reports, and with the contemporaneous radio transmissions and 911 calls. For these reasons, COPA finds the officers’ account is more credible than [REDACTED]’s account.

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<sup>17</sup> See CMS Notes 48443-60631, 66491.

<sup>18</sup> 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).

<sup>19</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

**b. The officers were justified in detaining and searching [REDACTED].**

The first allegation against Officers Braun, Fonseca, and Parker concerns their decision to detain and search [REDACTED]. [REDACTED] told COPA the officers had no right to stop him, as he was outside of his vehicle at the time the officers approached him. However, the officers stated [REDACTED]'s vehicle was double-parked on Kimbark Avenue, obstructing traffic, and [REDACTED] was in the driver's seat when the officers initially observed him. [REDACTED] himself admitted his vehicle was parked away several feet away from the street curb and that he locked the vehicle before walking towards the officers. Based on [REDACTED]'s own admissions, COPA finds he parked in violation of both the Illinois Vehicle Code and the Chicago Municipal Code, which prohibit stopping or parking a vehicle "on the roadway side of any vehicle stopped or parked at the edge or curb of a street."<sup>20</sup> Therefore, COPA finds the officers were justified in initiating a traffic stop of [REDACTED] when they viewed his vehicle double-parked on Kimbark Avenue.

[REDACTED] also alleged the officers searched him, emptied out his pockets, and threw his belongings on the ground. [REDACTED] claimed the search occurred as soon as he locked his vehicle and walked towards the officers, but the officers reported they did not search [REDACTED] until later in the incident, after they had probable cause to arrest him. Given [REDACTED]'s overall lack of credibility, COPA accepts the sequence of events provided by the officers, which is consistent with their written reports and contemporaneous radio transmissions. The officers stated they did not handcuff or search [REDACTED] until they observed the boy making furtive movements in the rear seat, and [REDACTED] refused to unlock his vehicle. At that point, the officers decided to detain [REDACTED] in handcuffs. [REDACTED] stiffened his arms and pulled away from the officers, giving the boy an opportunity to flee from his vehicle. [REDACTED]'s resistance provided the officers with probable cause to arrest, and their subsequent search of [REDACTED]'s person was justified, both for officer safety and as a custodial search incident to [REDACTED]'s arrest.<sup>21</sup> For these reasons, Allegation 1 against Officers Braun, Fonseca, and Parker is **exonerated**.

**c. The officers had probable cause to arrest [REDACTED].**

[REDACTED] also alleged Officers Braun, Fonseca, and Parker arrested him without justification. The 4<sup>th</sup> Amendment requires officers to have probable cause to effect a valid, warrantless, arrest.<sup>22</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>23</sup> The reasonable basis of any arrest "should be considered from the perspective of a reasonable officer at the time" of the arrest.<sup>24</sup> In this case, [REDACTED] admitted that: 1) his vehicle was illegally parked; and 2) he refused to comply with the officers' lawful orders to unlock the vehicle so they could secure the boy in the rear seat. The officers further reported [REDACTED] stiffened his arms and pulled away from them when they attempted to handcuff him. COPA finds [REDACTED]'s conduct during the traffic stop, as reported by the officers and [REDACTED] himself, gave the officers probable cause to

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<sup>20</sup> Illinois Vehicle Code, 625 ILCS 5/11-1303(a); Chicago Municipal Code, 9-64-110(A).

<sup>21</sup> Per General Order G06-01-02(IV)(B), "Department members taking persons into custody or accepting custody from other Department members will be responsible for conducting a thorough search and ensuring that the persons are appropriately restrained to prevent escape or injury."

<sup>22</sup> *People v. Johnson*, 408 Ill. App. 3d 107, 119 (2010) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

<sup>23</sup> Special Order S04-13-09 II(D).

<sup>24</sup> *Id.*

believe [REDACTED] was “knowingly resist[ing] or obstruct[ing] the performance by one known to the person to be a peace officer...of any authorized act within his or her official capacity.”<sup>25</sup> Therefore, the officers were justified in arresting [REDACTED] for resisting/obstructing a peace officer, and Allegation 3 against Officer Fonseca, Allegation 4 against Officer Parker, and Allegation 5 against Officer Braun are all **exonerated**.

**d. The protective search of [REDACTED]’s vehicle was justified under the circumstances.**

[REDACTED] further alleged that an officer, now identified as Sgt. Coleman, used a flashlight to shatter the driver’s side window of his vehicle. [REDACTED] stated he then saw multiple officers searching his vehicle, despite the fact that he had repeatedly told them he did not consent to the search. The officers told COPA that Sgt. Coleman broke the window to gain access to the locked vehicle, and they then conducted a protective search for firearms, with negative results. Under *Michigan v. Long*, officers may make a protective search of the passenger compartment of a vehicle, limited to those areas in which a weapon may be placed or hidden, when they “possess an articulable and objectively reasonable belief that the suspect is potentially dangerous” and may gain immediate control of weapons.<sup>26</sup>

In this situation, COPA finds Sgt. Coleman and the three officers had sufficient grounds to justify a protective search of [REDACTED]’s vehicle. The officers twice observed the boy in the rear seat reach under his jacket into his front waistband, consistent with someone who is carrying a firearm. The boy then ignored the officers’ commands, climbed over the driver’s seat, and fled the vehicle on foot. During the ensuing foot pursuit, the officers heard a gunshot, which Officer Braun perceived was fired at him. Under these circumstances, COPA finds a reasonable officer would believe the boy was potentially dangerous, and may have left a weapon inside [REDACTED]’s vehicle.

Additionally, the officers’ inability to secure [REDACTED]’s vehicle during the incident dramatically elevated their safety concerns. Not only had a crowd gathered around [REDACTED]’s vehicle, but one member of the crowd was able to enter the vehicle, remove the keys from the ignition, and throw them to another individual in the crowd. [REDACTED]’ actions demonstrated the lack of scene security, and they had the practical effect of depriving the officers of access to the inside of [REDACTED]’s vehicle. Under these circumstances, COPA finds Sgt. Coleman was justified in breaking the window to gain access to the vehicle, and the officers were justified in conducting a protective search of the vehicle. Therefore, Allegation 1 against Sgt. Coleman, Allegation 4 against Officer Braun, Allegation 2 against Officer Fonseca, and Allegation 3 against Officer Parker are all **exonerated**. Additionally, Allegation 3 against Officer Braun is **unfounded**, as COPA finds that Sgt. Coleman, not Officer Braun, broke the window of [REDACTED]’s vehicle.

**e. There is no evidence supporting [REDACTED]’s claims of verbal abuse and excessive force.**

Finally, [REDACTED] alleged Officers Braun and Parker told him to “shut the fuck up,”<sup>27</sup> and Officer Braun slapped him in the head and called him a “bitch” at the 3<sup>rd</sup> District Station. Both

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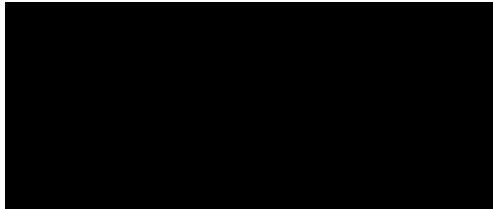
<sup>25</sup> 720 ILCS 5/31-1(a).

<sup>26</sup> *Michigan v. Long*, 463 U.S. 1032, 1051 (1983).

<sup>27</sup> Attachment 8 at 4:45 minutes.

officers denied these allegations, and COPA’s investigation identified no evidence corroborating ██████’s allegations. ██████ himself acknowledged there were no witnesses to Officer Braun’s alleged misconduct at the 3<sup>rd</sup> District. As discussed above, ██████’s overall account of the incident was not credible; therefore, COPA finds the misconduct alleged by ██████ did not occur. For these reasons, COPA finds Allegation 2 against Officer Parker and Allegations 2, 6, and 7 against Officer Braun are all **unfounded**.

Approved:



6/28/2021

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Matthew Hayman  
*Deputy Chief Administrator – Chief Investigator*

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Date



Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	Six
<b>Major Case Specialist:</b>	Jessica Sanchez, #45
<b>Supervising Investigator:</b>	Steffany Hreno
<b>Deputy Chief Administrator:</b>	Matthew Haynam