

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	September 9, 2019
Time of Incident:	8:55 pm
Location of Incident:	██████████
Date of COPA Notification:	September 27, 2018
Time of COPA Notification:	12:36 pm

On September 19, 2018, ██████████ went to retrieve his cell phone charger from his vehicle. While walking back towards his girlfriend’s house, he was approached by three officers in a squad car, now identified as Officer Mathew Kozlowski, Officer Robert Brown Jr.,<sup>1</sup> and Sergeant Dennis O’Brien.<sup>2</sup> Officers Kozlowski and Brown reported they smelled an odor of cannabis and observed only Mr. ██████████ in the area. When they approached Mr. ██████████ he was standing by the driver’s side door of his vehicle, and the smell of cannabis became stronger. Officer Kozlowski asked Mr. ██████████ if he had anything illegal on him, and Mr. ██████████ responded that he had two bags of cannabis.

Officer Kozlowski searched Mr. ██████████ pockets and recovered two clear plastic bags of suspected cannabis. Officers Bryant McDermott and Robert McHale then arrived at the scene to assist. Officer Kozlowski removed Mr. ██████████ car keys from his pocket, and he and Officer McDermott conducted a search of Mr. ██████████ vehicle. During the vehicle search, Mr. ██████████ informed the officers that he had a valid Firearm Owner’s Identification Card (FOID), and his firearm was in the trunk. Officer McDermott pulled a latch on the backseat, which exposed the trunk area. He then reached inside the trunk and recovered Mr. ██████████ gun. Mr. ██████████ was placed under arrest and transported to the police station for processing. Mr. ██████████ vehicle was not impounded, and his car keys were returned to his girlfriend before he was transported to the station. Mr. ██████████ alleged the officers stopped him without justification, lacked probable cause to search his vehicle, and failed to inventory a second firearm he claimed was missing from his trunk.

**II. INVOLVED PARTIES**

Involved Officer #1:	Robert Brown Jr., Star #1392, Employee ██████████, Date of Appointment: October 29, 2001, Sergeant, Unit of Assignment: 006, Date of Birth: May 1, 1973, Male, Black.
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<sup>1</sup> Officer Robert Brown Jr. was promoted to the rank of Sergeant on November 24, 2019, after the date of this incident.  
<sup>2</sup> Sergeant O’Brien retired from the Chicago Police Department prior to the filing of the complaint.

Involved Officer #2: Matthew Kozlowski, Star #13825, Employee [REDACTED], Date of Appointment: November 30, 2012, Police Officer, Unit of Assignment: 312, Date of Birth: [REDACTED] 1986, Male, White.

Involved Officer #3 Bryant McDermott, Star #12659, Employee [REDACTED], Date of Appointment: November 29, 2004, Police Officer, Unit of Assignment: 124, Date of Birth: [REDACTED] 1977, Male White.

Involved Officer #4 Robert McHale, Star #15902, Employee [REDACTED], Date of Appointment: November 18, 1991, Police Officer, Unit of Assignment: 004, Date of Birth: [REDACTED] 1964, Male, White.

Involved Individual #1: [REDACTED] Date of Birth: [REDACTED] 1991, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officers Kozlowski and McDermott	1. Improperly seized Mr. [REDACTED] without justification;	Exonerated
	2. Conducted an improper search of Mr. [REDACTED] vehicle; and	Sustained
	3. Failed to inventory a Sig Sauer 9mm.	Unfounded
Officers Brown and McHale	1. Improperly seized Mr. [REDACTED] without justification;	Exonerated
	2. Conducted an improper search of Mr. [REDACTED] vehicle; and	Unfounded
	3. Failed to inventory a Sig Sauer 9mm.	Unfounded

**IV. APPLICABLE RULES AND LAWS**

Rules

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

2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

3. Rule 6: Disobedience of an order or directive, whether written or oral.

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#### General Orders

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1. G10-01, Gang Violence Reduction Strategy<sup>3</sup>

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#### Special Orders

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1. S04-13-09, Investigatory Stop System

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#### Federal Laws

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1. Fourth Amendment, United States Constitution

### V. INVESTIGATION<sup>4</sup>

#### a. Interviews

In an interview with COPA on October 4, 2018, ██████████ ██████████ related that on September 9, 2018, he went to his vehicle to retrieve his cell phone charger. After locking his vehicle, Mr. ██████████ began to walk away and observed an unmarked squad car approaching him. Mr. ██████████ was ordered to be stopped by the officers, now known as Officer Matthew Kozlowski, Officer Robert Brown Jr., and Sergeant Dennis O'Brien.<sup>6</sup> Mr. ██████████ was told by the officers that they could smell the odor of marijuana coming from the entire block. Mr. ██████████ was searched by Officer Kozlowski, who found a bag of marijuana in one of his pockets and removed his car keys. An assisting unit then arrived at the scene with Officers Bryant McDermott and Robert McHale. Mr. ██████████ related that Officers Kozlowski and McDermott searched his vehicle without his permission.

While searching the backseat, Officer McDermott pulled down the backseat cup-holder and looked through an open gap and inside the trunk. At that point, Mr. ██████████ told the officers that his gun was inside the trunk. Mr. ██████████ related that Officer McDermott reached inside the trunk and removed his Ruger 9mm. Mr. ██████████ informed the officers that he had a Firearm Owner's Identification (FOID) card in his wallet and was waiting for his Carry Conceal License (CCL) to arrive. Mr. ██████████ was placed inside a police vehicle and waited there until a transporting squad car arrived. Mr. ██████████ related that he kept his gun in the trunk of his vehicle because his girlfriend does not like guns. After his arrest, Mr. ██████████ girlfriend came out of the house and took his personal belonging that included earrings, car keys, and his wallet.

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<sup>3</sup> Attachment #28, General Order 10-01, Gang Violence Reduction Strategy.

<sup>4</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>5</sup> Attachment #50, Transcribed statement of ██████████

<sup>6</sup> Attachment #69, Sergeant Dennis O'Brien PAR Form. Sgt. O'Brien was not originally named as an accused and has since retired from the Chicago Police Department.

Mr. [REDACTED] vehicle was not impounded. While at the police station, Mr. [REDACTED] was charged with Unlawful Possession of a Weapon (UW) and asked the officers about his second firearm. Mr. [REDACTED] related that there were two guns in the trunk of his car: the Ruger 9mm recovered by the officers and a Sig Sauer 9mm in a gun box. After being released, Mr. [REDACTED] went home and discovered that the Sig Sauer 9mm was missing from the trunk. Mr. [REDACTED] stated he did not see any of the officers recover the Sig Sauer because they did not open the trunk. Mr. [REDACTED] was informed by his girlfriend that she did not take his weapon and did not see any of the officers remove anything from the trunk of his vehicle.

**In an interview with COPA on October 22, 2020, Officer Matthew Kozlowski<sup>7</sup>** related that he was assigned to Unit 312, Area South Gang Enforcement, which focuses on gun and drug crimes. Officer Kozlowski was on patrol with Officer Brown and Sergeant O'Brien when he smelled an odor of unburnt cannabis in the area. While at the mouth of an alley, Officer Kozlowski observed [REDACTED] parking his vehicle. As the officers approached Mr. [REDACTED] the odor of cannabis became stronger, and a narcotics investigation was conducted. Mr. [REDACTED] was standing outside his vehicle, near the doorjamb, when Officer Kozlowski asked if he had anything illegal on him. Mr. [REDACTED] responded that he had a couple of bags of cannabis in his left pocket.

Officer Kozlowski described the cannabis as weighing approximately nine grams, with an estimated value of \$54.00 USC. Because the odor of marijuana was emanating from inside the vehicle, Officer Kozlowski believed there was enough reasonable suspicion to search the vehicle for narcotics. He did not recall if Mr. [REDACTED] consented to the search. Officers Kozlowski and McDermott proceeded to search the inside of Mr. [REDACTED] vehicle. While the search was in progress, Officer Brown told Officer Kozlowski that Mr. [REDACTED] had informed him there was a weapon inside the vehicle.

While searching the backseat, Officer McDermott pulled a flap that opened a small compartment with access to the trunk. Officer McDermott observed the butt of a weapon through the open compartment and recovered a loaded Ruger 9mm firearm. Officer Kozlowski related that the trunk was eventually opened and completely searched, but no other weapons were found. Officer Kozlowski denied that he failed to inventory a Sig Sauer 9mm, which Mr. [REDACTED] alleged was also inside the trunk. Officer Kozlowski also denied that he improperly seized Mr. [REDACTED] and searched his vehicle without justification.

**In an interview with COPA on November 5, 2020, Officer Robert Brown Jr.<sup>8</sup>** related that he was assigned to Unit 312, Area South Gang Enforcement, at the time of the incident. He was not equipped with a Body Worn Cameras (BWC). Officer Brown and his partners, Officer Kozlowski and Sergeant O'Brien, were on patrol when they smelled the odor of burnt cannabis emanating from the area.

While patrolling the area for the source of the burnt cannabis, Officer Brown noticed a vehicle pull up to a parking space and park. Officer Brown observed the driver, now identified as [REDACTED] exit the parked vehicle, adjust his clothing, then reach back inside the vehicle. At this point, Officer Brown believed that Mr. [REDACTED] was the source of the burnt cannabis odor

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<sup>7</sup> Attachment #48, Transcribed statement of Officer Matthew Kozlowski.

<sup>8</sup> Attachment #49, Transcribed statement of Officer Robert Brown.

emanating from the area. Officer Brown activated his emergency lights, pulled up behind Mr. [REDACTED] vehicle, and exited the police vehicle along with Officer Kozlowski. As the officers approached, Officer Brown observed Mr. [REDACTED] standing outside his vehicle with his car door closed. Officer Brown stated the odor of cannabis became stronger as he got closer to Mr. [REDACTED]. Officer Kozlowski engaged in a conversation with Mr. [REDACTED] about smoking cannabis and the possession of cannabis on his person.

Officer Brown heard Mr. [REDACTED] admit that he possessed two bags of cannabis. Officer Kozlowski proceeded to search Mr. [REDACTED] and discovered two bags of cannabis in one of his front pant pockets. Officer Kozlowski asked Mr. [REDACTED] if he had any cannabis inside his vehicle, and Mr. [REDACTED] replied, "There's no more cannabis in the vehicle, you can go ahead and look."<sup>9</sup> When Officers McHale and McDermott arrived on the scene, Officer Brown stood outside the vehicle with Mr. [REDACTED] while Officers Kozlowski and McDermott searched the vehicle. While the search was in progress, Mr. [REDACTED] informed Officer Brown that he had a weapon in his trunk. At that point, Officer Brown informed Officers Kozlowski and McDermott to take precautions because there was a weapon inside the vehicle.

As Officer McDermott searched the backseat, Officer Brown observed him pull on a fabric lever, which opened a compartment exposing the trunk area. Officer McDermott reached through the compartment and pulled a Ruger 9mm pistol from the trunk. The officers then placed Mr. [REDACTED] under arrest for UUW and transported him to the 4<sup>th</sup> District station for processing. While at the station, Officer Brown authored the Original Case Incident Report JB-442679<sup>10</sup> and Officer Kozlowski authored the Arrest Report of Mr. [REDACTED].<sup>11</sup> Mr. [REDACTED] was not criminally charged with the cannabis due to the small amount recovered, but he was issued a civil citation.<sup>12</sup> Officer Brown stated that Mr. [REDACTED] never mentioned having multiple weapons in his vehicle, and the officer did not recall the trunk being opened from the outside. Officer Brown maintained that only the Ruger 9mm was recovered and inventoried, and he denied the allegation that he failed to inventory the Sig Sauer 9mm. He also denied that he seized Mr. [REDACTED] without justification or conducted an improper search of Mr. [REDACTED] vehicle.

**In an interview with COPA on March 4, 2021, Officer Robert McHale<sup>13</sup>** related that he was assigned to Unit 312, Area South Gang Enforcement, and his partner was Officer McDermott. At the time of the incident, their unit was not equipped with BWCs. Officer McHale stated that when he and his partner arrived at the scene, he observed Mr. [REDACTED] being questioned by Officer Kozlowski. Officer McHale observed Officer Kozlowski holding two bags of cannabis and detected the odor of fresh cannabis emanating from his hands. However, Officer McHale could not recall the conversation between Officer Kozlowski and Mr. [REDACTED]. Officer McHale stood outside the vehicle, next to Mr. [REDACTED] while Officers Kozlowski and McDermott searched Mr. [REDACTED] vehicle. Officer McHale observed Officer McDermott exit the backseat with the recovered Ruger 9mm that belonged to Mr. [REDACTED]. He did not observe how Officer McDermott retrieved Mr. [REDACTED] gun.

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<sup>9</sup> Attachment #49, page 16, lines 4-5.

<sup>10</sup> Attachment #8, Original Case Incident Report JB-442679.

<sup>11</sup> Attachment #6, Arrest Report of [REDACTED]

<sup>12</sup> Attachment #46, Civil Law Citation [REDACTED].

<sup>13</sup> Attachment #48, Transcribed Statement of Officer Robert McHale.

Officer McHale related that the probable cause to search Mr. [REDACTED] vehicle was based on Officer Kozlowski's recovery of cannabis. Officer McHale did not participate in the vehicle search, nor did he open or search the trunk. He denied the allegation that he failed to inventory a second firearm, the Sig Sauer 9mm. He also denied that he seized Mr. [REDACTED] without justification or conducted an improper search of Mr. [REDACTED] vehicle.

**In an interview with COPA on March 25, 2021, Officer Bryant McDermott<sup>14</sup>** related that he was assigned to Unit 312, Area South Gang Enforcement, and his partner was Officer McHale. At the time of this incident, their unit was not equipped with BWCs. Officer McDermott related that when he arrived at the scene with Officer McHale, he observed Officer Kozlowski, Officer Brown, and Sergeant O'Brien having a conversation with Mr. [REDACTED]. Officer McDermott then assisted Officer Kozlowski in searching Mr. [REDACTED] vehicle. Officer McDermott could not recall if the search was already in progress, or if he simultaneously searched the vehicle with Officer Kozlowski.

While searching the backseat, Officer McDermott pulled on a latch that folded down the backseat, exposing a firearm. Officer McDermott retrieved the Ruger 9mm and handed the weapon to Officer Kozlowski. Officer McDermott related that he did not conduct any further search of Mr. [REDACTED] vehicle and did not recall having any conversation with Mr. [REDACTED]. After Mr. [REDACTED] was taken into custody, Officers McDermott and McHale resumed their patrol duties. Officer McDermott did not find any other weapons in Mr. [REDACTED] vehicle, and he denied the allegation that he failed to inventory a second weapon. He also denied that he seized Mr. [REDACTED] without justification or conducted an improper search of Mr. [REDACTED] vehicle.

#### **b. Digital Evidence**

The **In-Car Camera (ICC) Video of Beat #424<sup>15</sup>** (Officers Jakuba Maj and Stuart Majerczyk) captures the officers responding to a transport call and transporting Mr. [REDACTED] to the 4<sup>th</sup> District station for processing. While en route to the station, Mr. [REDACTED] tells the transporting officers he was arrested for possession of marijuana. He says that he initially told the arresting officers he had nothing in his vehicle, but after an officer started searching the vehicle, he admitted he had a gun in the trunk. Mr. [REDACTED] tells the officers he has a valid FOID card but has not yet received his Carry Conceal License (CCL). He describes his firearm as a Ruger 9mm and admits it was not in a locked box. Mr. [REDACTED] further states, "That was my first gun, I just brought it,"<sup>16</sup> and says he still needs to buy a holster and lock box for the firearm.

A **search of Body Worn Camera (BWC) videos<sup>17</sup>** revealed that Unit 312, Area South Gang Enforcement, Team 6722, was not equipped with BWCs at the time of the incident. Furthermore, Mr. [REDACTED] Arrest Report confirms that BWCs were not issued to Team 6722.

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<sup>14</sup> Attachment #66, Transcribed Statement of Officer Bryant McDermott.

<sup>15</sup> Attachment #27, In-Car Camera Video of Beat #424.

<sup>16</sup> Attachment #27 at 12:55.

<sup>17</sup> Attachment #51, BWC search under Event Query 1826215813.

### c. Documentary Evidence

The **Arrest Report**<sup>18</sup> authored by Officer Kozlowski details the arrest of Mr. [REDACTED] on September 19, 2018, at approximately 8:55 pm, at or near [REDACTED] [REDACTED]. The arrest was carried out by Area South Gang Enforcement Team 6722, who were in full uniform and in an unmarked squad car with both front windows down. According to the report, Officer Kozlowski, Officer Brown, and Sergeant O'Brien were driving eastbound on 80<sup>th</sup> Street, near South Shore Drive, when they smelled a strong odor of fresh cannabis in the area. Officer Kozlowski observed Mr. [REDACTED] exit a Chrysler 200 with license plate [REDACTED] and stand next to the door jam.

The officers did not see anyone else on the street and continued to smell the odor of fresh cannabis as they observed Mr. [REDACTED]. They activated their emergency lights, exited their squad car, and announced their office. As the officers approached Mr. [REDACTED] to conduct a narcotics investigation, the odor of fresh cannabis became stronger. Mr. [REDACTED] then shut the driver's side door of his vehicle and began to walk away. The officers instructed him to stop, and he complied. Officer Kozlowski asked Mr. [REDACTED] if he had anything illegal on his person. Mr. [REDACTED] responded that he had two bags of weed in his pants pocket, and Officer Kozlowski recovered two plastic knotted bags of suspected cannabis from Mr. [REDACTED] person. Officer Kozlowski then asked Mr. [REDACTED] if there were any narcotics in the vehicle, because the odor of fresh cannabis was coming from inside the vehicle. Mr. [REDACTED] replied, "No, I just got the weed." Officers Kozlowski and McDermott then began searching the vehicle for narcotics. During the search, Mr. [REDACTED] told Officer Brown, "I got my gun in the car, they are going to find it now."<sup>19</sup> Officer McDermott pressed the hatch lever that gave accessibility to the trunk and observed the butt of a firearm. He reached inside the trunk and removed a Ruger 9mm pistol with a loaded magazine. The officers confirmed that Mr. [REDACTED] possessed a valid FOID card but did not have a CCL, and they placed him under arrest for UUW.

The **Original Case Incident Report**<sup>20</sup> authored by Officer Brown reiterates essentially the same information as the Arrest Report, with one significant difference. The Original Case Incident Report states that after Officer Kozlowski recovered the bags of cannabis from Mr. [REDACTED] person, "The subject then consented to a search of the vehicle and related there was nothing else illegal in the vehicle."<sup>21</sup>

**Civil Law Citation** [REDACTED]<sup>22</sup>, authored by Officer Kozlowski, indicates that Mr. [REDACTED] was in an area where officers smelled a strong odor of cannabis. Mr. [REDACTED] admitted he possessed two bags of cannabis, which Officer Kozlowski recovered from Mr. [REDACTED] pants pocket.

COPA obtained the **Criminal Court Transcripts from *People v.* [REDACTED] Case No. [REDACTED]**.<sup>23</sup> During a hearing on a motion to quash Mr. [REDACTED] arrest and suppress the

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<sup>18</sup> Attachment #6, Arrest Report of [REDACTED]

<sup>19</sup> Attachment #6, pg. 3.

<sup>20</sup> Attachment #8, Original Case Incident Report JB-442679.

<sup>21</sup> Attachment #8, pg. 3.

<sup>22</sup> Attachment #46, Civil Law Citation [REDACTED].

<sup>23</sup> Attachment #40, Court Transcription from *People v.* [REDACTED] Case [REDACTED].

recovered evidence, Officer Kozlowski testified that he and his partners were patrolling the area with their windows down. At one point, Officer Kozlowski parked at the mouth of an alley and smelled the odor of cannabis emanating from the area. Officer Kozlowski was about half a block away when he observed Mr. ██████ park his vehicle, then exit the vehicle and stand next to the door jamb. Officer Kozlowski approached Mr. ██████ and the odor of fresh cannabis became stronger. Officer Kozlowski informed Mr. ██████ he was conducting a narcotics investigation because he could smell the odor of cannabis in the area. Officer Kozlowski asked Mr. ██████ if he had anything illegal, and Mr. ██████ admitted that he had two bags of marijuana in his pocket. Officer Kozlowski then searched Mr. ██████ and recovered two bags of cannabis, a civil law violation.

Officer Kozlowski further testified that Mr. ██████ vehicle doors were closed. He did not hear Mr. ██████ give consent to search his vehicle, but he was informed by Officer Brown that Mr. ██████ had given consent. Officers Kozlowski and McDermott then proceeded to search Mr. ██████ vehicle. While the search was in progress, Mr. ██████ told Officer Brown there was a weapon inside his vehicle. Officer McDermott accessed the trunk area by pulling a flap that caused the backseat to fold down, at which point he observed the butt of a gun and recovered the weapon. Following Officer Kozlowski's testimony and the parties' arguments, Judge Adrienne Davis ruled:

The Court does firmly believe that a Defendant who smells of marijuana is walking probable cause for a narcotics investigation, and that's what the officers probably did. They ask him about the narcotics, the Defendant gave up that he had some weed, but the Defendant was outside of the vehicle. There is absolutely no testimony that anything was seen inside the vehicle. The Defendant was not ordered out of the vehicle. There is no reason to touch the vehicle. The officers testified that they were given a civil citation, so this is not even a search incident to an arrest, which I don't know that I would have considered proper either. And the only statement that this Court heard was after a search began. There is absolutely no evidence that this Defendant gave consent to search that vehicle. It was closed. There is no evidence that the officer saw a handgun. Defense motion is granted.<sup>24</sup>

The **CPD Inventory Sheets**<sup>25</sup> document the recovery of the following items: two knotted baggies containing suspected cannabis; one Ruger 9mm pistol and magazine containing an unknown number of live rounds; FOID card ██████; and assorted personal property belonging to Mr. ██████

## 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;

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<sup>24</sup> Attachment #40, pgs. 37-38.

<sup>25</sup> Attachments #20-23, CPD Inventory Sheets.



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>26</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>27</sup>

## VII. ANALYSIS

COPA finds that Allegation #1 against Officers Kozlowski and Brown, that they seized Mr. ██████ without justification, is **Exonerated**. The investigation in this matter has determined that Mr. ██████ was detained on September 19, 2018, at approximately 8:55 p.m., in the vicinity of 3048 E. 80<sup>th</sup> Street. While on patrol together, Officers Kozlowski and Brown smelled a strong odor of cannabis emanating from the area near Mr. ██████ and his vehicle. Mr. ██████ was the only person in the area, and the officers decided to approach and detail Mr. ██████ to conduct a narcotics investigation. This was an involuntary detention, also known as a *Terry* stop, and must be analyzed under *Terry* principles.<sup>28</sup> When evaluating the validity of a *Terry* Stop, the totality of the circumstances must be considered.<sup>29</sup> Further, the officers’ basis for the stop must be objectively reasonable and not based upon inarticulable hunches or unparticularized suspicions.<sup>30</sup> In this case, COPA finds the odor of cannabis emanating from Mr. ██████ the lack of anyone else in the area, and Mr. ██████ immediate admission to the officers that he possessed cannabis was sufficient justification to detain him. Indeed, in the related criminal proceedings, the judge noted, “The Court does firmly believe that a Defendant who smells of marijuana is walking probable cause for a

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<sup>26</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>27</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

<sup>28</sup> See *Terry v. Ohio*, 392 U.S. 1 (1968) (“A police officer may conduct a brief investigatory stop of a person when the officer reasonably believes that the person has committed, or is about to commit, a crime.”)

<sup>29</sup> *United States v. Sokolow*, 490 U.S. 1, 8 (1989); *United States v. Cortez*, 449 U.S. 411, 417 (1981).

<sup>30</sup> *People v. Ray*, 116 Ill.App.2d 269, 252 N.E.2d 772 (Ill. App. 1969); Special Order S04-13-09, II.C, Investigatory Stop System (effective July 10, 2017 to present).

narcotics investigation, and that's what the officers probably did.”<sup>31</sup> For these reasons, COPA finds there is clear and convincing evidence that Officers Kozlowski and Brown had justification to detain Mr. [REDACTED]

Similarly, COPA finds Allegation #1 against Officers McDermott and McHale is **Exonerated**. It is undisputed that Officers McDermott and McHale were assisting officers who arrived on scene after Mr. [REDACTED] was detained and searched. They were not present when Officers Kozlowski and Brown initiated the narcotics investigation of Mr. [REDACTED]. In fact, when Officer McHale arrived at the location, he reported seeing Officer Kozlowski holding two bags of cannabis that he had already recovered from Mr. [REDACTED] person. For these reasons, COPA finds that Officers McDermott and McHale reasonably relied on the arresting officers' decision to detain Mr. [REDACTED] and their actions were lawful and proper.

Although the detention of Mr. [REDACTED] was justified, the search of his vehicle was not. The evidence shows that Officer Kozlowski approached Mr. [REDACTED] on the street, removed his car keys from his pocket, and gained entry into his vehicle. Officers Kozlowski and McDermott then proceeded to search Mr. [REDACTED] vehicle, despite the fact that Mr. [REDACTED] was outside his vehicle when he was detained, the vehicle doors were closed and locked, and there was no visible contraband inside the vehicle. Although Officer Brown stated that he heard Mr. [REDACTED] consent to the search of his vehicle, Officer Kozlowski did not recall Mr. [REDACTED] giving consent, and Mr. [REDACTED] has consistently denied that he gave the officers permission to search his vehicle. Ultimately, Officer McDermott reached through a compartment in the backseat and recovered a Ruger 9mm pistol from the trunk. The judge presiding over Mr. [REDACTED] criminal case ruled the search was improper and suppressed the recovery of the firearm. The court reasoned:

They ask him about the narcotics, the Defendant gave up that he had some weed, but the Defendant was outside of the vehicle. There is absolutely no testimony that anything was seen inside the vehicle. The Defendant was not ordered out of the vehicle. There is no reason to touch the vehicle. The officers testified that they were given a civil citation, so this is not even a search incident to an arrest, which I don't know that I would have considered proper either. And the only statement that this Court heard was after a search began. There is absolutely no evidence that this Defendant gave consent to search that vehicle. It was closed. There is no evidence that the officer saw a handgun. Defense motion is granted.<sup>32</sup>

COPA agrees with the reasoning of the Court and finds that Officers Kozlowski and McDermott lacked legal justification to search Mr. [REDACTED] vehicle, including the trunk. Therefore, COPA finds Allegation #2 against Officers Kozlowski and McDermott is **Sustained** as a violation of Rules 2, 3, and 6. Officers Brown and McHale did not participate in the vehicle search, and instead waited outside the vehicle with Mr. [REDACTED]. As a result, Allegation #2 against Officers Brown and McHale is **Unfounded**.

The third and final allegation against the officers arises from Mr. [REDACTED] claim that, following his arrest, a second firearm was missing from his trunk. However, there is no evidence

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<sup>31</sup> Attachment #40, pgs. 37-38.

<sup>32</sup> Attachment #40, pg. 38.

indicating the officers recovered a second firearm, and none of the officers recalled Mr. [REDACTED] mentioning that he had multiple weapons inside the vehicle. Moreover, while en route to the station, Mr. [REDACTED] was captured on ICC video telling the transporting officers he had a single firearm in the trunk of his vehicle. Mr. [REDACTED] described the weapon as a Ruger 9mm and stated, "That was my first gun, I just bought it."<sup>33</sup> There is no evidence, apart from Mr. [REDACTED] statement to COPA, that the trunk also contained a Sig Sauer 9mm pistol, or that the officers recovered and failed to inventory the second firearm. For these reasons, COPA finds that Allegation #3 against Officers Kozlowski, Brown, McHale, and McDermott is **Unfounded**.

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

### a. Officer Kozlowski

#### i. Complimentary and Disciplinary History<sup>34</sup>

Officer Kozlowski has received 189 awards, including four Department commendations, one Superintendent's award of tactical excellence, two Superintendent's honorable mentions, four top gun arrest awards, and 164 honorable mentions. He has no sustained disciplinary history in the past five years.

#### ii. Recommended Penalty

COPA has found that Officer Kozlowski violated Rules 2, 3, and 6 when he searched Mr. [REDACTED] vehicle without justification. Officer Kozlowski's actions not only violated CPD policy and brought discredit on the Department; they caused a criminal court judge to suppress the recovery of Mr. [REDACTED] firearm and dismiss the charges against him. Given Officer Kozlowski's years of service and lack of disciplinary history, COPA recommends he receive a **10-day** suspension.

### b. Officer McDermott

#### i. Complimentary and Disciplinary History<sup>35</sup>

Officer McDermott has received 173 awards, including nine Department commendations, one Superintendent's award of tactical excellence, one life saving award, and 142 honorable mentions. He has no sustained disciplinary history in the past five years.

#### ii. Recommended Penalty

COPA has found that Officer McDermott violated Rules 2, 3, and 6 when he searched Mr. [REDACTED] vehicle without justification. Although Officer Kozlowski bears the most responsibility for initiating the improper vehicle search, Officer McDermott was an active participant in the search, going so far as to reach through a compartment in the backseat to pull a firearm out of the

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<sup>33</sup> Attachment #27 at 12:55.

<sup>34</sup> Attachment #70.

<sup>35</sup> Attachment #71.

trunk. Given Officer McDermott's years of service and lack of disciplinary history, COPA recommends he receive a **5-day** suspension.

Approved:



Steffany Hreno  
*Director of Investigations*

11/21/2022

Date