

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 15, 2019
Time of Incident:	Approximately 7:05 P.M.
Location of Incident:	2602 E. 83 rd Street, Chicago, Illinois 606217
Date of COPA Notification:	September 23, 2019
Time of COPA Notification:	1:06 P.M.

On September 15, 2019, two Chicago Police Officers conducted a traffic stop of [REDACTED] as he drove with his infant son westbound on E. 83rd Street. Officer Vincenzo Lupo directed Mr. [REDACTED] from his vehicle on suspicion of driving under the influence of alcohol. Upon Mr. [REDACTED] refusal to submit to a field sobriety test, the officers placed Mr. [REDACTED] in handcuffs and placed him in the backseat of their police SUV. Both officers then simultaneously deactivated their Body Worn Cameras. Officer Lupo searched Mr. [REDACTED] vehicle before joining Officer Nicholas Gallapo and Mr. [REDACTED] in the police vehicle. In the course of the 16 - 17 minute period during which the parties sat in the police vehicle with Mr. [REDACTED] son remained in Mr. [REDACTED] vehicle, despite objections by [REDACTED]. The officers finally released Mr. [REDACTED] issuing him three traffic citations before the parties departed.

II. INVOLVED PARTIES

Involved Officer #1:	Vincenzo Lupo, Star No. 10401, Employee No. [REDACTED] Date of Appointment: April 25, 2016, Rank: Police Officer, Unit of Assignment: 004, DOB: [REDACTED] 1992, Male, White
Involved Officer #2:	Nicholas Gallapo, Star No. 8020, Employee No. [REDACTED] Date of Appointment: June 25, 2018, Rank: Police Officer, Unit of Assignment: 004, DOB: [REDACTED] 1996, Male, Unk.
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1988, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding/ Recommendation
Officer Vincenzo Lupo	1. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by failing to comply with Special Order S03-14 by deactivating his body worn camera.	Sustained
	2. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by violating 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes.	Sustained
	3. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by failing to issue [REDACTED] an Investigatory Stop Receipt.	Sustained
Officer Nicholas Gallapo	1. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by failing to comply with Special Order S03-14 by deactivating his body worn camera.	Sustained
	2. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by violating 720 ILCS 5/12C-5(a)-(c) by leaving a child six years of age or	Sustained

younger unattended in a motor vehicle for more than 10 minutes.

3. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by failing to issue [REDACTED] an Investigatory Stop Receipt.

Sustained

IV. APPLICABLE RULES AND LAWS

Rules

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1. Rule 1: Violation of any law or ordinance
 2. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
 3. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
 4. Rule 5: Failure to perform any duty
 5. Rule 6: Disobedience of an order or directive, whether written or oral
 6. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
 7. Rule 10: Inattention to duty.

General Orders

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1. G02-01 Human Rights and Human Resources
 2. G02-03 Community Relations Strategy (Specifically § VI (A) (1) – (3) on Procedural Justice and Legitimacy

Special Orders

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1. S04-13-09: Investigatory Stop System
 2. S03-14: Body Worn Cameras

State Laws

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1. 720 ILCS 5/12C-5 Endangering the life or health of a child

V. INVESTIGATION

a. Interviews

1. Civilian Interviews

In an interview with COPA on September 23rd, 2019 at approximately 1:00 P.M.,¹ [REDACTED] describes the traffic stop that occurred on September 15th, 2019. Mr. [REDACTED] states that he was driving with his infant son westbound on 83rd Street that evening when he saw a police vehicle roughly a half block behind him, stating he made sure to come to complete stops at stop signs. Mr. [REDACTED] states he was pulled over by two officers² of the Chicago Police Department, one of whom approached his vehicle's driver's side asking for identification. He states he complied and handed the officer—Officer Lupo—his driver's license and an insurance document. The insurance document had expired. Mr. [REDACTED] states Officer Lupo acted in an aggressive manner and appeared to repeatedly check his driver's license. He describes that as soon as Officer Lupo saw that Mr. [REDACTED] had money with him, he directed him from his vehicle. He states he questioned the instruction, pointing out that he had his son in the car with him. Officer Lupo, Mr. [REDACTED] states, told him he had not used his blinker to turn, did not stop at a stop sign, and had swerved into the bike lane. Observing Officer Lupo become increasingly aggressive and the situation escalating, Mr. [REDACTED] states he complied and exited the vehicle. He states Officer Lupo also informed him he showed signs of being drunk. Mr. [REDACTED] states the officer asked him to perform a field sobriety test, but that he refused, informing the officers that his tenant is a police officer and that he knows he is not required to perform one. The officers, he stated, then handcuffed him, placed him under arrest, placed him in the back of their police vehicle, closed the door, and the first officer began searching his vehicle without consent. Mr. [REDACTED] states neither officer searched his person.

Mr. [REDACTED] states he told the officers there was no reason for the stop, no reason for searching his vehicle, and that they were wrong for taking him away from his child. He describes while he and Officers Lupo and Gallapo were in the police vehicle following the vehicle search, he asked the officers if it was proper protocol to separate a parent from an infant child located in the backseat of a vehicle. Mr. [REDACTED] states that, prior to the stop, he had just given his son a bottle so he was afraid his son could have been choking. He further states that Officer Lupo proceeded to write out his tickets in a conspicuously slow manner, believing the officer was attempting to “egg [him] on” and make him upset by intentionally working slowly and making “little comments” directed toward him. Mr. [REDACTED] states he noticed a clock running in the center of their vehicle console showing that the total stop had gone on for 20 – 22 minutes, further estimating he had been detained in the police vehicle for between 15 – 17 minutes. Mr. [REDACTED] states he asked Officer Gallapo if he would go check on his son multiple times and that Officer Lupo replied saying he had only been detained in the vehicle for five minutes.

Mr. [REDACTED] states he did not notice whether the officers were wearing body worn cameras (BWC), but he did ask them if they had their cameras recording while the three sat in the police vehicle, and that Officer Lupo replied that they did. Mr. [REDACTED] states he did not yell

¹ Attachment 6.

² Now known to be Officer Vincenzo Lupo, Star No. 10401 and Officer Nicholas Gallapo, Star No. 8020.

or become aggressive or loud during the stop, but that Officer Lupo spoke to him in an aggressive tone and acted inappropriately throughout the encounter.

2. Officer Interview

In an interview with COPA on May 27th, 2020, Officer Vincenzo Lupo³ states that on the evening of September 15, 2019, he and Officer Gallapo patrolled the area in their vehicle. Officer Lupo drove the vehicle and states he observed a vehicle commit two traffic offenses: failure to stop at a stop sign and driving in the bike path. Suspecting impaired driving, the officers effected a traffic stop and Officer Lupo states he observed the driver⁴ appearing agitated, exhibiting lack of eye contact, fumbling for requested driver's documents, appearing "indifferent about the stop," chuckling, and not taking the stop seriously. Observing a young child in the backseat of the vehicle, Officer Lupo states that for the safety of the child, Mr. [REDACTED] and everyone else on the road, he asked Mr. [REDACTED] to exit the vehicle and submit to a field sobriety test. He states Mr. [REDACTED] did not immediately comply with the request to exit, then continued to display an "indifferent attitude [. . .] about the stop," was "snarling" at the officers, and refused to submit to the field sobriety test. He states, "Due to his agitated, indifferent attitude, for my safety [and] my partner's safety, he was handcuffed [and] escorted to the back of the squad car where he was placed [. . .] after a few objections on his part, but he eventually [. . .] willingly got in after he was given verbal commands to enter the squad car." He continues, "[t]he door was shut, at which time we then went into administrative paperwork." Officer Lupo states Mr. [REDACTED] was only placed in the vehicle while traffic violations were written, that he conducted a brief search of Mr. [REDACTED] vehicle for weapons, and he did not phone or otherwise contact any other officers about the stop.

Regarding the deactivation of his body worn camera approximately three and a half minutes into the encounter, Officer Lupo explains, "At that moment, [Mr. [REDACTED] was secured in the back of the vehicle [and] I was going to the driver's seat to simply do administrative paperwork." Regarding Special Order S03-14's requirement that he verbally justify deactivating his body worn camera if doing so part-way through a stop, Officer Lupo states his failure to record a justification "was an administrative error on my part, but again, he was secured in the back of the vehicle, and only paperwork was being done." Officer Lupo states Mr. [REDACTED] did not inquire whether body worn camera was recording. He states he re-activated his BWC after nearly twenty minutes when Mr. [REDACTED] was about to be released, explaining, "I wanted to document the interaction that we were going to have outside of the vehicle where he was going to be unhandcuffed and released, in case [. . .] situations escalated." Regarding his second body worn camera video capturing the tense exchange taking place during Mr. [REDACTED] release, with Mr. [REDACTED] stating, "You know better," and both officers stating, "[. . .] see you in court," Officer Lupo explains, "He was unsatisfied with police service. We did exactly what was required. He did commit [. . .] and received three traffic citations which entail a court date, and I didn't have anything else to say to Mr. [REDACTED] besides, "I'll see you at the court date."

Prior to Officer Lupo's reactivation of BWC upon Mr. [REDACTED] release, Officer Lupo states that he was located in the driver's seat of the squad car focusing on writing the traffic

³ Attachment 7.

⁴ The Complainant in this case, Mr. [REDACTED]

citations, with Mr. [REDACTED] secured in the backseat. Officer Lupo states he does not recall any argument, name-calling, or any other exchange occurring while inside the police vehicle. He states he, Officer Gallapo, and Mr. [REDACTED] were located inside the police vehicle the entire time between his return to the vehicle and Mr. [REDACTED] release. He states Officer Gallapo had duty as ‘Guard Officer’ during the stop, and that “it was his responsibility—along with myself—to keep an eye on any and all occupants that are in a vehicle,” noting Officer Gallapo remained focused on Mr. [REDACTED] vehicle during that period.

Officer Lupo states he could not personally see Mr. [REDACTED] son from where he sat in the police vehicle, but that the windows of both vehicles were down, allowing them to hear what occurred inside. He states he had already observed the child secured contently in child restraints with no dangerous objects nearby. He states he did not observe the child flailing in any way and states Mr. [REDACTED] made no mention of the child having any medical problems. He states he does not recall Mr. [REDACTED] raising concerns about his son’s wellbeing or the need for someone to check on his son, and confirms Mr. [REDACTED] was not permitted to check on his son.

Officer Lupo states Mr. [REDACTED] was not arrested during the stop because there was not probable cause to do so. He states that although he suspected alcohol or narcotic impairment, he was unable to confirm impairment due to Mr. [REDACTED] refusal to submit to the field sobriety test. He states he does not recall whether Mr. [REDACTED] exhibited other indicia of impairment such as bloodshot or watery eyes, that he did not smell an odor of alcohol emanating from his person, but did observe Mr. [REDACTED] swaying while standing. Officer Lupo states that, absent the probable cause for arrest, his decision to nonetheless keep Mr. [REDACTED] secured in the squad car away from his son was based on Mr. [REDACTED] level of agitation and the officer’s own desire to keep everyone safe and avoid escalation of the situation prior to release, saying the decision was not punitive in nature. Officer Lupo confirms that, upon Mr. [REDACTED] release, he did not issue him an Investigatory Stop Receipt. He explains, “At this time, he had multiple tickets with my name and star [number] on it.” Officer Lupo states the failure to provide the receipt was “an administrative error and [. . .] and honest mistake.”

In an Interview with COPA on May 27th, 2020, Officer Nicholas Gallapo⁵ states that on the evening of September 15, 2019, he and Officer Lupo observed a vehicle driving erratically on 83rd Street, driving in the bike lane and rolling through at least one stop sign. He states Officer Lupo believed the driver—Mr. [REDACTED] have consumed drugs or alcohol and asked him to exit the vehicle to perform a field sobriety test. He states Mr. [REDACTED] refused the test in a “slightly aggressive” manner and was then placed in handcuffs and into the back of the police vehicle. Officer Gallapo states he did not observe anything inside Mr. [REDACTED] vehicle indicating alcohol consumption and that his personal observation of indicia of impairment included his refusal to take the field sobriety test and Mr. [REDACTED] wobbling “slightly.” He states he does not recall glass eyes, slurred speech, or other indicia of impairment.

Asked why, approximately three minutes and forty seconds into the encounter, he turned off his body worn camera, Officer Gallapo replies, “You know, he was placed into the squad car and was secured [. . .] my partner was going to decide what he was going to do, which was to write

⁵ Attachment 8.

the tickets. At that point, I did turn off the body camera. Now looking back, I probably should have left it on.” He states he does not recall observing Officer Lupo turn off his own body worn camera or make any gesture toward his camera. He states they had not previously agreed on any protocol for deactivation, stating he and Officer Lupo simply “must have been on the same page” when they simultaneously deactivated their cameras. Officer Gallapo explains his failure to verbally justify his deactivation as required by Special Order S03-14, saying, “You know, I was just in the heat of the moment” during the stop and detention. He states he did not notify his supervisor of the deactivation prior to conclusion of the stop, as required by S03-14.

Officer Gallapo states that, following deactivation until the end of the stop, he “was in the passenger seat, keeping an eye on the vehicle in front of us” as Officer Lupo wrote citations. He states he believes all three individuals were present in the police vehicle the entire time after BWC deactivation until Mr. [REDACTED] release. He states that although the officers lacked probable cause to arrest Mr. [REDACTED] and though he did not fear for his or Officer Lupo’s safety, he did have some fear for Mr. [REDACTED] safety, stating, “[There have] been times that we put people in the squad cars and they attempt to hurt themselves.” He acknowledges Mr. [REDACTED] did not say or do anything specific to indicate he might hurt himself.

Officer Gallapo acknowledges an argument took place during Mr. [REDACTED] detention. “I think the real argument began when he was placed into handcuffs,” he states, explaining, “he just wasn’t happy with how things were going down.” The officer states he doesn’t remember whether the argument continued inside the vehicle. Officer Gallapo characterizes Mr. [REDACTED] demeanor while inside the police vehicle as “indifferent,” explaining, “he wasn’t happy with being in the back of a squad car,” however he states he does not recall anything Mr. [REDACTED] specifically said to indicate he was unhappy, nor anything he or Officer Lupo said to Mr. [REDACTED] during that period.

Officer Gallapo states it was Officer Lupo’s decision to keep Mr. [REDACTED] in handcuffs in the back of the police vehicle, and confirms the decision was based on Mr. [REDACTED] “attitude,” but he states he does not believe the decision was punitive in nature. “Well, if Mr. [REDACTED] was more compliant with our orders, if he had just done the field sobriety test and didn’t show indications of impairment [. . .] we might not have even given him tickets.” Officer Gallapo acknowledges he is aware that drivers in the State of Illinois are not required to perform a field sobriety test when so requested by a police officer.

Officer Gallapo states he had responsibility as Guard Officer during the entirety of the stop, that Mr. [REDACTED] son remained secured in a car seat in the back passenger’s side of Mr. [REDACTED] vehicle, and that he was not able to visually see Mr. [REDACTED] son from his vantagepoint in the police vehicle. He states, as Guard Officer, his duties included “[keeping] an eye on my car, my partner, the subject behind us [. . .] and then you also have to keep an eye on the passengers inside the vehicle that was stopped.” He explains, “I was able to see the exterior of the car. I had my windows down and his window was also cracked, so I could hear inside of the car.” Officer Gallapo is “not sure” if he exited the vehicle at any point to check on Mr. [REDACTED] son, states Officer Lupo did not do so and that Mr. [REDACTED] was not permitted to check because, “he was being detained at that point.” Officer Gallapo states he was familiar specifically with the requirements of 720 ILCS 5/12C-5 at the time of the stop.

Regarding the tense exchange during Mr. [REDACTED] release captured on body worn camera when Mr. [REDACTED] states to the officers, “You know better,” and both officers state, “[. . .] see you in court,” Officer Gallapo explains, “I just think he wasn’t happy with the way things turned out there, and when it gets to a point where you’re not going to argue on the street anymore, you argue in court.” Officer Gallapo states he did not give Mr. [REDACTED] an Investigatory Stop Receipt for the stop, as required by Special Order S04-13-09, explaining, “You know, it must’ve just slipped my mind.”

b. Digital Evidence

Body Worn Camera videos obtained from Officer Gallapo’s⁶ and Officer Lupo’s⁷ body worn cameras document from two perspectives the initial portion of the September 15, 2019 stop. The first two minutes of each video are silent. The officers conduct a traffic stop of a silver sedan and approach the vehicle, with Officer Lupo approaching the driver’s side. Mr. [REDACTED] is seated in the driver’s seat and his infant son is secured in a car seat in the rear of the vehicle. Officer Lupo greets Mr. [REDACTED] asking, “How you doing, sir?” Mr. [REDACTED] replies, “I was doing fine. How’s it going?” Officer Lupo asks for Mr. [REDACTED] license and states the reasons for the stop, including failing to stop at a stop sign, to which Mr. [REDACTED] replies, “I definitely stopped,” appearing to smile in a perturbed manner at the officer. Officer Lupo asks for Mr. [REDACTED] driver’s license and insurance documentation. Mr. [REDACTED] hands over his driver’s license and what he believes is expired insurance documentation. Officer Lupo agrees the documentation is expired and asks Mr. [REDACTED] to exit the vehicle. Mr. [REDACTED] asks, “Step out?” saying, “there’s no reason for that—I got my son with me.” Officer Lupo states the infant does not need to exit the vehicle. Mr. [REDACTED] asks why he needs to exit and Officer Lupo explains “Because the way you were driving makes me think you’ve consumed alcohol, so I’m going to make sure that you and everybody else on the road are safe.” Mr. [REDACTED] denies consuming alcohol. Officer Lupo asks Mr. [REDACTED] to exit twice more as Mr. [REDACTED] continues to object. He then laughs and exits the vehicle. Mr. [REDACTED] refers to the officers and their conduct as “ridiculous” and “disgusting.”

Officer Lupo directs Mr. [REDACTED] to the sidewalk. Once there, he continues to object to being asked from the car, stating that he has his child with him, that he owns a business nearby, and that he is married. Officer Gallapo states, “If you’ve been drinking and you got your son in the car—” Mr. [REDACTED] states, “I haven’t drank anything [. . .].” Officer Lupo replies, “Okay, well, then you would have no problems doing this.” Officer Lupo states, “I don’t [. . .] understand why you’re giving me such a hard time. I’m looking out for you, for your son, everybody else on the roadway,” explaining, “So [. . .] look at me, I’m doing my job—I’m doing a good job.” He then attempts to administer a field sobriety test and Mr. [REDACTED] refuses, stating, “I don’t want to take the field sobriety test [. . .] My tenant is a cop, I don’t have to do this.” Officer Lupo then replies, “You’re right, then put your hands behind your back,” and grabs Mr. [REDACTED] wrist, pulling out his handcuffs. The two officers secure Mr. [REDACTED] in handcuffs and begin walking him to their police vehicle. Mr. [REDACTED] continues to object,

⁶ Attachment 2.

⁷ Attachment 3.

stating he hadn't done anything and that the handcuffs are unnecessary. Officer Lupo asks if he will submit to the field sobriety test. Mr. [REDACTED] again refuses and the officers open the vehicle door. He states to Officer Gallapo, "Come on, dude, you know this is wrong and you gonna stand by there [. . .]." Officer Gallapo states, "You easily could just do the test." Mr. [REDACTED] states, "No, I don't have to." Patting Mr. [REDACTED] pockets, Officer Lupo states, "You're right, you don't have to. But driving is a privilege in the State of Illinois." They place Mr. [REDACTED] in the backseat of the vehicle and close the door.

The officers walk to the passenger's side of Mr. [REDACTED] vehicle. Officer Gallapo states, "What do we do with the kid, then?" Officer Lupo opens the front passenger's side door of the vehicle, shines his flashlight inside, and leans into the vehicle. He appears to examine the contents on and around the passenger's seat and looks into the backseat area before exiting the compartment. Officer Lupo turns with his left hand placed upon his vest near his body worn camera, looks at Officer Gallapo in the direction of Officer Gallapo's body worn camera, and walks past. Officer Lupo's body worn camera video is deactivated. Officer Gallapo follows Officer Lupo toward the police vehicle. Officer Gallapo's body worn camera is deactivated approximately seven seconds after Officer Lupo's.

In-Car Camera Video and Audio⁸ captures most of the September 15, 2019 traffic stop, including nearly all of the remainder of the stop following deactivation of Officer Lupo's and Officer Gallapo's body worn cameras. The in-car camera's perspective points directly outward through the police vehicle's front windshield. The audio recording captures primarily what occurs inside the vehicle; some sounds emanating from outside the vehicle can also be heard, though they are muffled. The video begins as the officers make a left-hand turn to travel westbound on E. 83rd Street. They travel at a distance behind a silver sedan that is captured slowing and turning into the bike lane, beginning to pass another vehicle stopped on the road in front of it. The other vehicle begins driving forward, and the silver sedan turns back into the driving lane. The police vehicle catches up to the silver sedan and both vehicles pull to the right-hand side of the street. The next approximately three minutes and forty seconds of the video largely duplicates the above-described body worn camera recordings.

Following the point in the stop when the officers' body worn cameras are deactivated, in-car camera captures the officers appearing to walk toward the police vehicle. A police vehicle door is heard opening and closing and Officer Lupo is captured returning to Mr. [REDACTED] vehicle. Officer Lupo opens the vehicle's front passenger's side door and conducts a second search of the front compartment. He soon exits the front passenger's side of the vehicle and walks around to the front driver's side. Officer Lupo appears to be on a cell phone call. He then opens the front, driver's side door and conducts a search of that part of the compartment, leaning and reaching into the vehicle. Officer Lupo exits the front driver's side door and walks around to the front passenger's side of the vehicle, appearing to continue speaking on the phone. Officer Lupo appears to end his call and then returns to the front driver's side of the police vehicle.

During the period of Officer Lupo's second search of Mr. [REDACTED] vehicle, in-car camera audio captures Mr. [REDACTED] stating to Officer Gallapo, "Dude [. . .] how come you couldn't step in there and say anything, man? You know that's not right." Officer Gallapo is

⁸ Attachment 5.

overheard replying, “Dude, if you would’ve just taken the test, you would’ve been fine.” The two argue briefly about the obligation to take the field sobriety test and the basis for the stop.

Upon Officer Lupo’s return to the vehicle, Mr. [REDACTED] states, “So what are we doing now, guys?” Officer Lupo states, “I’m gonna write you a bunch of tickets.” Mr. [REDACTED] asks, “Tickets for what?” Officer Lupo states, “Stop sign [. . .] bike lane [. . .] no insurance.” Mr. [REDACTED] replies, “Wow,” and states he wants the officers’ badge numbers, to which Officer Lupo replies, “That’s fine,” stating, “It’s gonna be on the ticket.” The two officers and Mr. [REDACTED] then engage in a long, argumentative conversation about the reason for the traffic stop, the legal obligation to submit to a field sobriety test, and multiple other topics including religious affiliation, upbringing, and parental status. The interaction captured on in-car camera lasts 16 – 17 minutes including periods during which nothing is said.

Soon after asking for the officers’ badge numbers, Mr. [REDACTED] asks what “precinct” the officers are from. Officer Lupo replies that he does not work in New York and so he is not assigned to a precinct, but that he works in the 004th District. Officer Lupo then asks, “I’m just curious what your issue is, because we haven’t done anything wrong.” Mr. [REDACTED] replies, “You have me in handcuffs in the back of a vehicle [. . .].” Officer Lupo interjects, “You’re right. We can legally detain you for the traffic stop, because this is a lawful traffic stop.” Nearly a minute and a half later (approximately four minutes after Officer Lupo re-enters the police vehicle), Mr. [REDACTED] asks, “Why am I still in handcuffs? How come I can’t be in my car just while you’re writing tickets?” Officer Lupo replies, “Because of your irate nature. You were getting angry with us, so we’re gonna write you the tickets where you’re at.” Mr. [REDACTED] laughs, stating, “You’re a good one, buddy. You’re a good one.”

Several seconds later, Mr. [REDACTED] asks the officers, “You guys have your webcams on,” referring to the officers’ body worn cameras. Officer Gallapo and Officer Lupo simultaneously reply, “Yep.” Mr. [REDACTED] quickly corrects his phrasing, “You got your body cams on?” Officer Gallapo replies, “[It’s] recording right there.” Mr. [REDACTED] counters, “No, I said your body cams. That’s not your body cam.” Officer Lupo replies, “Yeah, we got ‘em on.” Mr. [REDACTED] asks, “You do?” Officer Gallapo replies, “Yeah.” “Is it recording this conversation right now?” Officer Lupo replies, “Yeah.” Officer Lupo then quickly asks, “What do you think you’re gonna do, get us in trouble? We haven’t done anything wrong.”

Approximately three and a half minutes later, Mr. [REDACTED] poses a question to the officers regarding Christian religious affiliation. Officer Lupo replies, “When you were younger—I’ll answer your question if you answer mine: when you were younger did your parents teach you—;” however, he is interrupted by Mr. [REDACTED] who states, “Just write your ticket, chief. Man, I’ve got my son in the backseat [there].” Officer Lupo replies, “That’s what I thought. That’s what I thought.” Mr. [REDACTED] replies, “You’re being ridiculous.”

Approximately, one and a half minutes later, Mr. [REDACTED] speculates the officers stopped him in an attempt to get their “numbers up for the month.” Both officers state, “No,” denying that motivation, and laugh. Officer Lupo then states, “If you had just done what I asked, I would have let you go, no ticket—I don’t write anyone a ticket unless they’re a jerk.” Officer Lupo and Mr. [REDACTED] then briefly argue about whether driving is a privilege or a right.

Just over one minute later, Mr. ██████ states, “Why would you take a parent away from their child and leave a kid in the car for this long? Do you know how dangerous]—my kid could be dying. He could be suffocating.” Officer Gallapo interjects, stating, “Do you know how dangerous it is to drive like that?” Mr. ██████ insists, “He could be suffocating—he has nobody around him [. . .]. This is super, super irresponsible on ya’ll’s part.” [sic]. You have no idea what’s going on inside of that car. You guys should know better,” adding, “but you don’t care.” Officer Gallapo replies, “Apparently you don’t care either by the way you were driving.” Mr. ██████ replies, “Dude, I wasn’t driving reckless. I just moved to the side [. . .].” Officer Gallapo replies, “Okay.” Officer Lupo states, “I don’t understand why you wouldn’t submit to the test, I mean—” to which Mr. ██████ replies, “Because I don’t have to.”

Approximately thirty seconds later, Mr. ██████ states, “My son has been almost by himself for twenty-minutes.” Officer Lupo replies, “Really?” Mr. ██████ replies, “Yeah. Twenty minutes.” Officer Lupo states, “We stopped you at seven-ten and we sat in here for about seven minutes.” Appearing to be reading words printed on equipment inside the vehicle, Mr. ██████ states, “Record time,” then asks, “What does that mean, “record time?”” He continues, “When you guys cut on the sirens, that’s when your recorder started. 21:05. That’s where we at.” Officer Gallapo states, “It’s probably like five or six minutes.” Mr. ██████ states, “No, you guys are being ridiculous.” Officer Lupo states, “Alright.” Officer Gallapo states, “Okay.” Mr. ██████ exclaims, “My kid is by [himself]—do you guys not have children?” Officer Lupo replies, “I do.” Mr. ██████ asks, “How would you feel, right now?” Officer Lupo replies, “Well, I wouldn’t be a jerk to a police officer, so we’re nothing alike.” Mr. ██████ replies, “I wasn’t be a jerk, dude,” adding, “You’re not God, you’re a person.” Officer Lupo replies, “You’re right, but I treat people with respect, unlike you.” Mr. ██████ states, “No, you don’t.” Officer Lupo insists, “I referred to you as “sir!” Mr. ██████ replies, “And so have I. Just [because] you say, “sir,” don’t mean anything. You can call me “asshole,” then “sir” [. . .]. That doesn’t mean anything. That doesn’t mean there’s respectful intent behind it.”

After several more seconds, the officers begin exiting the vehicle to release Mr. ██████. The final thirty-eight seconds of the in-car camera’s recording of the encounter—taking place outside of the vehicle and, thus, mostly inaudible—are also captured audibly on Officer Lupo’s second body worn camera video.

The second **Body Worn Camera video obtained from Officer Lupo’s body worn camera**⁹ captures the remainder of the stop in greater detail, with video and clear audio. The first two minutes of the video are silent. The video begins as Officer Lupo sits in the police vehicle, completing the tickets he will issue to Mr. ██████ appearing to be holding Mr. ██████ driver’s license. Officer Lupo sets the driver’s license down on an open in-car computer and finishes writing, detaching, and organizing the tickets. Officer Lupo briefly begins to pick up the driver’s license from the in-car computer, pauses, letting the license remain on the computer, then exits the vehicle. Audio commences as Officer Lupo begins walking around to the passenger’s side of the police vehicle where he meets Mr. ██████ as Officer Gallapo is releasing him from handcuffs. Officer Gallapo is overheard saying, “We don’t know who we’re

⁹ Attachment 4.

stopping, man.” Mr. [REDACTED] replies, “Exactly,” then states, “Just remember, you reap what you sow, fellas.” He continues, “You guys do [. . .] a very dangerous job. Just remember how you handle people. You reap what you sow, alright?”

Officer Lupo states, “Yeah [. . .] We’ve been polite.” As Officer Gallapo releases Mr. [REDACTED] fully from the handcuffs, Officer Lupo extends the tickets toward Mr. [REDACTED] stating, “Here are your tickets, sir, I’ll see you in court on the twenty-ninth.” Mr. [REDACTED] takes his tickets, states to Officer Gallapo, “You can’t even look me in [the] face—you know better,” and begins walking away. Officer Gallapo states, “We’ll see you in court.” Mr. [REDACTED] repeats, “You know better,” as he continues walking away from the police vehicle, adding, “You guys are absolutely disgusting.” Officer Lupo approaches the driver’s side of the police vehicle, turning and replying, “That’s fine.” Mr. [REDACTED] repeats, “Absolutely disgusting,” as he approaches his vehicle. Officer Lupo states, “That’s right. All the traffic violations you committed.” Officer Lupo continues, “Okay. Very good, sir. Have a nice day.” Mr. [REDACTED] states something inaudible. Officer Lupo repeats, “Okay, have a nice day, sir.” Officers Lupo and Gallapo are seen entering the police vehicle and shutting the doors. Officer Lupo, in the driver’s seat, quickly stacks his copies of the tickets he issued, picks up the driver’s license still located on the in-car computer and organizes it with the tickets. Officer Gallapo states, “Oh [inaudible].” Officer Lupo deactivates his body worn camera.

c. Documentary Evidence

Attendance & Assignment records¹⁰ from Unit 004 on September 15, 2019, 3rd Watch, document Officer Nicholas Gallapo, Star No. 8020, and Officer Vincenzo Lupo, Star No. 10401, were present on duty the evening of the traffic stop under investigation. The officers were both assigned to Beat# 422 and Car# 9421.

An Office of Emergency Management and Communications Event Query Report¹¹ from September 15, 2019 at 7:05 P.M., bearing Event Number [REDACTED] documents a traffic stop conducted at or near 2599 E 83rd Street/8299 S. Colfax Avenue. The Report bears the Beat# 422, corresponding to Officers Lupo and Gallapo. The Report also lists a license plate number corresponding to Mr. [REDACTED] vehicle.

An Investigatory Stop Report numbered [REDACTED]¹² documents Officer Nicolas Gallapo’s and Officer Vincenzo Lupo’s investigatory traffic stop of Johnathan [REDACTED] on September 15, 2019 at approximately 7:05 P.M. at or near 2602 E. 83rd Street. The Report lists Officer Gallapo as First Officer, Officer Lupo as Second Officer, and Sgt. Carlos Sanchez as Reviewing Supervisor. The Investigatory Stop Narrative section of the report states in relevant part, “R/O’s [Reporting Officers] were on routine patrol and observed the above vehicle commit multiple traffic violations. Due to R/O’s observation of failing to stop at a stop sign and driving in the bike path R/O’s activated the emergency equipment and curbed the vehicle. Once the vehicle was curbed PO Lupo approached the driver and from his [Advanced Roadside Impaired Driving Enforcement] class knows these are signs of impaired driving, at which time PO Lupo asked the

¹⁰ Attachment 9.

¹¹ Attachment 10.

¹² Attachment 1.

driver to exit the vehicle. The driver immediately became confrontational with R/O's from there [sic] request. Once the driver finally exited the vehicle at which time he refused SFSF's exams and was confrontational with R/O's the entire time. Due to the drivers [sic] confrontational attitude the driver was detained and issued three citation [sic] listed above. PO Lupo searched the drivers [sic] immediate area due to the driver being so confrontational about the exam which made PO Lupo believe he could be concealing contraband. Search produced negative results [. . .]. BWC Recorded."

Chicago Police Department Traffic Citations, bearing Complaint Nos. TU-██████████, TU-██████████, and TU-██████████¹³ document the alleged traffic infractions committed by Mr. ██████████ the evening of September 15, 2019. Complaint No. TU-██████████ cites Municipal Code of Chicago Section 9-24-010(b), Failure to Stop at Stop Sign; Complaint No. TU-██████████ cites Municipal Code of Chicago Section 9-40-060, Driving on Bike Path; Complaint No. TU-██████████ cites Municipal Code of Chicago Section 3-707, Operating Uninsured Vehicle. All three citations bear CPD Star No. 10401, corresponding to Officer Vincenzo Lupo, as well as the officer's unit, Unit 004. The citations bear an illegible signature, each beginning with the letter "V," presumably corresponding to Officer Vincenzo Lupo. The citations contain a court date of October 29, 2019. The citations contain very little additional information.

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 complied with Department policy. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

¹³ Attachment 11.

VII. ANALYSIS

Officer Vincenzo Lupo and Officer Nicholas Gallapo

Allegation 1:

COPA finds the allegations that Officer Vincenzo Lupo and Officer Nicholas Gallapo failed to comply with Special Order S03-14 by deactivating their body worn cameras sustained. Chicago Police Department Special Order S03-14 states in relevant part that Department members, “will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities.”¹⁴ The Order continues, “Law-enforcement-related activities include but are not limited to: [. . .] b. investigatory stops; [. . .] c. traffic stops; [. . .] j. searches, including searches of [. . .] vehicles [. . .]; [. . .] k. statements made by individuals in the course of an investigation; [. . .] p. any encounter with the public that becomes adversarial after the initial contact; [. . .] r. any other instance when enforcing the law.”¹⁵ The Order continues, “The Department member will not deactivate event mode unless: [. . .] a. the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity; [. . .] b. requested by a victim of a crime; [. . .] c. requested by a witness of a crime or a community member who wishes to report a crime; or [. . .] d. the officer is interacting with a confidential informant.”¹⁶ The Order further states, “The Department member will verbally justify on the BWC when deactivating it prior to the conclusion of an incident. When a member fails to record an incident or circumstances warrant the verbal justification of a deactivation as being impractical or impossible, the member will document the reason by activating the BWC and stating the type of incident, event number, and the reason for deactivating the recording.”¹⁷

The record shows Officers Lupo and Gallapo failed to record the entire incident under investigation, as required by the Special Order. The incident met several definitions of a “law-enforcement-related activity” for which body worn camera activation and recording are required. The incident was both an investigatory stop and a traffic stop; in-car camera reveals Officer Lupo performed searches of Mr. ██████████ vehicle both before and after the officers deactivated their body worn camera; in-car camera reveals Mr. ██████████ made statements in the course of the officers’ investigation after deactivation, including statements in custody about the conduct leading to the stop;¹⁸ body worn camera and in-car camera video evidence reveal the encounter had become adversarial soon after inception and remained so for the remainder of the interaction.

The record contains no evidence the officers’ deactivations were unintentional. Further, the officers’ body worn camera deactivations did not meet any of the enumerated circumstances permitting deactivation, such as no longer being engaged in law-enforcement-related activity, by request of a victim, etc. Additionally, neither officer verbally justified deactivating his body worn

¹⁴ Chicago Police Department Special Order S03-14 on Body Worn Cameras; § (III)(A)(2).

¹⁵ Ibid.

¹⁶ Ibid; § (III)(B)(1).

¹⁷ Ibid; § (III)(B)(4).

¹⁸ *Supra*, “In-Car Camera Video and Audio” in which Mr. ██████████ states, “I wasn’t driving reckless. I just moved to the side [. . .].”

camera before doing so, as required by the Order; nor did the officers re-activate body worn camera to state the type of incident, event number, and reason for deactivating, as required. The deactivations were in direct violation of the Special Order. For the above reasons, the allegations that Officer Lupo and Officer Gallapo failed to comply with Special Order S03-14 by deactivating their body worn cameras are sustained.

Allegation 2:

COPA finds the allegations that Officer Lupo and Officer Gallapo violated 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes sustained. The legal requirements of 720 ILCS 5/12C-5 are clear. The law states, “A person commits endangering the life or health of a child when he or she knowingly [. . .] (1) causes or permits the life or health of a child under the age of 18 to be endangered; or (2) causes or permits a child to be placed in circumstances that endanger the child’s life or health,” and continues, “A trier of fact may infer that a child 6 years of age or younger is unattended if that child is left in a motor vehicle for more than 10 minutes [where] “Unattended” means either: (i) not accompanied by a person 14 years of age or older; or (ii) if accompanied by a person 14 years of age or older, *out of sight of that person.*”¹⁹ In-car camera video and audio reveal that both officers were present with Mr. ██████████ in their police vehicle for 16-17 minutes while Mr. ██████████ infant son was left unattended in Mr. ██████████ vehicle. The officers confirm in their Interviews neither was able to visually see Mr. ██████████ infant son while seated in the vehicle with Mr. ██████████. In-car camera video and audio confirm neither officer exited the vehicle during that period to check on the life and health of the child, nor did they permit Mr. ██████████ to do so.

Thus, the officers had a clear legal requirement with regard to Mr. ██████████ infant son located in the backseat of Mr. ██████████ vehicle, which they did not meet. From the moment the officers placed the child’s father in handcuffs and secured him in the back of their vehicle, they assumed responsibility for the life and health of the infant. Officer Gallapo states explicitly that, as Guard Officer, he had responsibility for “keep[ing] an eye on the passengers inside the vehicle that was stopped.” In fact, as the adults having control over the stop and detention, both officers shared the responsibility. The applicable statute requires that, at minimum, individuals 14 years of age or older having responsibility for supervision of a child 6 years of age or younger located in a vehicle must *visually* confirm the child’s safety and wellbeing. Under their general duties to know and uphold child endangerment laws, the officers were required to make a visual check on the infant’s life and health within ten minutes of the moment the last officer left line-of-sight of the child when returning to the police vehicle.

Further, the record does not support the view that the officers were engaged in some overriding or exigent police function preventing them from making a visual check on Mr. ██████████ son. Once the decision was made only to issue traffic citations while Mr. ██████████ was left secured in the back of the police vehicle, the officers faced no urgent security concerns for themselves or the public and no additional investigation tasks appeared to be undertaken. Neither officer reported any evident threat to officer or public safety at or near the scene of the stop. Officer Gallapo states he was not afraid of Mr. ██████████. Although he

¹⁹ 720 ILCS 5/12C-5(a)-(c). Italics added.

states he was concerned Mr. ██████████ might hurt himself, he is unable to cite any behavior or statement made by Mr. ██████████ to support that claim, nor is support for that claim found in body worn camera, in-car camera, or any other evidence on the record. No other security threats were evident at or near the scene.

On the question of what factor(s) most clearly did bear on the officers' non-compliance with the requirement to secure visual confirmation of the infant's wellbeing while detaining Mr. ██████████ in-car camera video and other evidence provide plentiful support. That evidence indeed confirms Officer Gallapo's own formal account found in the "Investigatory Stop Narrative"²⁰ he authored following the encounter, which contains three separate references to Mr. ██████████ "confrontational" attitude, even stating explicitly, "Due to the drivers [sic] confrontational attitude the driver was detained and issued three citations." In their statements at COPA, Officer Gallapo further describes Mr. ██████████ demeanor as "indifferent" and Officer Lupo cites Mr. ██████████ "indifferent" attitude three separate times. Additionally, when asked by Mr. ██████████ why he wasn't permitted to return to his vehicle while Officer Lupo wrote the citations, Officer Lupo replied, "Because of your irate nature. You were getting angry with us, so we're gonna write you the tickets where you're at." Officer Lupo also refers to Mr. ██████████ twice as "a jerk," states, "I treat people with respect, unlike you," and begins calling into question Mr. ██████████ upbringing. The officers' multiple statements demonstrate that Mr. ██████████ 'attitude' toward them was the likeliest reason for the separation imposed between the three adults and the child.

Regarding Mr. ██████████ behavior during the stop, the officers were no doubt confronted with a personally challenging traffic stop subject. Mr. ██████████ quickly assumed an unfriendly demeanor; he glowered at Officer Lupo as he confirmed his driver's documentation; he laughed at the officers; throughout the entirety of the stop, he referred to the officers and their conduct as "ridiculous" seven separate times and as "disgusting" four times. Mr. ██████████ even seemed to suggest he should be exempt from police investigation or detention, explicitly citing his status as a small business owner, his parental status, and his marital status as reasons the officers should not detain him. He appears at times to mock Officer Lupo's authority and threatens to file a complaint against the officers. He refuses to take the field sobriety test. That unfriendliness and, at times, open contempt Mr. ██████████ displayed toward the officers from the initiation of the stop—culminating with his refusal to comply with the officers' request to perform the field sobriety test—appear to be the primary factors resulting in the officers' detention of Mr. ██████████ away from his son and their own failure to comply with the legal requirement to furnish visual confirmation of the infant's life and health.

Nonetheless, as both officers attest in their Interviews with COPA, Mr. ██████████ was not legally required to perform the field sobriety test at Officer Lupo's request, and his refusal was not unlawful. Additionally, no legal requirement exists obliging Mr. ██████████ to adopt a friendly or deferential attitude toward the officers. After initial hesitation, Mr. ██████████ exited his vehicle at Officer Lupo's direction, obeyed Officer Lupo's order to walk to the sidewalk, allowed himself to be handcuffed without resistance, walked without resistance to the police vehicle, and entered the police vehicle, in Officer Lupo's words, "willingly." At no point during the stop did Mr. ██████████ physically threaten, resist, or even shout at the officers, nor fail to

²⁰ Attachment 1.

comply with any legal requirement to which he was actually subject. Thus, Mr. [REDACTED] words and “attitude” alone—though often discourteous and at times harsh—were not sufficient to justify the officers’ non-compliance with the requirement to provide or permit a visual check on the infant within ten minutes of leaving him in the vehicle, outside the range of sight of a supervising adult. For the above reasons, the allegations that Officer Lupo and Officer Gallapo failed to comply with 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes is sustained.

Allegation 3:

COPA finds the allegations that Officer Lupo and Officer Gallapo failed to issue [REDACTED] an Investigatory Stop Receipt sustained. Chicago Police Department Special Order S04-13-09 states in relevant part, “Upon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member’s name and star number.”²¹ The Order notes one exception to the requirement, stating, “An Investigatory Stop Receipt will not be provided if the subject of the stop is arrested.”

The stop in question involved a protective pat down as well as two searches of Mr. [REDACTED] vehicle, and Mr. [REDACTED] was not arrested. Therefore, the officers were required to provide Mr. [REDACTED] a completed Investigatory Stop Receipt prior to departing. Body Worn Camera evidence and the officers’ statements confirm they did not issue the Receipt. Their failure to do so thus strictly violated the Chicago Police Department’s Special Order on the Investigatory Stop System. Based on the above analysis, the allegation that Officer Lupo failed to issue [REDACTED] an Investigatory Stop Receipt is sustained.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Vincenzo Lupo

i. Complimentary and Disciplinary History

Officer Lupo’s disciplinary record consists of one April 2019 reprimand for a preventable accident.

ii. Recommended Penalty, by Allegation

1. Allegation 1

COPA has found that Officer Lupo failed to comply with Special Order S03-14 by deactivating his body worn camera, thus violating Rules 2, 3, 5, and 6. Additionally, the record indicates Officer Lupo deactivated his body worn camera simultaneously with Officer Gallapo for purposes of intentionally leaving unrecorded a portion of the stop that would go on to involve misconduct. The officer’s account of the failure to continuously record the encounter as simply

²¹ Special Order S04-13-09, Investigatory Stop System § VIII (A) (3).

“an administrative error”²² made upon entering the “paperwork” phase of the stop is not plausible based on the evidence under review. Officer Lupo is captured on Officer Gallapo’s body worn camera looking at Officer Gallapo’s body worn camera as he walks past, at the exact moment he [Officer Lupo] deactivates his own camera, and just seconds before Officer Gallapo deactivates his; during his Interview with COPA Investigators, Officer Lupo omits any mention of the second search he performed of Mr. [REDACTED] vehicle,²³ denies engaging in a long, argumentative conversation with Mr. [REDACTED] inside the police vehicle, and denies Mr. [REDACTED] asked if his body worn camera was recording the conversation; in-car camera audio captures him repeatedly and untruthfully affirming to Mr. [REDACTED] that his body worn camera was recording. Far more likely than the possibility of “an administrative error” on Officer Lupo’s part is the probability that the officers intentionally, simultaneously deactivated their body worn cameras and then proceeded to knowingly make untruthful statements about their deactivation both to Mr. [REDACTED] while he was in custody and to COPA Investigators. The deactivation was in direct violation of Special Order S03-14 and is contrary to the City of Chicago’s interest in recording public-police encounters to ensure violations ranging from officer rudeness to civil rights abuses to commission of crimes may not be hidden from scrutiny behind lapses of unrecorded time. Considering Officer Lupo’s record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

2. Allegation 2

COPA has found that Officer Lupo violated 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes, thus violating Rules 1, 2, 3, 5, 8, and 10. The evidence suggests the continued separation the officers maintained between the child and any supervising adult—whether Mr. [REDACTED] or one of the officers, themselves—occurred as a result of the officers’ ill will toward Mr. [REDACTED] based on the “confrontational” and “indifferent” attitude he displayed during the stop, and thus was punitive in nature. This is evinced perhaps most clearly in Officer Lupo’s denial of Mr. [REDACTED] request to return to his vehicle, in which he cites Mr. [REDACTED] “irate nature,” saying, “You were getting angry with us, so we’re gonna write you the tickets where you’re at.”

Indeed, Mr. [REDACTED] frequently complained about the continued separation and lack of supervision of his son, making statements such as “How come I can’t be in my car [. . .],” “I’ve got my son in the backseat,” “Why would you take a parent away from their child [. . .] for this long,” “my kid could be dying [. . .],” “he could be suffocating [. . .],” and “he has nobody around him.” Despite their duties under the law, despite Mr. [REDACTED] complaints, and faced with no exigent circumstances preventing them from attending to the child in the vehicle, neither officer took any step to furnish visual confirmation of the infant’s life and health. Instead of either allowing Mr. [REDACTED] to return to his vehicle while Officer Lupo wrote traffic citations or exiting their vehicle themselves to confirm the infant’s safety, the officers chose to ignore Mr. [REDACTED] complaints about his son being left unsupervised, squabbled with him, antagonized him, and even engaged in name-calling. Simply, the stop became a power struggle in

²² *Supra*, “Interview with COPA on May 27th, 2020, Officer Vincenzo Lupo.”

which the officers resorted to withholding from Mr. [REDACTED] the one thing he asked for most: attendance to his son's safety.

The encounter clearly involved mutual enmity between exasperated parties. As captured in body worn camera video, Officer Lupo insists—in apparent frustration with Mr. [REDACTED] criticisms—that he had been “doing a good job” in his investigation of a driver suspected of being under the influence of alcohol while operating a motor vehicle on a public way. Indeed, Officer Lupo as well as Officer Gallapo do appear to have been doing a notably good job during the investigation up to that point: they spotted a driving irregularity on the road, they acted courteously toward Mr. [REDACTED] during initiation of the stop, they were patient with Mr. [REDACTED] concerns, shared their reasoning for asking Mr. [REDACTED] out of his vehicle and for requesting the field sobriety test, and they secured a challenging situation with potential safety implications for a driver, an infant passenger, other citizens on the road, and for the officers, themselves.

The officers erred, however, by allowing the challenges posed by a confrontational subject to unduly affect the performance of their duties as police officers: specifically, compliance with the obligation to furnish a visual check on the infant in the vehicle. As law enforcement professionals, Chicago Police Officers must comport themselves above such errors. Failure to furnish the visual check within ten minutes of leaving the child in the vehicle was in contravention of the State of Illinois' laws protecting the life and health of the child; it is also contrary to the City's governmental interest in maintaining a police force that derives its legitimacy, in part, by complying with the same corpus of public safety laws officers themselves are charged with fairly enforcing. Such breaches can contribute to a deteriorating public-police relationship in Chicago, damaging public confidence and sowing resentment about a police department perceived to act unfairly, extrajudicially, and with impunity—further eroding the trust upon which just, safe, consent-based policing must ultimately be based. Considering Officer Lupo's record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

3. Allegation 3

COPA has found that Officer Lupo violated Special Order S04-13-09 by failing to issue [REDACTED] an Investigatory Stop Receipt, thus violating Rules 5 and 6. The rule on issuance of Investigatory Stop Receipts is clear: Investigatory Stops that involve a search but do not result in arrest require issuance of a Receipt. In addition to this strict requirement, Mr. [REDACTED] indicated during his period of detention that he intended to file a complaint against the officers, giving the officers further notice that their subject would have a specific need for a detaining officer's identifying information, as well as the stop's event number and the reason for the stop. At the conclusion of the detention, while the officers should have been issuing their subject an Investigatory Stop Receipt, they instead chose to further antagonize and intimidate Mr. [REDACTED] both telling him, *inter alia*, “See you in court.”

In his statement, Officer Lupo points to the fact the traffic citations he issued contained his name and star number. However, the issuance of traffic citations is not an enumerated exception to the requirement to provide an Investigatory Stop Receipt during a stop involving a search. Only an arrest triggers the exception and, thus, the issuance of citations has no mitigatory value. Simply,

failure to provide the Investigatory Stop Receipt violated the Chicago Police Department's Special Order on the Investigatory Stop System; it is also contrary to the City's interest in promoting transparency about investigatory stops and redress of grievances by ensuring citizens receive all information necessary to initiate a complaint against a public servant employed in the Chicago Police Department. Considering Officer Lupo's record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

b. Officer Nicholas Gallapo

i. Complimentary and Disciplinary History

Officer Gallapo has no disciplinary history on record.

ii. Recommended Penalty, by Allegation

1. Allegation 1

COPA has found that Officer Gallapo failed to comply with Special Order S03-14 by deactivating his body worn camera, thus violating Rules 2, 3, 5, and 6. Additionally, the record indicates Officer Gallapo deactivated his body worn camera simultaneously with Officer Lupo for purposes of intentionally leaving unrecorded a portion of the stop that would go on to involve misconduct. The officer's account of the simultaneous deactivation as an honest error made "in the heat of the moment" and in which the officers were simply "on the same page" is not plausible. In his statement, Officer Gallapo denies or omits multiple aspects of the stop known to have occurred, including the argument occurring in the police vehicle, Mr. [REDACTED] asking if the officers' body worn cameras were recording, and his own untruthful affirmation that they were. Far more likely than the possibility of an innocent error is the probability that both officers intentionally, simultaneously deactivated their body worn cameras and then proceeded to make untruthful statements about their deactivation both to Mr. [REDACTED] while he was in custody and to COPA Investigators. The deactivation was in direct violation of Special Order S03-14 and is contrary to the City of Chicago's interest in recording public-police encounters to ensure violations ranging from officer rudeness to civil rights abuses to commission of crimes may not be hidden from scrutiny behind lapses of unrecorded time. Considering Officer Gallapo's record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

2. Allegation 2

COPA has found that Officer Gallapo violated 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes, thus violating Rules 1, 2, 3, 5, 8, and 10. The evidence suggests the continued separation the officers maintained between the child and any supervising adult—whether Mr. [REDACTED] or one of the officers, themselves—occurred as a result of the officers' ill will toward Mr. [REDACTED] based on the "confrontational" and "indifferent" attitude he displayed during the stop, and thus was punitive in nature.

The officers erred by allowing the challenges posed by a confrontational subject unduly affect the performance of their duties as police officers: specifically, compliance with their requirement to furnish a visual check on the infant in the vehicle. As law enforcement professionals, Chicago Police Officers must comport themselves above such errors. Failure to furnish the visual check within ten minutes of leaving the child in the vehicle was in contravention of the State of Illinois’ laws protecting the life and health of the child; it is also contrary to the City’s governmental interest in maintaining a police force that derives its legitimacy, in part, by complying with the same corpus of public safety laws officers themselves are charged with fairly enforcing. Such breaches can contribute to a deteriorating public-police relationship in Chicago, damaging public confidence and sowing resentment about a police department perceived to act unfairly, extrajudicially, and with impunity—further eroding the trust upon which just, safe, consent-based policing must ultimately be based. (Refer to analysis of Officer Lupo’s Recommended Penalty for Allegation 2, above, for additional discussion). Considering Officer Lupo’s record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

3. Allegation 3

COPA has found that Officer Gallapo violated Special Order S04-13-09 by failing to issue [REDACTED] an Investigatory Stop Receipt, thus violating Rules 5 and 6. The rule on issuance of Investigatory Stop Receipts is clear: Investigatory Stops involving a search that do not result in arrest require issuance of a Receipt. Failure to provide the Investigatory Stop Receipt violated the Chicago Police Department’s Special Order on the Investigatory Stop System; it is also contrary to the City’s interest in promoting transparency about investigatory stops and redress of grievances by ensuring citizens receive all information necessary to initiate a complaint against a public servant employed in the Chicago Police Department. (Refer to analysis of Officer Lupo’s Recommended Penalty for Allegation 3, above, for additional discussion). Considering Officer Gallapo’s record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Vincenzo Lupo	1. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by failing to comply with Special Order S03-14 by deactivating his body worn camera.	Sustained

	<p>2. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by violating 720 ILCS 5/12C-5(a)-(c) by knowingly leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes.</p>	<p>Sustained</p>
	<p>3. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Vincenzo Lupo Star No. 10401 committed misconduct through the following acts or omissions, by failing to issue [REDACTED] an Investigatory Stop Receipt.</p>	<p>Sustained</p>
<p>Officer Nicholas Gallapo</p>	<p>1. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by failing to comply with Special Order S03-14 by deactivating his body worn camera.</p>	<p>Sustained</p>
	<p>2. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by violating 720 ILCS 5/12C-5(a)-(c) by leaving a child six years of age or younger unattended in a motor vehicle for more than 10 minutes.</p>	<p>Sustained</p>
	<p>3. It is alleged by the Civilian Office of Police Accountability that on or about September 15, 2019 at approximately 7:05 PM at or near 2602 E 83rd Street Officer Nicholas Gallapo Star No. 8020 committed misconduct through the following acts or omissions, by failing to issue [REDACTED] an Investigatory Stop Receipt.</p>	<p>Sustained</p>

Approved:



12-28-2020

Angela Hearts Glass
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	4
Investigator:	Daniel Thetford
Supervising Investigator:	James Murphy Aguilu
Deputy Chief Administrator:	Angela Hearts-Glass