

## SUMMARY REPORT OF INVESTIGATION

## I. EXECUTIVE SUMMARY

Date of Incident:	February 1, 2018
Time of Incident:	1:30 PM
Location of Incident:	7700 S. Phillips Ave.
Date of COPA Notification:	February 1, 2018
Time of COPA Notification:	3:43 PM

On February 1, 2018, at approximately 1:30 PM, Officer Daniel Brown ("Officer Brown"), and Officer Miguel Delgado, ("Officer Delgado"), working a tactical unit in the 4<sup>th</sup> District as Beat no. 4-61, stopped complainant [REDACTED] (" [REDACTED] ") for a traffic violation in front of 7700 S. Phillips Ave. [REDACTED] alleges that Officer Brown and Officer Delgado failed to inform him of the purpose of the traffic stop. Additionally, [REDACTED] alleges that Officer Brown and Officer Delgado improperly conducted a search of his vehicle.

## II. INVOLVED PARTIES

Involved Officer #1:	Daniel R. Brown, Star #7571, Employee ID # [REDACTED], DOA: 2/19/13, Rank: Police Officer, Unit of Assignment: 4 <sup>th</sup> District, DOB: [REDACTED]/1986, Male, White
Involved Officer #2:	Miguel Delgado, Jr., Star #18560, Employee ID # [REDACTED], DOA: 10/31/12, Rank: Police Officer, Unit of Assignment: 4 <sup>th</sup> District, DOB: [REDACTED]/81, Male, Hispanic
Subject #1:	[REDACTED] DOB: [REDACTED]/1986, Male, Black

## III. ALLEGATION

Officer	Allegation	Finding
Officer Brown	1. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Brown failed to inform [REDACTED] of the purpose of his traffic stop, in violation of Rules 1, 2 and 11.	Sustained
	2. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave.,	Sustained

	Chicago, IL, at approximately 1:30 PM, that Officer Brown improperly conducted a search of [REDACTED] vehicle, a violation of Rules 1, 2 and 11	
Officer Delgado	<ol style="list-style-type: none"> <li>1. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Delgado failed to inform [REDACTED] of the purpose of his traffic stop, in violation of Rules 1, 2 and 11.</li> <li>2. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Delgado improperly conducted a search of [REDACTED] vehicle, a violation of Rules 1, 2 and 11</li> </ol>	<p>Sustained</p> <p>Sustained</p>

#### IV. APPLICABLE RULES AND LAWS

##### Rules

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 11:** Incompetency or inefficiency in the performance of duty.

##### Special Orders

1. **S04-13-9:** Investigatory Stop System

##### Federal Laws

1. 4<sup>th</sup> Amendment, U. S. Constitution

##### Municipal Code

1. **Municipal Code:** Ch. 9-40-035(5)

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

<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

a. Interviews

On February 2, 2018, complainant [REDACTED] gave an audio recorded interview to COPA. [REDACTED] stated on February 1, 2018, he had just left his grandmother's house when he observed an unmarked CPD Ford SUV following him. [REDACTED] stated the police vehicle followed him for a block and then activated its emergency lights. [REDACTED] stated he pulled over and rolled down his driver's window. [REDACTED] stated he was approached by two plainclothes officers, later identified as Officer Brown and Officer Delgado. [REDACTED] stated either Officer Brown or Delgado told him to lower all his windows because his back windows were tinted and they could not see inside the vehicle. [REDACTED] stated the officer, later identified as Officer Brown, asked him for his driver's license and insurance. [REDACTED] stated Officer Brown did not tell him the purpose of the traffic stop. [REDACTED] stated Officer Brown was looking around the inside of his vehicle and asked him to step out. [REDACTED] stated he refused, saying to Officer Brown, "I have [a driver's] license and insurance, why am I stepping out of the car for?"<sup>2</sup> [REDACTED] stated Officer Brown opened his driver's door, pulled him out of the vehicle and searched him. [REDACTED] stated Officer Brown searched him while Officer Delgado searched inside his vehicle and found nothing. [REDACTED] stated Officers Brown and Delgado searched him and his vehicle for no reason. [REDACTED] stated Officers Brown and Delgado looked at him and automatically judged him and treated him like he was a nobody, like he was a drug dealer and he had a gun. [REDACTED] stated he was upset about what happened and that he asked Officers Brown and Delgado for identification because something had to be done about what the officers did. [REDACTED] stated when he asked why he was stopped, the officers replied that he was moving funny. [REDACTED] stated that he told Officers Brown and Delgado they could not have seen into his vehicle because they had asked him to lower his windows to see in. [REDACTED] stated he had to request a receipt for the stop and waited in the cold for ten minutes to receive it. [REDACTED] stated the arm rest in his vehicle was ripped and papers in the front console were destroyed from the search.<sup>3</sup>

On March 26, 2018, accused **Officer Daniel Brown**, ("Officer Brown"), gave an audio recorded interview to COPA. Officer Brown stated that on February 1, 2018, he was working a tactical unit in the 4<sup>th</sup> District, with his partner Officer Miguel Delgado ("Officer Delgado"). Officer Brown stated he was wearing plainclothes and he was the driver of an unmarked CPD vehicle. Officer Brown stated that on February 1, 2018, approximately between 1:00 PM and 1:15 PM, he and Officer Delgado were in the area of 79<sup>th</sup> and Essex Avenue. Officer Brown stated the area has a lot of gang activity. Officer Brown stated he observed [REDACTED] driving a four-door dark sedan northbound on either Colfax Avenue or Essex Avenue. Officer Brown stated he followed [REDACTED] vehicle a block or two before stopping it. Officer Brown stated he stopped [REDACTED] for an obstruction of driver's view violation. Officer Brown stated that although [REDACTED] rear window was tinted, with the sunlight going through it he could see straight through his vehicle. Officer Brown stated he activated his vehicle's emergency equipment and conducted a traffic stop of [REDACTED] near the intersection of 78<sup>th</sup> and Phillips Avenue. Officer Brown stated he asked [REDACTED] to

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<sup>2</sup> Attachment 11 at 2:30

<sup>3</sup> Attachment 11

lower the car's windows. Officer Brown stated [REDACTED] was agitated because of an altercation he had with a woman who had gone through his phone. Officer Brown stated he did not tell [REDACTED] why he was being stopped. Officer Brown stated that [REDACTED] told Officer Brown he was agitated, and [REDACTED] was shaking and dropped his license. He stated that these factors made him concerned for his safety and that of Officer Delgado.

Officer Brown stated that during his five-year career as a CPD officer, he did not recall encountering anyone else he stopped for a traffic violation being either shaky or having dropped their driver's license. Officer Brown stated he returned to his vehicle with Dear's identification and performed a name and warrant check, which was negative. Officer Brown stated he returned to [REDACTED] and asked him to exit the vehicle. Officer Brown stated he asked [REDACTED] to do so because his partner Officer Delgado said that [REDACTED] refused to turn his vehicle off, and based upon Officer Delgado's knowledge and experience [REDACTED] could have fled. Officer Brown stated when he and Officer Delgado initiated the traffic stop, they observed [REDACTED] placing his hands towards the passenger side of the vehicle, alerting them that [REDACTED] might be concealing contraband or a weapon. Officer Brown stated he opened [REDACTED] door and asked him to step out of the vehicle. Officer Brown stated after [REDACTED] stepped from the vehicle, he performed a protective pat-down. Officer Brown stated as [REDACTED] exited the vehicle, he observed bulges in [REDACTED] front pocket that could have been a weapon. Officer Brown stated the protective pat-down yielded negative results. Officer Brown stated Officer Delgado searched the interior of the vehicle.<sup>4</sup>

On March 26, 2018, accused **Officer Miguel Delgado, Jr.**, ("Officer Delgado") gave an audio recorded interview to COPA. Officer Delgado stated that on February 1, 2018, he was working in a tactical unit, with his partner, Officer Daniel Brown ("Officer Brown"). Officer Delgado stated he was wearing plainclothes and he was in an unmarked CPD vehicle. Officer Delgado stated approximately between 1:00 PM and 1:15 PM, he and Officer Brown were on routine patrol near 79<sup>th</sup> and Essex Ave. Officer Delgado stated the location is known as a high gang and narcotics conflict area. Officer Delgado stated he and Officer Brown observed [REDACTED] driving a four-door dark sedan northbound on Essex from 79<sup>th</sup>. Officer Delgado stated he and Officer Brown were driving northbound on Essex from 79<sup>th</sup> behind the sedan. Officer Delgado stated he observed an object dangling from the car's rear view mirror, which he stated was an obstruction of driver's view violation, and informed Officer Brown. Officer Delgado stated he and Officer Brown were behind [REDACTED] vehicle "less than a block, and if you go by feet approximately 500 feet to 600 feet, it wasn't really that far, it was definitely less than a block."<sup>5</sup> Officer Delgado stated the rear window was tinted, but did not impede his ability to observe the object dangling from the rearview mirror. Officer Delgado stated they activated their emergency equipment and [REDACTED] pulled to the curb.

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<sup>4</sup> Attachment 13

<sup>5</sup> Attachment 14 at 12:45

Officer Delgado stated before [REDACTED] vehicle stopped, he saw [REDACTED] make a movement with his right arm extended from the driver's side towards the front passenger side of the vehicle. Officer Delgado stated he activated his body-worn camera. Officer Delgado stated he informed Officer Brown of his observation of [REDACTED] action. Officer Delgado stated that after exiting their unmarked unit, he told Officer Brown he could not see through the front and rear passenger windows. Officer Delgado stated [REDACTED] rolled down his windows after being told to do so, and Officer Brown began speaking to him. Officer Delgado stated he observed from the passenger side window that [REDACTED] was very agitated, and that "he was shaking, his hands were clearly shaking."<sup>6</sup> Officer Delgado stated Officer Brown was asking [REDACTED] if everything was alright. Officer Delgado stated [REDACTED] said to Officer Brown "something about his girlfriend and an argument."<sup>7</sup> Officer Delgado stated Officer Brown asked [REDACTED] for identification. Officer Delgado stated [REDACTED] fumbled the documents and he had to open the door in handing them to Officer Brown. Officer Delgado stated from what he observed, [REDACTED] was "very shaky, very agitated, very nervous."<sup>8</sup>

Officer Delgado stated while Officer Brown checked [REDACTED] identification, he spoke with [REDACTED] regarding his agitated behavior. Officer Delgado stated he requested [REDACTED] to turn off the vehicle, but [REDACTED] refused. Officer Delgado stated after finding [REDACTED] had no outstanding warrants, he and Officer Brown approached [REDACTED] vehicle. Officer Delgado stated Officer Brown asked [REDACTED] to exit his vehicle. Officer Delgado stated he went to Officer Brown's side of [REDACTED] vehicle for support in case something happened. Officer Delgado stated Officer Brown opened [REDACTED] door and [REDACTED] exited the vehicle. Officer Delgado stated he then began to search [REDACTED] vehicle. Officer Delgado stated the reason for the vehicle search was [REDACTED] behavior. Officer Delgado stated that based on his experience when someone behaves nervous, as [REDACTED] was, some type of contraband is in the vehicle that causes the nervousness. Officer Delgado stated that [REDACTED] volatile actions, nervousness, shaking of his hands, and furtive movements, created reasonable suspicion to search. Officer Delgado stated no contraband was recovered from the interior vehicle search. Officer Delgado stated he and Officer Brown walked back to their vehicle to get [REDACTED] an investigatory stop receipt. Officer Delgado stated [REDACTED] was very agitated, and that he was asked to sit in his car but refused. Officer Delgado stated [REDACTED] kept approaching the vehicle and the officers in a very agitated state, with Officer Brown telling [REDACTED] not to walk behind Officer Delgado. Officer Delgado stated Officer Brown again told [REDACTED] to sit in his vehicle, but he refused. Officer Delgado stated that after giving [REDACTED] his investigatory stop receipt, he and Officer Brown explained why they stopped him and asked him to exit his vehicle. Officer Delgado stated [REDACTED] was still very agitated, and did not want to listen to anything.<sup>9</sup>

## **b. Digital Evidence**

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<sup>6</sup> Ibid @15:19

<sup>7</sup> Ibid, @15:28

<sup>8</sup> Ibid, @15:35

<sup>9</sup> Attachment 14

The BWC video of Officer Brown on February 1, 2018, shows the interaction of Officer Brown with [REDACTED] during the traffic stop.<sup>10</sup>

The BWC video of Officer Delgado on February 1, 2018, shows the traffic stop of [REDACTED]. The video shows Officer Delgado searching [REDACTED] vehicle.<sup>11</sup>

### c. Documentary Evidence

The CPD Investigatory Stop Report (ISR), Card No. ISR000434440, states on February 1, 2018, complainant [REDACTED] (“[REDACTED]” driving a four-door 1993 Infiniti black sedan, was stopped by Officer Brown and Officer Delgado for the traffic violation obstruction of driver’s view. The ISR states as Officers Brown and Delgado turned on their emergency equipment, they observed furtive movements from [REDACTED] towards the passenger’s seat inside the vehicle. The report states that [REDACTED] was very nervous to the point he was shaking, and that he fumbled and dropped his driver’s license and proof of insurance when giving said items to Officers Brown and Delgado. The report states due to [REDACTED] furtive movements and nervous appearance, Officers Brown and Delgado asked him to exit the vehicle. The report further states [REDACTED] became agitated and refused to do so, but did exit the vehicle. Because of [REDACTED] behavior, and for officer safety, the report states Officers Brown and Delgado conducted a protective pat down for weapons with negative results. The report also states because of [REDACTED] furtive movements towards the passenger side area, Officers Brown and Delgado searched [REDACTED] vehicle for possible contraband with negative results. The ISR concludes [REDACTED] was given an Investigatory Stop Receipt and sent on his way without incident.<sup>12</sup>

## VI. ANALYSIS

### 1. Failure to inform purpose of the traffic stop

Chapter 9-40-035(5), Traffic Stop Code of Conduct, of the City of Chicago Municipal Code states that sworn members of the Chicago Police Department (CPD) shall “politely inform the driver of the reason and purpose of the traffic stop.” Although Officer Delgado made a generalized statement that he and Officer Brown explained their actions to Dean, the BWC videos of Officers Brown and Delgado, as well as Officer Brown’s admission in his COPA interview,<sup>13</sup> clearly establish that neither officer told complainant [REDACTED] what violation of the law constituted the reason and purpose for his traffic stop. Therefore, the allegation that Officers Brown and Delgado failed to inform [REDACTED] of the reason and purpose for the traffic stop is sustained.

### 2. Improper search of [REDACTED] vehicle

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<sup>10</sup> Attachment 18

<sup>11</sup> Attachment 19

<sup>12</sup> Attachment 10

<sup>13</sup> Attachment 18

As a preliminary matter, when a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation." *People v. Ramsey*, 362 Ill.App.3d 610 (4th Dist. 2005). A stop of a vehicle and the detention of its occupants constitutes a "seizure" under the fourth amendment. *People v. Jones*, 215 Ill.2d 261 (2005). To be constitutionally permissible, a vehicle stop must be reasonable under the circumstances, and the stop will be deemed reasonable "where the police have probable cause to believe that a traffic violation has occurred." *Ramsey*, 362 Ill. App. 3d at 615 (quoting *Whren v. United States*, 517 U.S. 806 (1996)).

It is a violation of the Illinois Vehicle Code to "drive a motor vehicle with any objects placed or suspended between the driver and the front windshield...which materially obstructs the driver's view." 625 ILCS 5/12-503(c). It is well established that an air freshener may support the reasonable articulable suspicion necessary to initiate a traffic stop pursuant to 625 ILCS 5/12-503(c). See, e.g., *People v. Jackson*, 335 Ill.App.3d (2d Dist. 2002) (holding that air freshener hanging from a rearview mirror can create a reasonable suspicion that 625 ILCS 5/12-503(c) is being violated); *United States v. Smith*, 80 F.3d 215 (7th Cir. 1996) (holding that where officers stopped motorist suspected of drug offenses based upon the presence of an air freshener hanging from his rear-view mirror, stop of automobile was valid and did not constitute an impermissible pretextual stop).

However, there is no bright-line test that determines when the size of a dangling object, such as a pendant, air freshener, or necklace, constitutes a material obstruction. See, e.g., *United States v. Garcia-Garcia* 633 F.3d 608 2011 U.S. App. Lexis 1463 (7<sup>th</sup> Cir. 2011) (holding that air fresheners may (or may not) constitute material obstructions depending on their size, their position relative to the driver's line of vision, and whether they are stationary or mobile); *People v. Mott*, 359 Ill.App.3d 313 (4th Dist. 2009) (holding that size alone does not determine whether an object materially obstructs a driver's view for 625 ILCS 5/12-503(c) of the Illinois Vehicle Code purposes; necklaces, pendants, parking passes, souvenirs, good luck charms, beads, crucifixes, St. Christopher medals, and sunglasses suspended from a rearview mirror may be material obstructions in the proper situation).

Both officers,<sup>14</sup> as memorialized later in the ISR that was completed,<sup>15</sup> say [REDACTED] was stopped for an obstruction of driver's view traffic violation. It is highly improbable that either officer could have determined in their vehicle, from a distance of 500 feet to 600 feet, through [REDACTED] tinted window, that the tree air freshener dangling from [REDACTED] rear view mirror constituted a material obstruction. However, pursuant to *Terry v. Ohio*, the officers could initiate a traffic stop to conduct an investigation into whether or not a crime had been committed (i.e. whether or not the air freshener did materially obstruct Mr. [REDACTED] view). 392 U.S. 1 (1968).

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<sup>14</sup> Attachments 18 and 19

<sup>15</sup> Attachment 9

However, assuming *arguendo* the officers could immediately determine that the air freshener was a material obstruction, the subsequent search of [REDACTED] vehicle for contraband was improper.<sup>16</sup> There are limited circumstances when a lawfully stopped vehicle may be searched without consent or a warrant. The first exception is the automobile exception in which probable cause exists for the seizing officers to believe that there is contraband or evidence in the stopped vehicle. *People v. Christmas*, 396 Ill.App.3d 951 (2d Dist. 2009). In such instances, an officer may search any area of the vehicle that may contain the evidence or contraband. It is evident that in this instance, the automobile exception does not apply.

The second instance a warrantless search is appropriate is when the occupants of a lawfully stopped vehicle give the officer reasonable suspicion that they are dangerous *and* the occupants might access the vehicle to gain control of the weapons. *Michigan v. Long*, 103 S.Ct. 3469 (1983). In this instance, a search of the passenger area of the vehicle is appropriate. Under *Long*, “protective search” of the passenger compartment should be limited to the area where a weapon may be located or hidden. The search is permissible *only* when the officers possess a reasonable belief, based on specific and articulable facts and reasonable inferences from those facts, that the individual was dangerous and could gain control of a weapon.

In this instance, Officers Brown and Delgado both stated that they believed [REDACTED] displayed nervous behavior, because his hands were shaking and he fumbled, and dropped his driver’s license and proof of insurance when handing them to Officer Brown. While officers can use their experience and the totality of circumstances to give them reasonable suspicion that a subject has, is committing or about to commit a crime, there are a myriad of reasons why an individual may become fearful and nervous from being stopped by the police. The fact that an individual is nervous is not of itself reasonable suspicion that criminal activity is afoot, nor is it evidence that a person may be armed and dangerous. Both officers stated that they saw [REDACTED] “make furtive gestures” from the driver’s seat to the passenger seat and thus suspected that [REDACTED] was concealing either contraband or a weapon. However, neither Officers Brown or Delgado asked [REDACTED] to exit his vehicle immediately upon stopping him to conduct further investigatory questioning or a protective pat-down for their safety.<sup>17</sup> In fact, it was only *after* ascertaining [REDACTED] possessed a valid driver’s license and proof of insurance, that Officers Brown and Delgado returned to [REDACTED] and performed a protective pat down and search of his vehicle. Thus, Officer Brown and Officer Delgado demonstrated a lack of exigency that counters the explanation they gave [REDACTED] as to why they had to remove him from his vehicle and conduct a protective pat-down and search the vehicle.<sup>18</sup> There are no facts to support that [REDACTED] posed a danger to the officers.

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<sup>16</sup> S04-13-9, *Investigatory Stop System*

<sup>17</sup> Pursuant to *Pennsylvania v. Mims*, 434 U.S. 106 (1977), during a lawful vehicle stop, all occupants may be required to exit the vehicle.

<sup>18</sup> Attachments 18 and 19



Based on the totality of the circumstances, Officer Brown and Officer Delgado lacked the reasonable articulable suspicion to do a sweep of [REDACTED] vehicle. Therefore, the allegation that the officers improperly searched [REDACTED] vehicle is sustained.

## VII. CONCLUSION

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

Officer	Allegation	Finding
Officer Brown	1. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Brown failed to inform [REDACTED] of the purpose of his traffic stop, in violation of Rules 1, 2 and 11.	Sustained
	2. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Brown improperly conducted a search of [REDACTED] vehicle, a violation of Rules 1, 2 and 11.	Sustained
Officer Delgado	1. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Delgado failed to inform [REDACTED] of the purpose of his traffic stop, in violation of Rules 1, 2 and 11.	Sustained
	2. It is alleged that on or around February 1, 2018, in front of 7700 S. Phillips Ave., Chicago, IL, at approximately 1:30 PM, that Officer Delgado improperly conducted a search of [REDACTED] vehicle, a violation of Rules 1, 2 and 11.	Sustained

Approved:

[REDACTED]

Mark Javier  
Acting Deputy Chief Administrator

6/12/18  
Date

**Appendix A**

## Assigned Investigative Staff

<b>Squad#:</b>	10
<b>Investigator:</b>	Mark A. Glenn
<b>Supervising Investigator:</b>	Erica Sangster
<b>Acting Deputy Chief Administrator:</b>	Mark Javier
<b>Attorney:</b>	Christina Chojnacki