

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 27, 2019
Time of Incident:	7:20 pm
Location of Incident:	10600 S. Dr. Martin Luther King Jr. Drive
Date of COPA Notification:	May 28, 2019
Time of COPA Notification:	11:14 am

On May 28, 2019, COPA received notice from CPD of a complaint by [REDACTED] was pulled over for a traffic violation on May 27, 2019, and alleged that the officers stopped him for no reason, searched his car, damaged his car, and were rude to him. Following its investigation, COPA reached a **Sustained** finding against Officer Thomas Fennell regarding disrespectful treatment of [REDACTED] and **Not Sustained** or **Unfounded** findings as to the other allegations.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Fennell / Star #15220 / Employee ID # [REDACTED] / Date of Appointment: October 31, 2012 / Police Officer / Unit of Assignment: 5th District
Involved Officer #2:	Luke Opoka / Star #18962 / Employee ID # [REDACTED] / Date of Appointment: December 14, 2015 / Police Officer / Unit of Assignment: 5th District
Involved Individual #1:	[REDACTED] / Age: 32 Years / Black Male

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendations
Officer Thomas Fennell	It is alleged that on or about May 27, 2019, at approximately 7:20 pm, at or near 10538 S. Dr. Martin Luther King Jr. Drive, Officer Thomas Fennell committed misconduct through the following acts or omissions: 1. Stopping the vehicle [REDACTED] was driving without justification.	Not Sustained

	<p>2. Searching the vehicle [REDACTED] was driving without justification.</p> <p>3. Damaging the interior of the vehicle [REDACTED] was driving without justification.</p> <p>4. Attempting to search the trunk of the vehicle [REDACTED] was driving without justification.</p> <p>5. Treating [REDACTED] disrespectfully.</p> <p>6. Making a false, misleading, or inaccurate Investigatory Stop Report No. [REDACTED]</p>	<p>Not Sustained</p> <p>Unfounded</p> <p>Not Sustained</p> <p>Sustained</p> <p>Not Sustained</p>
<p>Officer Luke Opoka</p>	<p>It is alleged that on or about May 27, 2019 at approximately 7:20 pm, at or near 10538 S. Dr. Martin Luther King Jr. Drive, Officer Luke Opoka committed misconduct through the following acts or omissions:</p> <p>1. Stopping the vehicle [REDACTED] was driving without justification.</p> <p>2. Searching the vehicle [REDACTED] was driving without justification.</p> <p>3. Damaging the interior of the vehicle [REDACTED] was driving without justification.</p> <p>4. Attempting to search the trunk of the vehicle [REDACTED] was driving without justification</p>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p>

III. APPLICABLE RULES AND LAWS

Rules

Rule 2: Prohibits any misconduct which impedes the Department’s effort to achieve its policy goals or brings discredit upon the Department.

Rule 3: Prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

Rule 8: Prohibits disrespect to or maltreatment of any person.

Rule 10: Prohibits inattention to duty.

Special Orders

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1. S04-13-09 Investigatory Stop System (Effective July 10, 2017 – Present)

United States Laws

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1. 4th Amendment to the United States Constitution
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IV. INVESTIGATION

a. Digital Evidence

The body-worn camera (BWC) video¹ of Officer Fennell shows that after Officer Fennell pulled over the vehicle Mr. █████ was driving, he approached the driver's side of the car, asked Mr. █████ how he was doing, and requested Mr. █████ driver's license and insurance. Mr. █████ asked why he was stopped, and Officer Fennell informed him he did not stop at a stop sign. Mr. █████ insisted he did stop at the stop sign, and Officer Fennell also noted that he was parked in front of a fire hydrant. Mr. █████ tried to explain and continued to argue when Officer Fennell again asked for Mr. █████ license and insurance. Mr. █████ began to record on his cell phone. Officer Fennell asked Mr. █████ two more times for the documents and informed Mr. █████ he was already recording the encounter. Mr. █████ continued to argue about whether he stopped at the stop sign, and Officer Fennell warned Mr. █████ he was going to ask him to step out of the vehicle.

Mr. █████ continued to argue about whether he stopped at the stop sign, whereupon Officer Opoka informed Mr. █████ that he also had a brake light out. In response, Mr. █████ stated that he was a "cool guy" who respected police, whereupon Officer Fennell asked Mr. █████ for the fifth time for his driver's license and insurance. Mr. █████ then began to provide his insurance and license, as Officer Fennell stated, "do me a favor man, hop out."²

█████ argued about why he had to get out, with Officer Fennell asking him several more times to do so. Officer Fennell opened the driver's side door and told █████ to unbuckle his seatbelt and put his phone down. █████ indicated he needed to stop the recording. Officer Fennell stated, "that's fine," and reminded █████ that he could stop his recording because Officer Fennell was recording.³ █████ finally exited the vehicle on his own and Fennell placed him in handcuffs. Officer Fennell asked █████ whether there were any weapons inside the vehicle while reaching inside his right pants pocket.⁴ █████ who could not be seen on the video at that moment, did not answer. Officer Fennell again asked █████ if he had any weapons inside the vehicle, to which █████ responded, "there ain't nothing inside the vehicle."⁵ Officer Fennell then led █████ to the front of the squad car with Officer Opoka accompanying them.

█████ became more agitated, complaining about being asked to step out of the car. Officer Opoka tried to calm him down stating "let's take a breath and let's just be cool,"⁶ while Officer Fennell reviewed █████ documents. █████ mentioned that he knew a lot of police officers and worked with them providing information and objected to the way he was being treated. Officer Fennell assured █████ he would be "all good" and to relax, while he went into the passenger seat of his vehicle to run █████ driver's license.⁷ █████ asked for Officer Fennell's badge number and Officer Fennell told him he would give him everything he needs.⁸ █████ continued to complain in

¹ Att. 3.

² Att. 3 at 1:32.

³ Att. 3 at 1:48

⁴ Att. 3 at 1:55.

⁵ Att. 3 at 1:58.

⁶ Att. 3 at 2:17.

⁷ Att. 3 at 2:54.

⁸ Att. 3 at 2:57.

an agitated way about how they were treating him and again asked for Officer Fennell to write down his badge number. Officer Fennell responded, "yeah, buddy, just cool it alright ...you can call all your cop friends and you can have 'em put a beef on me 'n shit, whatever you want to do."⁹ [REDACTED] stated "it ain't even that, man," and then started talking about his lawyer.¹⁰ [REDACTED] continued to complain and then yelled across the street to people that were recording that he had "license and insurance" and was "snatched" out of the car.¹¹

When Officer Fennell finished running [REDACTED] name and got out of the police vehicle, [REDACTED] asked Officer Fennell something that could not be clearly heard, to which Officer Fennell responded, "no, I haven't done that yet, man. So just shut up for a second, let me do my job."¹² [REDACTED] stated, you can't tell me to shut up, I have a right of speech," and continued to argue about how he gave Officer Fennell his license.¹³ Officer Fennell listened, stating, "okay," and "alright," and "I know."¹⁴

[REDACTED] said something about the individuals across the street that were recording the incident and Officer Fennell told them to, "come over here and record."¹⁵ [REDACTED] continued to make statements that could not be clearly heard, and Officer Fennell asked, "do you want to tell everybody that you're a snitch on camera, too?"¹⁶ [REDACTED] said, he didn't care.¹⁷ [REDACTED] asked Officer Fennell what district he was from and Officer Fennell told him he worked in the 5th District over on 111th. [REDACTED] asked for Officer Fennell's name, and Officer Fennell said he would write it all down for him.¹⁸

Officer Opoka searched the vehicle while Officer Fennell and [REDACTED] stood by conversing. [REDACTED] mentioned that since they searched his whole car, they might as well search the trunk, too. Officer Fennell thanked him for his consent, and [REDACTED] corrected him, saying they do not have consent to search the car.¹⁹ Officer Fennell again asked [REDACTED] to do him a favor and just be quiet to which [REDACTED] again responded, "no, I don't have to be quiet, I have the right of speech."²⁰ Officer Fennell asked him if he wanted to sit in the back of the police vehicle. [REDACTED] said, "yeah, we can do that, that's cool," and then Officer Fennell brought him there.

Officer Fennell walked to where Officer Opoka was searching the passenger side of the car. Officer Opoka said there were burnt cannabis cigars all over the inside of the car. Officer Fennell looked in the front seat and the burnt tips of the cannabis cigars can be seen.²¹ Officer Fennell used the key to try to open the trunk of the car, but was unsuccessful. Officer Fennell

⁹ Att. 3 at 3:24.

¹⁰ Att. 3 at 3:31.

¹¹ Att. 3, at 3:55.

¹² Att. 3 at 4:46.

¹³ Att. 3 at 4:40.

¹⁴ Att. 3 at 4:43.

¹⁵ Att. 3 at 4:59.

¹⁶ Att. 3 at 5:02.

¹⁷ Att. 3 at 5:05.

¹⁸ Att. 3 at 5:13.

¹⁹ Att. 3 at 5:40.

²⁰ Att. 3 at 5:50.

²¹ Att. 3 at, 6:50.

briefly searched the passenger area of the car, and said they are going to write him a ticket and do an ISR.

Officer Fennell sat in the driver's seat of the squad car and wrote the ticket and ISR, and made small talk with █████ in the backseat. █████ "apologized," to Officer Fennell," stating he was "real cool," and just "doing [his] job."²² Officer Fennell explained that █████ would have all his information on the ticket. Officer Fennell mentioned that █████ could have his police contacts give him a call if they had any questions, or that they could find him at 111th Street.²³ █████ continued to talk while Officer Fennell completed the paperwork. When he was done, Officer Fennell stated that he wanted to make sure █████ could read his name and star number "really clearly" on the ticket because he did not have any receipts right then, but █████ would have the name on the ticket.²⁴ Officer Fennell asked if he should expect a call from someone in particular, but █████ response could not be heard. Once █████ was out of the car and his handcuffs removed, Officer Fennell gave him a copy of the ticket and pointed out where to find Officer Fennell's name and star number on it.

The BWC of Officer Opoka shows him assisting Officer Fennell in the stop of █████²⁵ Officer Opoka was initially at the passenger side of the vehicle, but once █████ stepped out of the vehicle he moved to the driver's side. █████ and Officer Fennell argued about why █████ was asked to step out of the car. Officer Opoka informed █████ that aside from not having stopped at a stop sign, he had a brake light out. █████ told Officer Opoka that he was an informant for the police helping them get guns off the streets and he did not understand why the officers were harassing him. Officer Opoka searched the driver's side area of the car, including the center console, between the seats, inside a cigar container, the front passenger side, and the rear passenger compartment.²⁶ Officer Opoka also removed a dashboard vent piece, replaced it, and attempted to remove paneling under the steering wheel but was unable to pull the paneling out.²⁷

b. Interviews

The complainant, █████ was interviewed by COPA investigators on June 5, 2019.²⁸ In his statement, █████ said he was pulled over at 106th and King Drive. █████ said that usually when he gets pulled over, the officer says "how you doing, sir," but this officer was "aggressive."²⁹ According to █████ when the officer approached him, the officer (now known to be Officer Thomas Fennell) did not ask for a driver's license and insurance.³⁰ When █████ asked Officer Fennell why he was pulled over, Officer Fennell said █████ did not stop at the stop sign. █████ indicated he provided Officer Fennell with his driver's license and insurance, but Officer Fennell asked him to step out of the car. █████ was recording the interaction on his cell phone and Officer Fennell told him to stop. █████ stopped recording and Officer Fennell asked him to step out

²² Att. 3 at 10:30.

²³ Att. 3 at 11:18.

²⁴ Att. 3 at 13:06.

²⁵ Att. 2.

²⁶ Att. 2 at 00:22:00.

²⁷ Att. 2 at 00:26:15.

²⁸ Att. 14.

²⁹ Att. 20, pgs. 38-39.

³⁰ Att. 20, pgs. 24-25.

of the car. █████ asked Officer Fennell why he was being asked out of his car. When █████ did not immediately get out of the vehicle, Officer Fennell opened the car door, unbuckled █████ seat belt, grabbed his left arm, and pulled him out of the car.

█████ said he complied with the officers once they got him out of the car but continued to vocally object to being asked out of the vehicle. According to Pair, Officer Fennell finally told █████ that he did not make a complete stop at the stop sign. █████ said it was not possible for the officers to see whether he made a complete stop because they were driving in the opposite direction from him. Officer Fennell handcuffed █████ and began searching the interior of the car. There were people across the street recording the interaction on their cell phones. █████ told the officers he is an informant helping the police to get guns off the street. Officer Fennell asked █████ if he should let them know across the street that he is a snitch.

The officers tried to get into the trunk of █████ car. The other officer (now known to be Officer Opoka) told █████ to shut up as he was protesting their search of his car. The officers eventually put █████ in the back of the squad car.

█████ said that during their search, the officers damaged the inside of the vehicle to the point where it was difficult to drive, and the heating system was damaged. He said they did something under the driver's side near where the gas pedal was, and pulled some paneling down from under the driver's side which interfered with the gas pedal, leaving paneling and metal exposed. █████ said the car he was driving belonged to his friend. █████ said the officers were laughing at him when he said he was going to call a lawyer about the incident.

█████ received a ticket for not stopping at the stop sign. He said he could not drive the car away because the gas was revving wildly, and he had to wait there several hours for a tow truck.

Accused Officer, Thomas Fennell, was interviewed by COPA investigators on December 14, 2021.³¹ In his statement Officer Fennell said that on May 27, 2019, he was on duty with his partner, Officer Opoka. Officer Fennell said he did not have any specific memory of the incident, but after reviewing the Investigatory Stop Report (ISR) and his body-worn camera video (BWC), he said they stopped █████ for not stopping at a stop sign. Officer Fennell said he approached the vehicle and asked █████ to provide his license and insurance which █████ provided "eventually," after "some time."³² He also asked █████ to step out of the vehicle because, according to his ISR, he smelled cannabis and saw a bulge in █████ pants. Although Officer Fennell said he could not specifically remember this incident, his general practice would be to handcuff a driver as a precaution because █████ was agitated and they were on a busy street, so he was handcuffed for their safety. Also according to the ISR, the reason for the search was the smell of cannabis, and when █████ was asked about firearms, he did not provide a direct answer and appeared nervous and agitated. However, Officer Fennell said the primary reason for the search was the smell of cannabis. Officer Fennell could not recall whether he ever asked █████ anything about the cannabis he smelled, such as whether █████ had a medical marijuana card. Officer Fennell said even if he

³¹ Atts. 19 and 22.

³² Att. 22, pg. 10.

did have a medical marijuana card, it would still be illegal to smoke cannabis in a vehicle or on the public way.³³

Officer Fennell said they tried to search the trunk of the car because they can search anywhere in the vehicle where they believe there are drugs, but they were unable to gain access to the trunk. After re-reviewing his BWC during the interview, Officer Fennell noted that he did not search the driver's side of the vehicle at all. He said that he searched the passenger side and back seat behind the passenger seat. Officer Fennell said [REDACTED] was issued a citation for not stopping at a stop sign.

Officer Fennell explained that ISRs are completed at the end of the night, before he would have a chance to review his BWC. He said he was not trying to be deceptive in the ISR, and that it was simply a mistake that he wrote that he asked [REDACTED] about weapons and then asked [REDACTED] out of the vehicle, where he actually asked [REDACTED] out of the vehicle prior to asking [REDACTED] about weapons.

Officer Fennell said he thought he was very polite to [REDACTED] and did not think he disrespected him. Officer Fennell said people tell them all the time that they work with police to "throw [them] off their game, but that [REDACTED] did not use the usual protocol for someone who was actually a police informant.³⁴

Accused Officer, Luke Opoka, was interviewed by COPA investigators on December 14, 2021.³⁵ In his statement, Officer Opoka said he was working routine patrol on the date of the incident with his partner, Officer Fennell. Officer Opoka did not have an independent recollection of the stop involving [REDACTED] and did not remember the reason for the stop although he saw from his BWC that he advised [REDACTED] that his brake light was out. Officer Opoka said he believed the reason [REDACTED] was asked to step out of the vehicle was due to the smell of cannabis and visible burnt ends of cannabis cigars strewn about the interior of the car.³⁶

Once out of the vehicle, his partner placed Mr. [REDACTED] in handcuffs and spoke with Mr. [REDACTED] on the driver's side of the car. Officer Opoka said he searched the vehicle for narcotics based on the odor of cannabis coming from the car and the suspect burnt marijuana cigars. Officer Opoka searched the driver's side area of the vehicle under the steering wheel where there were two small dashboard components that were loose which he removed and then replaced. Officer Opoka said he did not find any contraband in his search other than the initial burnt marijuana cigar ends he had previously observed. He said he tried to search the trunk of the vehicle but was unable to gain access.

c. Documentary Evidence

The Investigatory Stop Report documents that Officers Fennell and Opoka stopped [REDACTED] vehicle for not stopping at a stop sign.³⁷ The report further states there was a smell

³³ Att. 22, pg. 14.

³⁴ Att. 22, pg. 25.

³⁵ Atts. 18 and 21.

³⁶ Att. 21, pg. 8.

³⁷ Att. 6.

of burnt cannabis emanating from the vehicle. The report says [REDACTED] was questioned about there being any weapons in the car and he became visibly nervous when asked, began sweating, and did not answer the question. The report states that [REDACTED] was asked to step outside of the vehicle and a protective pat-down was performed due to his failure to answer their questions, his behavior, and a large bulge in his waistband. The report says a cursory search of the vehicle was performed which did not yield any contraband, and [REDACTED] was issued a moving violation and released.

V. 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.

VII. ANALYSIS

COPA finds that **Allegation 1** against Officer Fennell and **Allegation 1** against Officer Opoka – that they stopped [REDACTED] vehicle without justification – is **Not Sustained**.

A violation of traffic laws provides probable cause for a vehicle stop. People v. Gonzalez, 204 Ill. 2d 220, 227-28 (2003). The BWC showed that [REDACTED] was informed by Officer Fennell that the reason for the stop was that he failed to stop at a stop sign, and the ISR indicates the same

reason for the stop.³⁸ Additionally, Officer Opoka told ██████ that he had a brake light out, which was an additional traffic violation for which ██████ could be stopped. ██████ claimed the officers were not able to see whether he stopped at the stop sign from their vantage point; however, there is no evidence as to what their vantage point was other than that they were in proximity of ██████ vehicle and within visual range. Thus, the preponderance of the evidence indicates that the officers had a valid reason to stop ██████ for a traffic violation. Therefore, COPA recommends a finding of **Not Sustained** for **Allegation 1** against Officer Fennell and **Allegation 1** against Officer Opoka.

COPA recommends a finding of **Not Sustained** for **Allegation 2** against Officer Fennell and **Allegation 2** against Officer Opoka, that they searched the vehicle ██████ was driving without justification.

Under the “automobile exception” to the search warrant requirement, “law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize.” *People v. James*, 163 Ill. 2d 302, 312 (Ill. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). “When officers have such probable cause, the search may extend to ‘all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks.’” *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)). “Probable cause deals with probabilities, not certainties,” it is a “flexible, commonsense standard that ‘does not demand any showing that such belief be correct or more likely true than false,’” and it “does not require an officer to rule out any innocent explanations for suspicious facts.”³⁹

In Illinois, the smell of cannabis by a trained officer supports probable cause to search a vehicle.⁴⁰ This remains so even after Illinois passed a statute allowing those with certain medical conditions to purchase and possess cannabis, as well as after Illinois began to de-criminalize cannabis, especially when other factors are present.⁴¹ This is because although cannabis may no longer be considered “contraband” in all circumstances, even medical users are required to keep cannabis in a sealed, tamper-evident medical cannabis container.⁴²

Here, not only did the officers report the smell of burnt cannabis, burnt cannabis cigar ends could be seen strewn about the car. As such, the officers here had probable cause to search ██████ vehicle.

While it is true that the smell of burnt cannabis was first mentioned in the ISR, and was not mentioned at the time of the stop, the cannabis cigar ends can be seen in the BWC footage on the

³⁸ 625 ILCS 5/11-1204(b).

³⁹ *People v. Hill*, 2020 IL 124595, ps. 23, 28-34.

⁴⁰ *People v. Stout*, 106 Ill. 2d 77, 88 (1985).

⁴¹ 410 ILCS 130/1 *et seq.* (West 2014); 720 ILCS 550/4 (West 2014); *People v. Hill*, 2020 IL 124595.

⁴² *People v. Hill*, 2020 IL 124595, ps. 28-34.

floor of the front passenger seat,⁴³ which Officer Opoka had a view of through the open window at the beginning of the stop, and in his interview he cited both reasons for the search.

Therefore, COPA finds by a preponderance of the evidence that the officers had probable cause for the search. Therefore, COPA recommends a finding of **Not Sustained** for Allegation 2 against Officer Fennell and Allegation 2 against Officer Opoka.

COPA recommends a finding of **Unfounded** for **Allegation 3** against Officer Fennell and a finding of **Not Sustained** for **Allegation 3** against Officer Opoka in that they did not damage the interior of the vehicle [REDACTED] was driving.

According to the BWC video, Officer Fennell only briefly searched the front passenger area and in the backseat behind the passenger seat; he never searched any area around the driver's seat of the vehicle. Officer Opoka did search the driver's seat area and removed a small dashboard piece but replaced it.⁴⁴ Officer Opoka also searched under the driver's steering column area, but the search could not be seen on his BWC. In his statement, Officer Opoka said he attempted to remove some components under the steering column but was unable to. The BWC video supports that nothing substantial was disturbed when the vehicle was searched, specifically nothing under the steering column. Officer Opoka did a cursory search under the steering column and did not remove anything. Further, [REDACTED] did not provide any documentation to support his statements that the car was towed from that location or that any mechanical work had to be done on the car.

For these reasons, COPA finds by clear and convincing evidence that Officer Fennell did not damage the interior of the vehicle and, thus, recommends a finding of **Unfounded** for Allegation 3 against Officer Fennell. COPA further finds by a preponderance of evidence that Officer Opoka did not damage the interior of the vehicle and recommends a finding of **Not Sustained for** Allegation 3 against Officer Opoka.

COPA recommends a finding of **Not Sustained** for **Allegation 4** against Officer Fennell and **Allegation 4** against Officer Opoka, that they attempted to search the trunk of the vehicle without justification.

As previously discussed regarding Allegation 2 against each officer, probable cause existed for them to search the vehicle for contraband, and that included any location where contraband could be found, such as the trunk. While they did not ultimately gain access to the trunk, it would have been permissible for them to do so under the fourth amendment. For these reasons, COPA recommends a finding of **Not Sustained** for **Allegation 4** against Officer Fennell and **Allegation 4** against Officer Opoka.

COPA recommends a finding of **Sustained** for **Allegation 5** against Officer Fennell in that he treated [REDACTED] disrespectfully.

According to BWC video, Officer Fennell was polite and respectful when he first approached [REDACTED] In response, [REDACTED] argued and complained causing Officer Fennel to ask [REDACTED] no

⁴³ Att. 3 at 6:30.

⁴⁴ Atts. 2 and 3 at 00:27:21.

less than five times for his driver’s license and proof of insurance, and multiple times to step out of the car. When Officer Fennell was trying to run [REDACTED] information, [REDACTED] continued to engage in an agitated state complaining and yelling across the street. At one point, Officer Fennell told [REDACTED] to “shut up for a second,” so he could “do his job.” Based on the foregoing, COPA recommends a finding of **Sustained** for **Allegation 5** against Officer Fennell.

COPA recommends a finding of **Not Sustained** for **Allegation 6** against Officer Fennell in that he made a false, inaccurate or misleading Investigatory Stop Report.

In the ISR, Officer Fennell wrote that they stopped the car [REDACTED] was driving for failure to stop at a stop sign; during the field interview they could detect the smell of burnt cannabis; when questioned about there being any weapons in the car, [REDACTED] became visibly nervous and began to sweat and failed to answer the question; and, [REDACTED] was asked to step out of the vehicle.⁴⁵ In fact, the BWC showed that [REDACTED] was asked to step out of the vehicle before he was asked about a weapon in the car.

However, Officer Fennell stated in his interview to COPA that he did not have a chance to watch his BWC before he wrote the ISR, and so any error in the sequence of events was a simple mistake and not an intentional deception. Furthermore, whether or not weapons were asked about before or after [REDACTED] was asked to step out of the car is immaterial. The officers had a right to ask [REDACTED] out of the car for a traffic stop,⁴⁶ and especially since they smelled the burnt cannabis which meant they were going to search the car. Based on the foregoing, COPA recommends a finding of **Not Sustained** for Allegation 6 against Officer Fennell.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

Officer Fennell has received numerous honorable mentions and several awards including meritorious performance and a crime reduction award. There is one sustained CR from 2019 for improper citation processing/reporting/procedures for which Officer Fennell received a reprimand.

COPA recommends a Reprimand.

VI. CONCLUSION

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

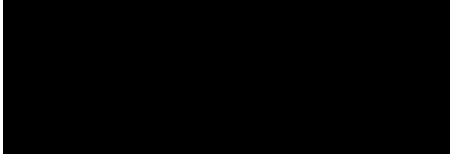
Officer	Allegation	Finding / Recommendations
Officer Thomas Fennell	It is alleged that on or about May 27, 2019, at approximately 7:20 pm, at or near 10538 S. Dr. Martin Luther King Jr. Drive, Officer	

⁴⁵ Att. 6

⁴⁶ See, Pennsylvania v. Mimms, 434 U.S. 106 (1977)

	<p>Thomas Fennell committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Stopping the vehicle [REDACTED] was driving without justification. 2. Searching the vehicle [REDACTED] was driving without justification. 3. Damaging the interior of the vehicle [REDACTED] was driving without justification. 4. Attempting to search the trunk of the vehicle [REDACTED] was driving without justification. 5. Treating [REDACTED] disrespectfully. 6. Making a false, misleading, or inaccurate Investigatory Stop Report No. [REDACTED] 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Unfounded</p> <p>Not Sustained</p> <p>Sustained</p> <p>Not Sustained</p>
<p>Officer Luke Opoka</p>	<p>It is alleged that on or about May 27, 2019 at approximately 7:20 pm, at or near 10538 S. Dr. Martin Luther King Jr. Drive, Officer Luke Opoka committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Stopping the vehicle [REDACTED] was driving without justification. 2. Searching the vehicle [REDACTED] was driving without justification. 3. Damaging the interior of the vehicle [REDACTED] was driving without justification. 4. Attempting to search the trunk of the vehicle [REDACTED] was driving without justification 	<p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p>

Approved:



3/31/2023

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

