

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident 1:	April 23, 2018
Time of Incident 1:	7:47 PM
Location of Incident 1:	41 W. 71 st St.
Date of Incident 2:	May 7, 2018
Time of Incident 2:	11:18 AM
Location of Incident 2:	Flournoy & Kedzie
Date of COPA Notification:	April 24, 2018
Time of COPA Notification:	5:04 PM

The complainant, [REDACTED] was stopped by Chicago Police Department (CPD) officers on March 20, 2018, resulting in his arrest. On March 22, 2018, [REDACTED] filed a COPA complaint under Log 1088836. [REDACTED] alleged that since filing this COPA complaint, he has been subject to police harassment, including unjustified traffic citations. Specifically, [REDACTED] alleged he was improperly stopped on April 23, 2018, and May 7, 2018. After reviewing [REDACTED] complaint and watching Department video, COPA determined the allegations relating to [REDACTED] May 7, 2018 traffic stop are Unfounded. After reviewing Department video, COPA brought additional allegations against Officers Nisivaco and Howard related to their April 23, 2018 traffic stop of [REDACTED]. These allegations are further discussed in the Analysis portion of this report.

II. INVOLVED PARTIES

Involved Officer #1:	Steven Nisivaco, Star #18344, Employee ID: [REDACTED] Date of Appointment: October 26, 2015, Police Officer, 7 th District, Date of Birth: [REDACTED], 1986, Male, White
Involved Officer #2:	Leon Howard, Star #17741, Employee ID: [REDACTED] Date of Appointment: October 26, 2015, Police Officer, 7 th District, Date of Birth: [REDACTED], 1981, Male, Black
Involved Officer #3:	Jesse Rodriguez, Star #8364, Employee ID: [REDACTED] Date of Appointment: December 14, 1998, Police Officer as Field Training Officer, 11 th District, Date of Birth: [REDACTED], 1972, Male, Hispanic

Involved Officer #4:	Victor Alvarado, Star #7118, Employee ID: [REDACTED] Date of Appointment: September 18, 2017, Police Officer, 18 th District, Date of Birth: [REDACTED], 1986, Male, Hispanic
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED], 1969, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Nisivaco	1. Provided a false report that [REDACTED] failed to use his turn signal on April 23, 2018, in violation of Rule 14.	Unfounded
	2. Searched [REDACTED] vehicle illegally on April 23, 2018, in violation of Rule 6.	Unfounded
	3. Detained [REDACTED] passengers in handcuffs without justification on April 23, 2018, in violation of Rule 6.	Sustained
	4. Detained [REDACTED] in handcuffs without justification on April 23, 2018, in violation of Rule 6.	Exonerated
	5. Detained [REDACTED] for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.	Exonerated
	6. Detained [REDACTED] passengers for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.	Exonerated
	7. Performed a protective pat down on [REDACTED] without cause on April 23, 2018, in violation of Rule 6.	Unfounded
	8. Performed a protective pat down on [REDACTED] passengers without cause on April 23, 2018, in violation of Rule 6.	Exonerated
	9. Failed to complete Investigatory Stop Reports for all three civilians on April 23, 2018, in violation of Rule 6.	Sustained

	<p>10. Failed to give [REDACTED] and his passengers Investigatory Stop Receipts on April 23, 2018, in violation of Rule 6.</p> <p>11. Allowed [REDACTED] to drive on a suspended license on April 23, 2018, in violation of Rule 2.</p>	<p>Sustained</p> <p>Sustained</p>
<p>Officer Howard</p>	<p>1. Provided a false report that [REDACTED] failed to use his turn signal on April 23, 2018, in violation of Rule 14.</p> <p>2. Searched [REDACTED] vehicle illegally on April 23, 2018, in violation of Rule 6.</p> <p>3. Detained [REDACTED] passengers in handcuffs without justification on April 23, 2018, in violation of Rule 6.</p> <p>4. Detained [REDACTED] in handcuffs without justification on April 23, 2018, in violation of Rule 6.</p> <p>5. Detained [REDACTED] for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.</p> <p>6. Detained [REDACTED] passengers for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.</p> <p>7. Performed a protective pat down on [REDACTED] without cause on April 23, 2018, in violation of Rule 6.</p> <p>8. Performed a protective pat down on [REDACTED] passengers without cause on April 23, 2018, in violation of Rule 6.</p> <p>9. Failed to complete Investigatory Stop Reports for all three civilians on April 23, 2018, in violation of Rule 6.</p> <p>10. Failed to give [REDACTED] and his passengers Investigatory Stop Receipts on April 23, 2018, in violation of Rule 6.</p>	<p>Unfounded</p> <p>Unfounded</p> <p>Sustained</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Sustained</p> <p>Unfounded</p> <p>Sustained</p> <p>Sustained</p>

	11. Allowed ██████ to drive on a suspended license on April 23, 2018, in violation of Rule 2.	Sustained
Officer Rodriguez ¹	1. Performed a traffic stop on May 7, 2018 on ██████ without justification, in violation of Rule 6.	Unfounded
	2. Provided a false report that ██████ failed to provide valid insurance on May 7, 2018, in violation of Rule 14.	Unfounded
Officer Alvarado ²	1. Performed a traffic stop on May 7, 2018 on ██████ without justification, in violation of Rule 6.	Unfounded
	2. Provided a false report that ██████ failed to provide valid insurance on May 7, 2018, in violation of Rule 14.	Unfounded

IV. APPLICABLE RULES AND LAWS

Rules

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1. **Rule 2:** Prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
 2. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
 3. **Rule 14:** Prohibits making a false report, written or oral.

Special Orders

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1. **Special Order 204-13-09:** Investigatory Stop System.

Federal Laws

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1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

¹ Officer Rodriguez was not served with allegations or brought in for an interview, as COPA was able to determine all of ██████ allegations against Officer Rodriguez were Unfounded after reviewing Department video. COPA’s findings are further discussed in the Analysis portion of this report.

² Officer Alvarado was not served with allegations or brought in for an interview, as COPA was able to determine all of ██████ allegations against Officer Alvarado were Unfounded after reviewing Department video. COPA’s findings are further discussed in the Analysis portion of this report.

V. INVESTIGATION³

a. Interviews

COPA interviewed the complainant, ██████████ on May 7, 2018.⁴ ██████████ previously submitted a COPA complaint regarding an incident that occurred on March 20, 2018.⁵ The facts of that incident are documented under Log #1088184.

██████████ was processed then released on the evening of March 20, 2018. He saw his car outside of the station, and he left in his car. ██████████ was given some of his keys when he was leaving. Officers also took multiple keys from his key chain that were not returned. The morning after his arrest, ██████████ vehicle had three citations for expired license plates. ██████████ came to Chicago to register his vehicle, but he could not get license plates as he and his vehicle were at the police station. ██████████ elaborated he drove to Illinois one day before the temporary plate expired, and that was the day he was arrested. ██████████ stated that officers also went inside his garage and ticketed a disabled car.

According to ██████████ since his arrest on March 20, 2018, officers have been sitting outside of his home and harassing his family. ██████████ related he has been stopped by CPD three times since March 20, 2018. On approximately March 21, 2018 (the night ██████████ got his truck back), ██████████ was stopped by the police outside of his mother's home and taken out of his car. Officers searched ██████████ vehicle again during this incident, but he was not ticketed or arrested. ██████████ stated that at the time of his interview, he received five traffic tickets. According to ██████████ all the tickets were illegal and issued by officers to cover their illegal seizures of his vehicle.

On April 23, 2018, ██████████ got a ticket for not using a turn signal while exiting a gas station parking lot. ██████████ stated he had returned to Chicago to see his mother. ██████████ claimed he was, in fact, using his turn signal. ██████████ stated officers also had their guns drawn.⁶ The officers pulled him out of his car and searched it. ██████████ got a ticket for a suspended license but was allowed to drive off. Per ██████████ he has a valid license but there was an issue where "somebody forget to vacate the [inaudible] [...]."⁷ ██████████ elaborated his license was previously suspended for reckless driving. ██████████ went to the Secretary of State's Office on April 23 - 24, 2018 and was told his license would be fixed in 48 hours.

██████████ stated he received more tickets for not wearing a seatbelt and not having insurance while outside of Homan Police Station. These citations were issued by Officer Rodriguez. ██████████ claimed he and his passengers were wearing seatbelts and showed the officer his insurance.

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁴ Att. 3

⁵ A full analysis of ██████████ claims related to his arrest and police interactions on March 20, 2018 can be found under Log 1088836.

⁶ Allegations were not brought related to this claim as Department video shows this did not occur.

⁷ Approximately 8:50 minute mark

Attempts to obtain further details related to an incident that occurred on, or around, March 21, 2018 were unsuccessful. During his initial interview for Log 1089206, ██████████ alleged that on this approximate date, he was stopped, removed from his car, and searched - but not ticketed or arrested. Following a phone call with ██████████ on July 30, 2018, ██████████ was unable to provide any specific details regarding an incident in which he was stopped, but not ticketed or arrested.⁸ Instead, ██████████ articulated a concern with widespread harassment from officers in the 7th District and CPD in general. Additionally, ██████████ related that the day he was released from jail (March 21, 2018), he was stopped by one African American and one white police officer for failing to signal while exiting a gas station. ██████████ may be confused regarding the date on which this incident occurred, as he is seemingly talking about the incident with Officers Nisivaco and Howard that occurred on April 23, 2018.⁹

Officer Steven Nisivaco was interviewed by COPA on July 10, 2018.¹⁰ Officer Nisivaco stated that on April 23, 2018, he was on-duty and partnered with Officer Leon Howard. Officer Nisivaco and Officer Howard performed a traffic stop after ██████████ failed to use his turn signal. Officer Nisivaco related that the gas station where ██████████ made this turn is “known to be a high-crime, narcotic, gang area [...]”¹¹ Officer Nisivaco personally saw ██████████ fail to use his turn signal. Officer Nisivaco did not recall having his gun drawn when he approached ██████████ car. The officers asked ██████████ to exit his vehicle because his driver’s license was suspended. ██████████ passengers were also asked to exit because it was difficult to see inside the car, it was nighttime, and the men had on bulky clothing. The officers searched ██████████ vehicle after obtaining his consent. Officer Nisivaco believed ██████████ told Officer Howard they could search his car.

██████████ was handcuffed because he was initially going to be arrested for driving on a suspended license. ██████████ passengers were handcuffed because ██████████ vehicle was going to be towed and the officers were detaining the passengers. Officer Nisivaco related that the passengers were detained because it was nighttime, they had on bulky clothing, and the officers wanted to perform a protective pat down. Officer Nisivaco believed ██████████ and his passengers consented to a protective pat down. The passengers were not free to leave after the protective pat down because the officers’ investigation was not complete. The investigation was completed once the officers issued ██████████ citations. Officer Nisivaco confirmed neither passenger received a citation.

██████████ had to wait an extended amount of time because the officers were waiting on a sergeant to bring them a civil law citation book. Officer Nisivaco related that officers in the 7th District do not carry these books in their cars, but he does not know why. Officer Nisivaco did not know why Investigatory Stop Reports (ISRs) were only completed for two of the three civilians and related it may have been a mistake. Officer Nisivaco also stated the two ISRs that were written

⁸ Att. 48

⁹ Without further information from ██████████ and due to the lack of Department paperwork to support ██████████ claims, COPA could not identify the accused or present allegations related to ██████████ being stopped and searched on or around March 21, 2018.

¹⁰ Att. 34

¹¹ Approximately 13:10 minute mark.

did not have receipts by mistake. Officer Nisivaco believed his partner offered the civilians the ISR receipts and that the receipts were refused.

Officer Nisivaco knew who ██████████ was prior to this incident. During the traffic stop on April 23, 2018, ██████████ referenced a previous police interaction. Officer Nisivaco identified this previous interaction as Officer Skalski's incident from March 20, 2018. Officer Nisivaco knew of the March 20, 2018 incident from discussion at the police station. Officer Nisivaco reported ██████████ was allowed to drive away on a suspended license because of officer discretion. The officers wanted to improve ██████████ opinion of the police. Officer Nisivaco stated ██████████ has given citations instead of being arrested for the same reason.

COPA interviewed **Officer Leon Howard** on July 10, 2018.¹² Officer Howard performed a traffic stop on ██████████ on April 23, 2018 for failing to use his right turn signal when turning out of a gas station. Officer Howard personally saw ██████████ do so. Officer Howard denied having his gun drawn when he approached ██████████ vehicle. The officers asked ██████████ to exit his car because he was driving on a suspended license. His passengers were also asked to exit because the officers were going to arrest ██████████ and take possession of his car. ██████████ was placed in handcuffs because the officers were going to arrest him. ██████████ passengers were handcuffed because they were being detained and the officers did not want them to "roam freely" while the officers completed their investigation.¹³ The officers searched ██████████ vehicle after Officer Howard asked and ██████████ replied, "go ahead."¹⁴ ██████████ told the officers he had marijuana before they searched his car.

The officers performed a pat down on ██████████ because he was in custody. The passengers were also given pat downs because they had on bulky clothing. The passengers were not free to leave because, at first, ██████████ was going to be arrested. The men were detained after everyone was asked to leave the vehicle. The passengers were never going to be arrested. The two passengers were detained until the investigation concluded. The investigation was over once the officers decided not to arrest ██████████ and instead issued tickets. Neither passenger was issued a citation.

██████████ waited for an extended period of time because the officers needed a civil law citation book for the marijuana citation, which only sergeants have. The officers had to wait for a sergeant and it was a "busy night."¹⁵ Officer Howard was uncertain why only two of the three civilians were given ISRs, and it may have been a computer glitch. Officer Howard stated Officer Nisivaco completed the ISRs. Officer Howard thought Officer Nisivaco offered receipts to the two men ISRs were written for. Per Officer Howard, ██████████ was allowed to drive off after he was issued a citation for driving on a suspended license because of police discretion. ██████████ told Officer Howard he had negative experience with the police and he lived nearby. Officer Howard wanted to provide ██████████ with "good community interaction."¹⁶

¹² Att. 39

¹³ Approximately 6:40 minute mark.

¹⁴ Approximately 6:07 minute mark.

¹⁵ Approximately 10:08 minute mark.

¹⁶ Approximately 12:00 minute mark.

b. Digital Evidence

The following **Department video** was obtained from [REDACTED] police encounter on **April 23, 2018**.¹⁷

Officer Nisivaco Body Worn Camera

Officer Nisivaco's BWC began at about 7:46 PM. Officer Nisivaco approached [REDACTED] SUV on the passenger's side. Officer [REDACTED] had one passenger in the front seat and one in the rear. At about 7:47 PM, Officer Nisivaco took the rear passenger's license because he was not wearing a seatbelt. [REDACTED] insisted he did nothing wrong and the officers were harassing him. At about 7:48 PM, Officer Nisivaco told [REDACTED] he failed to use his turn signal while exiting a gas station. At roughly 7:49 PM, both officers returned to the police car. Officer Nisivaco handed Officer Howard the rear passenger's license, returned to [REDACTED] car, and stood on the passenger's side.

At about 7:50 PM, Officer Howard had [REDACTED] exit the vehicle. Officer Nisivaco then opened the front passenger door and told the front passenger to exit. Officer Nisivaco asked the front passenger if he had anything illegal and asked to perform a pat-down. The passenger's response was not audible, but Officer Nisivaco performed the pat down and told the man to go stand near the rear of [REDACTED] car. At about 7:51 PM, Officer Nisivaco had the rear passenger exit the car. Officer Nisivaco asked the rear passenger to perform a pat down. His response also was not audible, but Officer Nisivaco proceeded to perform a pat down. Officer Nisivaco apparently found something and handcuffed the rear passenger. Officer Nisivaco determined the object was a brush shortly thereafter. At approximately 7:53 PM, Officer Nisivaco asked [REDACTED] if anything illegal was in his car and asked to search the vehicle. [REDACTED] response sounded like, "[inaudible] there's nothing illegal in the car." At about 7:55 PM, all three men were handcuffed together in a daisy chain with two sets of handcuffs. At approximately 7:56 PM, [REDACTED] told the officers he had only been in Chicago for a week and was from Colorado. At roughly 7:57 PM, Officer Nisivaco asked [REDACTED] if someone with a valid license could come get the car. At about 8:00 PM, [REDACTED] told Officer Nisivaco he had just been stopped by the police outside of his home. Officer Nisivaco proceeded to open [REDACTED] trunk at about 8:03 PM.

At 8:04 PM, Officer Nisivaco told [REDACTED] he could arrest him and impound his car, but instead was giving him traffic citations and a ticket for marijuana. At 8:06 PM, [REDACTED] explained his March 20, 2018 arrest to Officer Nisivaco. Shortly after, Officer Nisivaco told Officer Howard to come talk to him when the sergeant arrived because [REDACTED] was "the guy Skalski had a run-in with," and he would tell Officer Howard about it later. At about 8:07 PM, Officer Nisivaco explained to [REDACTED] what tickets he was getting, and [REDACTED] acknowledged it.

At approximately 8:20 PM, [REDACTED] told Officer Nisivaco CPD killed his nephew. At about 8:24 PM, Officer Nisivaco took off the three subjects' handcuffs and had the two passengers sit in [REDACTED] vehicle while [REDACTED] spoke with Officer Howard. At roughly 8:27 PM,

¹⁷ Att. 28

██████████ was given his tickets. Officer Nisivaco told him to go sit in his car and the officers would bring him back his ID. The officers were apparently waiting for a sergeant to bring a civil law citation book for ██████████ marijuana ticket. The officers sat in their police car until a sergeant arrived on scene. From inside the car, Officer Nisivaco told the sergeant that he would tell him about the situation later and to ask “Urquizo” about it. Officer Howard exited to give ██████████ the ticket, while Officer Nisivaco stayed in the squad car. Officer Nisivaco terminated his BWC at about 9:05 PM.

*Officer Howard Body Worn Camera*¹⁸

Officer Howard’s BWC initiated at approximately 7:45 PM. The officers were in a squad car in a gas station parking lot. ██████████ car was seen turning right out of the parking lot and the turn signal did not appear to be in use. ██████████ was pulled over at about 7:46 PM. At about 7:49 PM, ██████████ told Officer Howard he previously had his car taken by the police. Officer Howard approached the driver’s side and asked ██████████ for his license and insurance. ██████████ asked what he was being harassed for, and Officer Howard said he did not use a turn signal. ██████████ argued that he did use his turn signal. After going to his squad car with ██████████ license, Officer Howard approached ██████████ told him his license was suspended, and instructed ██████████ to exit the car. Officer Howard handcuffed ██████████ right arm and escorted him to the rear of ██████████ SUV. At about 7:51 PM, Officer Howard asked ██████████ if he had anything illegal. ██████████ related he had “a little bud.” Officer Howard then performed a pat down on ██████████ and extracted a pill bottle, presumably containing marijuana. ██████████ told the officer the marijuana was prescription. Officer Howard then performed a pat down on the front passenger, who was handcuffed to ██████████ Officer Howard asked ██████████ if the officer could search ██████████ car. ██████████ response was not audible, but Officer Howard entered the driver’s side at roughly 7:58 PM and began searching. At about 8:01 PM, Officer Howard asked for a sergeant via radio to bring a civil law citation book to the scene. Officer Howard continued searching ██████████ vehicle until about 8:03 PM. The men were detained and handcuffed to each other.

At approximately 8:24 PM, Officer Howard had ██████████ sign his traffic tickets for failing to use a turn signal and driving on a suspended license. While signing, ██████████ stated a finger on his right hand was injured during his incident with Officer Skalski. At about 8:27 PM, the officers returned to their squad car and the civilians sat in ██████████ vehicle while they continued waiting. At 8:31 PM, while sitting with his partner in the squad car, Officer Howard noted that the marijuana bottle was not prescription because it stated on the label it was manufactured without regulatory oversight. At roughly 8:45 PM, Officer Howard approached ██████████ (who was in the driver’s seat of his car) and related the officers were still waiting on their sergeant to arrive, or they could take ██████████ to the police station to complete the cannabis citation. Officer Howard also told ██████████ his license was suspended a month prior – possibly for unpaid parking tickets. ██████████ stated he does not live in Chicago and got his vehicle about a month prior.

¹⁸ Officer Howard used profane language multiple times during his interaction with ██████████ and ██████████ passengers. COPA ultimately did not present Officer Howard with these allegations, as he used profanity conversationally and not against a civilian or in an aggressive manner. However, COPA admonishes Officer Howard to use language more becoming of a Chicago Police Officer.

At about 8:53 PM, Sergeant Rumsa brought Officer Howard a civil law citation book. Officer Howard told Sergeant Rumsa that [REDACTED] was “the guy Skalski had an interaction with” and showed Sergeant Rumsa that marijuana bottle. The two officers sat in the police car and wrote [REDACTED] marijuana citation. At approximately 9:04 PM, Officer Howard brought [REDACTED] the citation. Shortly after, Officer Howard brought [REDACTED] his driver’s license. [REDACTED] who was in the driver’s seat, was allowed to drive off. Officer Howard returned to his car and terminated his BWC at about 9:05 PM.

Beat 0741 In-Car Camera¹⁹

The video from Beat 0741, which was staffed by Officers Howard and Nisivaco on April 23, 2018, began at about 7:45 PM. [REDACTED] red SUV was seen parked in the center of the gas station parking lot, not at a pump or parking spot. At approximately 7:45 PM, [REDACTED] drove towards the officers before he turned right to exit the parking lot. The officers then went in the same direction as [REDACTED] before pulling him over on the street at about 7:46 PM. It was not visible from ICC if [REDACTED] used his turn signal while exiting the gas station parking lot. [REDACTED] SUV drove from the scene at approximately 9:05 PM.

The following **Department video** was obtained from [REDACTED] police encounter on **May 7, 2018.**²⁰

Officer Rodriguez Body Worn Camera

Body Worn Camera (BWC) from Officer Rodriguez showed the officers approaching [REDACTED] vehicle at approximately 11:19 AM. Officer Rodriguez asked for [REDACTED] driver’s license and insurance. [REDACTED] responding by asking what he was pulled over for. Officer Rodriguez then told [REDACTED] that he and his passenger were not wearing seatbelts. [REDACTED] told the officers he just took his seatbelt off because he was pulling over. Officer Rodriguez told [REDACTED] that the passenger in the backseat was also not wearing her seatbelt. Officer Rodriguez related he saw [REDACTED] driving before the traffic stop, and [REDACTED] was not wearing his seatbelt then. [REDACTED] accused the officers of harassing him. When Officer Rodriguez asked for an insurance card, [REDACTED] handed him a piece of paper. Officer Rodriguez told [REDACTED] that it did not include the vehicle information and was therefore not valid. The officer asked [REDACTED] for a city sticker, and [REDACTED] responded that he “just got all this shit.”²¹ [REDACTED] was insulting and yelling at Officer Rodriguez. Officer Rodriguez returned to the police vehicle to write the tickets. Officer Rodriguez then asked Officer Alvarado to write a parking ticket for not having a city sticker while Officer Rodriguez was writing tickets on a different book. At roughly 11:32 AM, Officer Rodriguez went on the police car loud speaker to ask [REDACTED] if he found his insurance yet and to give the officer a “thumbs-up” if so. It is unclear what [REDACTED] response was, but Officer Rodriguez left the car about 11:35 AM. [REDACTED]

¹⁹ Redundant details from Department video of [REDACTED] April 23, 2018 CPD interaction were not included in these summaries.

²⁰ Att. 25

²¹ Approximately 11:21 AM

told Officer Rodriguez he had an investigator on the phone. ██████ asked the officer for his card. Officer Rodriguez responded that his badge number was on the ticket and that his Star #8364.

*Officer Alvarado Body Worn Camera*²²

Officer Alvarado's BWC began at approximately 11:19 AM. Officer Alvarado approached the driver's side along with Officer Rodriguez. Officer Alvarado returned to the police vehicle at about 11:23 AM. Officer Alvarado then returned to ██████ vehicle with Officer Rodriguez at about 11:35 AM. ██████ drove away at about 11:38 AM and the officers returned to the squad car.

Beat 1141 In Car Camera

In Car Camera (ICC) was obtained from the vehicle staffed by Beat 1141 (Officers Rodriguez and Alvarado) on May 7, 2018.²³ The squad car was driving behind ██████ at about 11:18 AM. Shortly after, ██████ was pulled over. ICC confirmed there were only two officers present.

c. Physical Evidence

No relevant, physical evidence was obtained in relation to the present investigation.

d. Documentary Evidence

According to an **Office of Emergency Management and Communications Event Query Report**, ██████ requested a sergeant to 7207 S. Perry on March 21, 2018 at approximately 7:03 AM.²⁴ ██████ wanted to speak with a sergeant regarding an "incident that occurred yesterday with police property damage and missing money." Beat 710 (Sergeant Pokuta) was dispatched at about 7:05 AM. At approximately 7:49 AM, Sergeant Pokuta cleared the event and related "complaint already obtained, incident reported on TRR."²⁵

An **Investigatory Stop Report (ISR)** was obtained for ██████ from **April 23, 2018**.²⁶ ██████ was stopped near 41 W. 71st St at approximately 7:47 PM. ██████ was driving a red 2007 Chevrolet Suburban with an Illinois license plate that expires on November 30, 2018. Officers Nisivaco and Howard observed ██████ "make a right hand turn without using a turning signal" and curbed his car. Per this report, this area is "known as a high gang/crime/narcotic area." After the officers checked ██████ name and learned he had a suspended license, He was asked to exit his vehicle and detained. When the officers asked ██████ if he had anything illegal, ██████ related "he had cannabis in his left jacket pocket." The officers performed a protective pat down and removed a "prescription pill bottle containing [a] green leaf like

²² The BWC for Officers Rodriguez and Alvarado were substantially similar and redundant information was not included in these summaries.

²³ Repetitive information from BWC was not included in this ICC summary.

²⁴ Att. 45

²⁵ While this CPD interaction on March 21, 2018 can be verified, it does not appear that this is the incident to which ██████ is referring to where he was stopped and searched, but not given a ticket or arrested.

²⁶ Att. 24

substance.” [REDACTED] vehicle was also searched with negative results after [REDACTED] gave the officers consent. In addition to traffic citations, [REDACTED] was issued Civil Law Citation #CL714161 for possession of cannabis. [REDACTED] “was released and refused an investigatory stop receipt.”

An **ISR** was also located for one of [REDACTED] passengers on April 23, 2018, [REDACTED] [REDACTED]²⁷ After curbing [REDACTED] for failing to use a turn signal and learning [REDACTED] had a suspended license, [REDACTED] was asked to exit [REDACTED] vehicle and “detained for further investigation.” The officers “observed a bulge in the above subject’s left cargo pant pocket.” After performing a protective pat down, officers learned the bulge was a hairbrush. Per this report, once [REDACTED] was given traffic citations, [REDACTED] “was released and refused an investigatory stop receipt.”

Inventory Sheets were obtained from [REDACTED] **April 23, 2018** traffic stop. A bottle containing “suspect cannabis” was inventoried by Officer Howard. The bottle was held for investigation.

Office of Emergency Management and Communications Event Query Report was obtained related to [REDACTED] April 23, 2018 traffic stop.²⁸ Beat 706B (Officers Nisivaco and Howard) reported a traffic stop at approximately 7:47 PM. Shortly after, [REDACTED] driver’s license was searched, followed by one of his passenger’s driver’s licenses. At roughly 8:02 PM, Beat 706B reported needing a civil law citation book. At about 9:07 PM, the officers reported heading to the 7th District with ISRs.

e. Additional Evidence

The following relevant **Traffic Citation** information was obtained through the Cook County Clerk of Courts.

- On **April 23, 2018**, [REDACTED] was issued citations for an improper stop or turn signal and for driving on a suspended or revoked license.²⁹ A judgement of nolle prosequi was entered for both tickets on June 8, 2018.
- On **May 7, 2018**, [REDACTED] was issued four citations: one for seat belt usage – driver, two for seat belt usage passenger, and one for operating an uninsured motor vehicle.³⁰ [REDACTED] failed to appear on June 5, 2018 and his license suspension was pending. On June 12, 2018, a motion to advance was granted.

COPA requested details from the **Administrative Notice of Violation** (ANOV) citation issued to [REDACTED] for cannabis possession on May 7, 2018.³¹ Per the City of Chicago Department of Administrative Hearings, they had no responsive documents to provide to COPA.

²⁷ Att. 32

²⁸ Att. 30

²⁹ Att. 21

³⁰ Att. 22

³¹ Att. 29

VI. ANALYSIS

Allegation 1 against Officers Nisivaco and Howard, that they provided a false report that ██████ failed to use his turn signal on April 23, 2018, is **Unfounded**. First, both officers asserted they personally saw ██████ fail to signal his turn. Officer Howard immediately told ██████ why he was stopped, and both officers maintained that ██████ did not signal throughout the interaction. Further, ██████ right turn signal did not appear activated in Officer Howard's BWC. COPA finds the officers credible and thus the allegation is Unfounded.

Similarly, Allegation 2 against Officers Nisivaco and Howard, that they searched ██████ vehicle illegally on April 23, 2018, is **Unfounded**. Officer Howard was heard on BWC asking ██████ if he could search ██████ car. While ██████ response was not audible on BWC, he did not protest the search or tell Officer Howard to stop. Both Officer Howard and Officer Nisivaco related that ██████ gave consent to search his vehicle. COPA finds the officers credible that ██████ did give consent, therefore this allegation is Unfounded.

Allegations 3 against Officers Howard and Nisivaco, that they detained the car's passengers in handcuffs without justification, is **Sustained**. The officers related they handcuffed ██████ passengers because they were an area of high drugs, crime, and gangs. The officers further stated that it was nighttime and the men had on bulky clothes. Both officers acknowledged the two men were being detained but reported no intention of ever arresting either passenger.

"A restriction of movement that is brief may amount to an arrest rather than a *Terry* stop if it is accompanied by use of force usually associated with an arrest, unless such use of force was reasonable in light of the circumstances surrounding the stop." *Id.* (citing *People v. Delaware*, 314 Ill. App. 3d 363, 370 (1st Dist. 2000)). Courts have found that "handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion and is not generally part of a stop." *See id.* (citing *People v. Wells*, 403 Ill. App. 3d 849, 857 (1st Dist. 2010); *Delaware*, 314 Ill. App. 3d at 370; *People v. Tortorici*, 205 Ill. App. 3d 625, 628 (3d Dist. 1990).

The officers never provided any reasonable articulable suspicion as to why the two passengers posed a threat (*i.e.* were armed and dangerous) and the officers had already conducted a protective pat-down of the occupants. While officers could certainly control where the occupants stood for officer safety purposes, handcuffing them without any suspicion that they were involved in any criminal activity or were armed and dangerous was not reasonable.

Allegations 4 against Officers Howard and Nisivaco, that they detained ██████ in handcuffs without justification, is **Exonerated**. Both officers reported they were initially going to arrest ██████ when they learned his license was suspended. The officers had probable cause to arrest ██████ Ultimately, the officers did not arrest ██████ and he was unhandcuffed once they gave him his traffic citations. Because the officers had probable cause to arrest ██████ they were permitted to handcuff him. Therefore, this allegation is Exonerated.

Allegation 5 against both officers, that they detained ██████████ for an unreasonable amount of time on April 23, 2018, is **Exonerated**. The encounter began at roughly 7:45 PM. ██████████ was unhandcuffed, given his traffic citations, and told to wait in his car at approximately 8:25 PM. ██████████ was not free to leave until about 9:05 PM. Officers Nisivaco and Howard related that they had to wait for a sergeant to bring them a civil law citation book. While ██████████ was made to wait for over an hour, it was for a valid law enforcement purpose outside of the officers' control. Therefore, this allegation is Exonerated.

Allegation 6 against Officer Howard and Officer Nisivaco, that they detained ██████████ passengers for an unreasonable amount of time, is **Exonerated**. For the reasons, stated above, the length of the traffic stop was reasonable. Officers are permitted to detain occupants of a vehicle for the duration of a traffic stop even if the occupants were not subject the traffic stop or otherwise under investigation. *Brendlin v. California*, 551 U.S. 249, 255 (2007).³²

Allegation 7 that Officer Howard and Officer Nisivaco performed a protective pat down on ██████████ without cause on April 23, 2018, is **Sustained** for Officer Howard and **Unfounded** for Officer Nisivaco. However, Allegation 8, that Officers Nisivaco and Howard performed a protective pat down on ██████████ passengers without cause on April 23, 2018, is **Exonerated** for Officer Nisivaco and **Unfounded** for Officer Howard. The officers reported all three men gave consent to the pat downs. The BWC footage depicts Officer Nisivaco asking for both passengers' consent before performing a pat down. While neither response was audible, Officer Nisivaco proceeded with the pat down and the men did not protest. A preponderance of the evidence demonstrates that the passengers consented. Officer Howard did not perform a pat down of the passengers.

However, with regards to ██████████ BWC depicted Officer Howard asking ██████████ if he had anything illegal. ██████████ responded he had marijuana. Officer Howard proceeded to perform a pat down on ██████████ and removed the bottle of marijuana but did not get consent first. Special Order S04-13-09 specifically states that an officer may only perform a protective pat down to search for weapons when they reasonably believe that a person is armed and dangerous or presents a danger of attack.³³ Officer Howard did not have articulable, reasonable suspicion to believe that ██████████ was armed and dangerous or presented a danger of attack. While Officer Howard had probable cause to arrest ██████████ based on his admission, Officer Howard did not arrest ██████████ Therefore, Officer Howard could not search ██████████ incident to arrest.³⁴ Officer Howard had no other basis to lawfully search ██████████ Therefore, Allegation #7 is Sustained as to Officer Howard. However, Officer Nisivaco did not perform a pat down of ██████████ and therefore Allegation #7 is Unfounded as Officer Nisivaco.

³² However, as explained above, it was unreasonable to handcuff these occupants when the officers did not reasonably believe they were involved with any criminal activity or armed and dangerous.

³³ However, an officer may recover illegal contraband during the protective pat-down if the plain-feel doctrine applies (i.e. an officer feels an object which is immediately identifiable as contraband).

³⁴ There is no paperwork reflecting that ██████████ was arrested and Officer Howard did not follow any of the procedures for releasing an arrestee without formal processing. Officer Howard issued ██████████ an ANOV.

Allegation 9, that Officer Howard and Officer Nisivaco failed to complete Investigatory Stop Reports for all three civilians on April 23, 2018, is **Sustained**. ISRs were only completed for [REDACTED] and one of his passengers, [REDACTED]. As seen in BWC, only two subjects provided identification, the third civilian apparently did not have identification. However, the officers made no effort to ascertain his identity. Because the man was subject to an Investigatory Stop and a protective-pat down, the officers were required to complete an ISR, per CPD Special Order S04-13-09. Because they failed to do so, this allegation is Sustained.

Allegation 10, that Officer Howard and Officer Nisivaco failed to give [REDACTED] and his passengers Investigatory Stop Receipts, is also **Sustained**. As seen in BWC, [REDACTED] was given his traffic citations to sign at about 8:24 PM. Officer Howard explained the documentation/citations and made no mention of an ISR receipt. Also, at about 8:24 PM, the two passengers were told to sit in [REDACTED] car. Officer Nisivaco unhandcuffed them but did not give either man any documentation. Officer Howard approached [REDACTED] for the last time at about 9:04 PM. Officer Howard handed him a paper the officer identified as the civil law citation, followed shortly by [REDACTED] ID. The ISRs for [REDACTED] and [REDACTED] stated the men were offered and refused their ISR receipts, but the BWC footage contradicts the officers' accounts. During their statements, the officers related there was confusion, where each officer thought the other offered the receipts and was refused. Because the officers failed to offer ISR receipts, this allegation is Sustained.

Allegation 11, that Officer Howard and Officer Nisivaco allowed [REDACTED] to drive on a suspended license on April 23, 2018, is **Sustained**. The officers removed [REDACTED] from his car, handcuffed him, and reportedly were going to arrest him - all for driving on a suspended license. However, they ultimately issued [REDACTED] a ticket for driving on a suspended license, followed by allowing him to knowingly break the law by driving away from the scene. The officers admitted to doing this and it was documented by BWC footage. Officers do not have the discretion to allow citizens to commit misdemeanor crimes such as driving on a suspended license. The officers could have allowed the one licensed passenger to drive, assuming his license was valid, or at least instruct [REDACTED] he was not permitted to drive. As such, this allegation is Sustained.

Allegation 1 against Officer Rodriguez and Officer Alvarado from May 7, 2018, that they performed a traffic stop on [REDACTED] without justification, is **Unfounded**. BWC footage demonstrates Officer Rodriguez immediately told [REDACTED] they stopped him for not wearing a seat belt. Officer Rodriguez went on to state that prior to curbing [REDACTED] he saw [REDACTED] did not have on a seatbelt. BWC showed [REDACTED] did not have his seatbelt on when the officers first approached him. Therefore, a preponderance of the evidence demonstrates the officers had legal justification to stop [REDACTED].

Allegation 2 against Officer Rodriguez and Officer Alvarado, that they provided a false report that [REDACTED] failed to provide valid insurance, is also **Unfounded**. As seen in BWC, [REDACTED] handed Officer Rodriguez paper he claimed was his insurance card. Officer Rodriguez stated that the paper was not an insurance card because it did not include vehicle information. Officer Rodriguez then told [REDACTED] to let him know once [REDACTED] had his insurance card available for the officer. After Officer Rodriguez went into his squad car, he again gave [REDACTED] the opportunity to provide valid insurance. If [REDACTED] had valid insurance, he did not give it to

the officers despite multiple chances to do so. Because BWC footage shows ██████ failed to provide valid insurance, this allegation is Unfounded.³⁵

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Nisivaco

i. Complimentary and Disciplinary History

Officer Nisivaco’s Complimentary History consists of: 13 Honorable Mentions, 3 Complimentary Letters and 1 Unit Meritorious Performance Award. Officer Nisivaco has no relevant Disciplinary History outside of this incident.

ii. Recommended Penalty, by Allegation

COPA recommends that Officer Nisivaco receive 3 Day Suspension and additional 4th Amendment Training for Allegation 3. COPA recommends that Officer Nisivaco receive a 1 Day Suspension for Allegations 9 and 10. COPA recommends that Officer Nisivaco receive a 3 Day Suspension for Allegation 11.

b. Officer Howard

i. Complimentary and Disciplinary History

Officer Howard’s Complimentary History consists of: 10 Honorable Mentions, 1 Department Commendation, 3 Complimentary Letters, and 1 Unit Meritorious Performance Award. Officer Howard has no relevant Disciplinary History outside of this incident.

ii. Recommended Penalty, by Allegation

COPA recommends that Officer Howard receive a 3 Day Suspension and additional 4th Amendment Training for Allegation 3. COPA recommends that Officer Howard receive a 3 Day Suspension and additional 4th Amendment Training for Allegation 7. COPA recommends that Officer Howard receive a 1 Day Suspension for Allegations 9 and 10. COPA recommends that Officer Howard receive a 3 Day Suspension for Allegation 11.

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer Nisivaco	1. Provided a false report that ██████ failed to use his turn signal on April 23, 2018, in violation of Rule 14.	Unfounded

³⁵ COPA commends Officer Rodriguez for maintaining professionalism and not escalating the situation.

	2. Searched [REDACTED] vehicle illegally on April 23, 2018, in violation of Rule 6.	Unfounded
	3. Detained [REDACTED] passengers in handcuffs without justification on April 23, 2018, in violation of Rule 6.	Sustained/3Day Suspension and Training
	4. Detained [REDACTED] in handcuffs without justification on April 23, 2018, in violation of Rule 6.	Exonerated
	5. Detained [REDACTED] for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.	Exonerated
	6. Detained [REDACTED] passengers for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.	Exonerated
	7. Performed a protective pat down on [REDACTED] without cause on April 23, 2018, in violation of Rule 6.	Unfounded
	8. Performed a protective pat down on [REDACTED] passengers without cause on April 23, 2018, in violation of Rule 6.	Exonerated
	9. Failed to complete Investigatory Stop Reports for all three civilians on April 23, 2018, in violation of Rule 6.	Sustained/1Day Suspension
	10. Failed to give [REDACTED] and his passengers Investigatory Stop Receipts on April 23, 2018, in violation of Rule 6.	Sustained/1Day Suspension
	11. Allowed [REDACTED] to drive on a suspended license on April 23, 2018, in violation of Rule 2.	Sustained/3Day Suspension
Officer Howard	1. Provided a false report that [REDACTED] failed to use his turn signal on April 23, 2018, in violation of Rule 14.	Unfounded
	2. Searched [REDACTED] vehicle illegally on April 23, 2018, in violation of Rule 6.	Unfounded

	<p>3. Detained [REDACTED] passengers in handcuffs without justification on April 23, 2018, in violation of Rule 6.</p> <p>4. Detained [REDACTED] in handcuffs without justification on April 23, 2018, in violation of Rule 6.</p> <p>5. Detained [REDACTED] for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.</p> <p>6. Detained [REDACTED] passengers for an unreasonable amount of time on April 23, 2018, in violation of Rule 6.</p> <p>7. Performed a protective pat down on [REDACTED] without cause on April 23, 2018, in violation of Rule 6.</p> <p>8. Performed a protective pat down on [REDACTED] passengers without cause on April 23, 2018, in violation of Rule 6.</p> <p>9. Failed to complete Investigatory Stop Reports for all three civilians on April 23, 2018, in violation of Rule 6.</p> <p>10. Failed to give [REDACTED] and his passengers Investigatory Stop Receipts on April 23, 2018, in violation of Rule 6.</p> <p>11. Allowed [REDACTED] to drive on a suspended license on April 23, 2018, in violation of Rule 2.</p>	<p>Sustained/3Day Suspension and Training</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Sustained/3Day Suspension and Training</p> <p>Unfounded</p> <p>Sustained/1Day Suspension</p> <p>Sustained/1Day Suspension</p> <p>Sustained/3Day Suspension</p>
Officer Rodriguez	<p>1. Performed a traffic stop on May 7, 2018 on [REDACTED] without justification, in violation of Rule 6.</p> <p>2. Provided a false report that [REDACTED] failed to provide valid insurance on May 7, 2018, in violation of Rule 14.</p>	<p>Unfounded</p> <p>Unfounded</p>
Officer Alvarado	<p>1. Performed a traffic stop on May 7, 2018 on [REDACTED] without justification, in violation of Rule 6.</p>	<p>Unfounded</p>

2. Provided a false report that [REDACTED] failed to provide valid insurance on May 7, 2018, in violation of Rule 14.	Unfounded
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Approved:



Andrea Kersten
Deputy Chief Administrator – Chief Investigator

February 23, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:	Four
Investigator:	Kelsey Fitzpatrick #61
Supervising Investigator:	James Murphy-Aguilu
Deputy Chief Administrator:	Andrea Kersten