

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	June 9, 2018
Time of Incident:	9:11 p.m.
Location of Incident:	5423 West Madison Street
Date of COPA Notification:	June 9, 2018
Time of COPA Notification:	9:55 p.m.

It is alleged that on June 9, 2018, Officers Maria Sigartau, Spencer Engquist, and Jason Kostanski (collectively, “the Officers”) stopped [REDACTED] ([REDACTED] without justification and improperly searched both his person and his backpack. [REDACTED] mother, who was present for part of the encounter, filed a complaint with **Sergeant Joseph Di Pinto, #930**, at the 15th District almost immediately after the incident. However, she retained legal representation and did not cooperate with Civilian Office of Police Accountability (“COPA”).

COPA brought allegations, after reviewing Body Worn Camera footage, alleging that [REDACTED] was improperly stopped, his person and backpack were improperly searched, and an Investigatory Stop Report was not completed. COPA conducted a thorough investigation of the allegations. A detailed analysis of COPA’s findings is discussed below.

II. INVOLVED PARTIES

Involved Officer #1:	Jason Kostanski, star #9056, employee ID# [REDACTED] Date of Appointment: November 27, 2006, PO, Unit 015, DOB: [REDACTED], 1978, Male, White
Involved Officer #2:	Spencer Engquist, star #16153, employee ID# [REDACTED] Date of Appointment: August 25, 2014, PO, Unit 015, DOB: [REDACTED], 1989, Male, White
Involved Officer #3:	Maria Sigartau, star #16288, employee ID# [REDACTED] Date of Appointment: August 25, 2014, PO, Unit 015, DOB: [REDACTED] 1984, Female, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 2002, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Jason Kostanski	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423	Exonerated

	West Madison Street, you improperly stopped [REDACTED] 2. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you failed to properly complete an Investigatory Stop Report.	Sustained
Officer Spencer Engquist	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly stopped [REDACTED]	Exonerated
Officer Maria Sigartau	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly stopped [REDACTED] 2. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly searched [REDACTED] 3. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly searched [REDACTED] backpack. 4. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you failed to properly complete an Investigatory Stop Report.	Exonerated Sustained Sustained Sustained

IV. APPLICABLE RULES AND LAWS

Rules
1. Rule 6: Disobedience of an order or directive, whether written or oral. 2. Rule 11: Incompetency or inefficiency in the performance of duty.
General Orders
1. G02-02 The First Amendment and Police Actions 2. G06-01-02 Restraining Arrestees
Special Orders
1. S04-13-09 Investigatory Stop System
Federal Laws
1. United States Constitution, Amendment IV: Prohibits search and seizure without

probable cause.¹

State Laws

1. 625 ILCS 5/11-1512. Bicycles on sidewalks.

Municipal Code

1. Chicago, Illinois, Municipal Code Section 9-52-020

V. INVESTIGATION²

a. Documentary Evidence

In his **Initiation Report**³, dated June 9, 2018, **Sergeant Joseph Di Pinto, #930**, documented that ██████ reported that officers stopped, handcuffed and then released her son, ██████ 15 years of age, for riding his bicycle on the sidewalk. In addition to her son being handcuffed, ██████ was upset because the Investigatory Stop Receipt (Event No. 15795) indicated her son was stopped for “actions indicative of engaging in drug transactions” and “gang/narcotic related enforcement.”⁴

Investigatory Stop Receipt documented a stop under Event No. 15795 provided by Officer Kostanski, #9056, for the reasons “actions indicative of engaging in drug transactions” and “gang/narcotic related enforcement.”⁵

The **Office of Emergency Management and Communications (OEMC) Event Query No. 1816015795** recorded, on June 9, 2018 at 9:13 pm, ██████ made a remote inquiry for name: ██████ date of birth: ██████-02, Male, and driver’s license state: Illinois.⁷

The **Office of Emergency Management and Communications (OEMC)** recorded a call, on June 9, 2018 at 9:03 p.m., about two males, black, loitering in front of the building at 5354 W. Madison Street. There were two calls, on June 9, 2018 at 8:19 and 8:33 p.m., regarding a group of males, black, selling drugs.⁸

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Attachment 4.

⁴ After filing her complaint, ██████ retained counsel. COPA made numerous efforts to contact ██████ counsel to arrange for interviews with ██████ and ██████. COPA spoke with counsel on one occasion and was told to contact her again in two weeks to arrange for a meeting with ██████ however, counsel did not respond to COPA’s subsequent calls. See Attachment 44

⁵ Attachment 5.

⁶ Now known as Officer Engquist.

⁷ Attachment 8.

⁸ Attachments 40, 41.

b. Interviews

In an **interview with COPA**, on September 26, 2018, **Officer Peter White, #5367, (“Officer White”)** stated, on June 9, 2018, he was a Field Training Officer working with recruit PPO Edgar Escobar. Officer White heard commotion over the radio, an officer or officers were involved in a foot chase. Officer White, happened to be driving by on Madison, and observed both uniform and plain clothes officers struggling to place an individual⁹ into handcuffs. Officer White stopped to assist.

Once [REDACTED] was in handcuffs, officers patted him down for police safety and spoke to [REDACTED]. Officer White did not know why the officers were chasing [REDACTED] why the officers stopped [REDACTED] why the officers handcuffed [REDACTED] or why they checked [REDACTED] backpack. Officer White did not know why Officer Sigartau performed the search on [REDACTED] instead of one of the male officers on scene. He remembered, at least, one officer had retraced the path believed to have been taken by the [REDACTED] and other officers may have been providing security of the scene or making sure others were not involved. Officer White explained, according to CPD orders, female officers could pat down a male individual in emergency situations, for safety reasons. Officer White indicated usual practice was for a thorough search to be performed by a same gendered officer, but he believed, due to size and safety concerns, female officers may search male individuals. During this incident, Officer White stated he was not the primary officer on scene nor was he Officer Sigartau’s supervisor, so he would not have stepped in and taken over the search. Additionally, Officer White stated if an individual, verbally, responds in the affirmative to an open-ended request for permission to search, consent was given voluntarily.¹⁰

In an **interview with COPA**, on September 26, 2018, **Officer Spencer Engquist, #16153,¹¹ (“Officer Engquist”)** stated, on June 9, 2018, he was in plain clothes, working with his partners, Officers Maria Sigartau and Jason Kostanski, and he was driving in an unmarked vehicle. Officer Engquist could not recall why he stopped [REDACTED] whether the officers were dispatched or “on view.”¹² Officer Engquist believed the officers followed [REDACTED] for less than a block before making the stop. When [REDACTED] was stopped, Officer Engquist secured the scene, making sure “no one came up on the other officers.”¹³ Officer Engquist spoke to [REDACTED] to get his name and date of birth to run a name check.

[REDACTED] was handcuffed, but Officer Engquist did not know which officer handcuffed [REDACTED]. Officer Engquist stated, most of the time, regardless of the number of officers on the scene individuals are placed in handcuffs for officer safety to prevent an individual from fleeing or pulling a weapon. Officer Engquist did not recall how many other officers were on scene beyond him and his partners.

⁹ Now known as [REDACTED]

¹⁰ Attachments 20, 21.

¹¹ Officer Engquist reviewed his body worn camera footage on the record Attachment 37.

¹² Attachment 26 at 11:51-11:53.

¹³ *Id.* at 15:59-16:00.

After reviewing his body worn camera (“BWC”) video, Officer Engquist indicated Officers Kostanski and Sigartau performed a pat down on ██████¹⁴ Officer Engquist believed female officers are able to pat down male individuals, but for a search it should be a male officer, unless a male officer is unavailable. He did not see Officer Sigartau go into ██████ pockets and did not know why she would. Engquist believed Officer Sigartau had ██████ consent to search his backpack. Officer Engquist admitted, according to the video, it looked as though Officer Sigartau started searching ██████ backpack before he provided consent.¹⁵ At the conclusion of the incident, ██████ was not arrested or given a citation. An Investigatory Stop receipt was provided to ██████ mother. Officer Engquist believed an Investigatory Stop Report was completed for this incident but did not remember filling one out and could not locate one before the interview.

Officer Engquist responded to the allegation that he did not improperly stop ██████ because ██████ was riding his bicycle on the sidewalk, looked at the officers, and took off. Officer Engquist believed ██████ could be concealing narcotics or a gun because this is a high narcotics and gun area.^{16,17}

In an **interview with COPA**, on October 1, 2018, **Officer Jason Kostanski, #9056**,¹⁸ (“**Officer Kostanski**”) stated, on June 9, 2018, he was in plain clothes, working with his partners, Officers Maria Sigartau and Spencer Engquist, in an unmarked vehicle. He was in the front passenger seat, Officer Engquist was driving and Officer Sigartau was in the back seat. He and his partners were near Monroe and Lotus on either a drug or gun call.¹⁹ When they were leaving, Officer Kostanski saw ██████ who appeared to be over the age of 12, riding his bike on the sidewalk against city ordinance. Officer Kostanski thought ██████ may have drugs or a gun because he was coming from the same area they were called. When they asked ██████ to come to the car, ██████ looked at them, and took off. When Officer Kostanski caught up to ██████ he jumped off his bike and attempted to enter a building. Officers detained ██████ Officer Kostanski did a pat down around ██████ waist for a gun. No gun was found. Officer Sigartau handcuffed ██████ who, initially, by his words and actions, was not compliant. ██████ did not want to talk to the officers and they did not know if ██████ had a gun. Once ██████ was in handcuffs, Officer Kostanski had no reason to believe ██████ was going to reach into his bag to grab a gun. Additionally, there were two other officers on scene, so Officer Kostanski backtracked to see if ██████ had dropped a gun or drugs. No gun or drugs were found.

Officer Kostanski spoke to ██████ to try and figure out if there was a gun or drugs and why he fled from officers on his bike. Officer Kostanski did not search ██████ He did not recall seeing

¹⁴ It should be noted when Officer Engquist was asked to describe what is being searched for during a pat down, he, incorrectly, stated contraband and weapons. Attachment 37 at 21:08-21:26. “Pursuant to Terry v. Ohio and People v. Galvin, authority to perform a Protective Pat Down is limited to the following: 1. When an officer has detained a subject based upon Reasonable Articulate Suspicion that criminal activity is afoot and, during that detention, develops additional Reasonable Articulate Suspicion that the subject is armed and dangerous or reasonably suspects that the person presents a danger of attack to the officer or another, the officer may conduct a Protective Pat Down of the outer clothing of the subject for hard objects that could be used as weapons. The Protective Pat Down is only for the purpose of officer and citizen safety; it is not to search for evidence. Special Order S04-13-09 VI.A.1.
¹⁵ *Id.* at 26:18.

¹⁶ *Id.* at 41:00-41:23.

¹⁷ Attachment 26.

¹⁸ Prior to answering questions about this incident, Officer Kostanski reviewed his body worn camera footage, Attachment 38.

¹⁹ There was no evidence of a call that this unit responded to within an hour of the incident. *See* Attachments 40-42.

Officer Sigartau perform a pat down or search of [REDACTED]. He believed a female officer could pat down and search a male individual. In his experience with Officer Sigartau, she will pat down male individuals, then, when a male individual is placed under arrest, Officer Kostanski will take over and search him. Officer Kostanski did not pay attention whether [REDACTED] backpack was searched. He indicated, based on an individual's attitude and the circumstances of the stop, Officer Kostanski would say for your safety and mine, can I search your bag? If the individual responded yes, he believed the individual consented.

Officer Kostanski believed the stop ended positively. [REDACTED] was not arrested or given a citation. Officer Kostanski gave [REDACTED] mother an Investigatory Stop Receipt. Officer Kostanski stated, based on the receipt, the previous call must have been related to drugs, and he just didn't think to mark other for [REDACTED] riding his bike. Officer Kostanski explained he intended to complete a report but between only being back on the job for a couple of days after a long absence and working with new partners, there must have been a miscommunication.

In an **interview with COPA**, on October 10, 2018, **Officer Maria Sigartau, #16288,**²⁰ (“**Officer Sigartau**”) stated, on June 9, 2018, she was in plain clothes, working with her partners, Officers Jason Kostanski and Spencer Engquist, in an unmarked vehicle. Officer Sigartau believed Officer Kostanski was driving, Officer Engquist was in the front passenger seat, and she was in the back seat behind the driver. Officer Sigartau could not remember the nature of the call prior to the incident. They were traveling eastbound on Madison and observed the subject²¹ riding his bicycle on the sidewalk. [REDACTED] did not fit a description from a call, but Officer Sigartau thought [REDACTED] looked eighteen or nineteen due to his height and appearance. In Chicago, it is illegal to ride your bicycle on the sidewalk unless you are 12 and under. She believed they wanted to speak to [REDACTED] and advise him of the law. One of her partners told [REDACTED] to stop, so they could speak with him. [REDACTED] looked in the officers' direction and immediately turned around trying to avoid contact. Officers pulled closer to the curb to park, [REDACTED] jumped off his bicycle, left the bicycle in the middle of the sidewalk, and tried to go into a store. Additionally, it was warm outside, officers were all in short-sleeves, but [REDACTED] was wearing a thicker layer, not short sleeves and he was hiding his hands and backpack, which made her believe that he had something on him that he was not supposed to have.²²

Officer Kostanski made first contact and Officer Sigartau was soon after. [REDACTED] was moving a lot and raising his voice, trying to pull away. Officer Sigartau placed him in handcuffs and detained him. The area was known for high narcotics dealings and gang activity coupled with [REDACTED] behavior led her to believe [REDACTED] may have something on him. For safety reasons, both Officer Kostanski and Officer Sigartau performed a pat down for weapons. In one of his pockets Officer Sigartau felt a hard object, which “could possibly be a knife, weapon, anything that can hurt us, himself or civilian.”²³ [REDACTED] said, “Go ahead, I have nothing, it's just a cell phone, it's just a cell phone,”²⁴

²⁰ Prior to answering questions about this incident, Officer Sigartau reviewed her body worn camera footage, Attachment 39.

²¹ Now known as [REDACTED]

²² Attachment 36 at 13:58-14:30.

²³ *Id.* at 33:52-34:00.

²⁴ *Id.* at 34:38-34:40.

Officer Kostanski, quickly, back tracked along the path traveled to see if a weapon was dropped. Officer Sigartau remained with [REDACTED] and Officer Engquist provided Officer Sigartau safety and security on scene, including providing her light. Officer Sigartau searched [REDACTED] looking for weapons, because his behavior was erratic, he was still moving a lot, pulling away, talking a lot, and he was nervous. Her experience made her believe he had something on him. Officer Sigartau did not request consent to search [REDACTED] person, but from what [REDACTED] was saying when asked about one pocket, that he had nothing on him and you could check, she believed he gave consent to search his person. Officer Sigartau recovered a cell phone. No weapon was found.

She performed the search, Officer Sigartau explained, instead of her male partners because Officer Kostanski was unavailable walking the path, and for safety, it was more efficient for them, standing over 6 feet tall and stronger, to handle any potential issue. Officer Engquist was standing right next to her, providing light, while she conducted the search. At the time, Officer Sigartau was focused on [REDACTED] and was not aware of whether the other officers on scene were male or female. Specifically, Officer Sigartau did not realize Officer White was on scene until after watching the video. Officer Sigartau said it was an extremely violent area and there were a lot of civilians gathering nearby. Officer Sigartau did not recall hearing the civilians saying anything to her partners, did not hear any threats, and did not recall if officers provided verbal commands to the crowd.

Once Officer Sigartau realized [REDACTED] had nothing on his person, she lifted [REDACTED] backpack to make sure he had nothing in his backpack. Officer Sigartau reported that the backpack had some weight to it and there were noises coming from inside. Officer Sigartau asked [REDACTED] if he had anything on him that he is not supposed to have. [REDACTED] said he had a speaker. Officer Sigartau believes that she asked something to the extent of, "Do you mind if I check?"²⁵ [REDACTED] gave her permission to check the backpack. Officer Sigartau believed she asked for permission to search and searched the backpack simultaneously. Officer Sigartau believed [REDACTED] gave voluntary consent because he could have refused consent. When asked whether she believed [REDACTED] gave voluntary consent knowing that [REDACTED] was 15, handcuffed, surrounded by five officers, and had Tourette's, Officer Sigartau could not answer. She indicated she would have to be in the situation, know the nature of the stop, before she could answer. When the investigator responded that this was the situation with [REDACTED] Officer Sigartau repeated that she did not know what she would believe. She would need to be put in the situation.²⁶

Officer Sigartau stated she had reasonable suspicion to do a further investigation, based on the circumstances,²⁷ to make sure there were no weapons on his person or his belongings. Officer Sigartau explained that the noises she heard in the backpack indicated there were more objects inside than just the speaker, and in her experience, it could be weapons. Officer Sigartau responded that weapons are different sizes and could have been anywhere in the backpack. Additionally, she thought that [REDACTED] was moving, pushing, blading his body, pulling away, which led Officer

²⁵ *Id.* at 39:07

²⁶ *Id.* at 52:04-53:45.

²⁷ Officer Sigartau listed that [REDACTED] was trying to avoid police contact, being aggressive, shifting his body, doesn't want officers to find out what is going on with him and what he has on him, high crime location, and recent encounters where her team recovered weapons from backpacks. *Id.* at 40:15-40:44.

Sigartau to believe there was more in his backpack, possibly a weapon.²⁸ Officer Sigartau found a speaker and miscellaneous items. Officer Sigartau did not find anything illegal.

After she searched his backpack, Officer Sigartau still believed [REDACTED] may have something on him because of [REDACTED] behavior, he was not calm and not following verbal direction. Even though [REDACTED] was responding to Officer Sigartau's questions, she did not believe he was being forthright because he only said he had a speaker and cell phone, but he was carrying many more items. She knew of a time when an officer recovered a weapon from an individual after the individual had been previously searched by another officer.

[REDACTED] mother arrived on scene. Officer Kostanski spoke to the mother, wrote out an Investigatory Stop Receipt and provided it to the mother. In the end, [REDACTED] was not arrested, but given a verbal warning for riding his bicycle on the sidewalk. Officer Sigartau, to this day, believed an Investigatory Stop Report was completed, and does not know why a report cannot be found.

c. Digital Evidence

Body Worn Camera Video obtained from Officers Engquist, Kostanski and Sigartau captured the incident. Officers approached an individual²⁹ in the entrance of a store. Officers Sigartau and Kostanski patted [REDACTED] down. Officer Sigartau handcuffed [REDACTED] Officer Kostanski walked down the block, spoke to a male individual, who told him [REDACTED] was just a kid. Officer Sigartau searched [REDACTED] and his backpack, while male officers were on scene surrounding [REDACTED] Officers appear to inspect a bicycle that is lying on the sidewalk near [REDACTED] Eventually, [REDACTED] mother³⁰ arrived on scene. Officers spoke to [REDACTED] about what was happening, including [REDACTED] riding his bicycle on the sidewalk. In conclusion, Officer Sigartau gave [REDACTED] a verbal warning regarding riding his bicycle on the sidewalk, and Officer Kostanski provided [REDACTED] with an Investigatory Stop Receipt.³¹

VI. ANALYSIS

I. 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

²⁸ *Id.* at 44:01-44:11.

²⁹ Now known as [REDACTED]

³⁰ Now known as [REDACTED]

³¹ Attachment 37-39.

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 occurred and violated 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 misconduct occurred, 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.

a. Officer Jason Kostanski

Allegation 1:

COPA finds Allegation 1 that Officer Kostanski improperly stopped [REDACTED] is **Exonerated**, because Officer Kostanski had a legal justification to stop [REDACTED] for riding his bicycle on the sidewalk in violation of Chicago Municipal Code. An officer "may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions."³³ A lawful stop requires "at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law." *United States v. Rodriguez-Escalera*, 884 F.3d 661, 667-68 (7th Cir. 2018) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)). In Chicago, a person, 12 years or older, cannot ride a bicycle on the sidewalk.³⁴

Officer Kostanski and Officer Sigartau stated they observed [REDACTED] riding his bicycle on the sidewalk. Officer Sigartau stated she believed [REDACTED] was an adult based on his physical appearance. After officers stopped [REDACTED] Officer Engquist stated he obtained [REDACTED] name and date of birth to run a name check. Video confirms officers approached [REDACTED] on a sidewalk with a bicycle lying on the sidewalk nearby. [REDACTED] stated, "I'm just riding my bike around, bro."³⁵ Officer Sigartau gave [REDACTED] a verbal warning for riding his bicycle on the sidewalk.

Based on the foregoing, the evidence is clear and convincing that [REDACTED] violated the law by riding his bicycle on the sidewalk at the age of fifteen. Therefore, Officer Kostanski and his partners properly stopped [REDACTED] and this allegation is **Exonerated**.

Allegation 2:

COPA finds Allegation 2 that Officer Kostanski failed to properly complete an Investigatory Stop Report is **Sustained**. Pursuant to Special Order S04-13-09, an officer who

conducts an Investigatory Stop and, if applicable, a Protective Pat Down or other search in a public place is required to submit an Investigatory Stop Report (“ISR”) into the Investigative Stop Database.³² As indicated above, Officer Kostanski, along with Officers Sigartau and Engquist, conducted an Investigatory Stop of [REDACTED]. Officer Kostanski was aware that this incident rose to the level of an investigatory stop—as opposed to a mere consensual encounter—because he provided [REDACTED] with an Investigatory Stop Receipt for the incident. Additionally, Officers Kostanski, Sigartau, and Engquist indicated their team, not a particular officer, was responsible for submitting the report. Officer Kostanski, and his partners, thought a report had been completed, but no one could find a report.

Based on the foregoing, a preponderance of the evidence establishes that Officer Kostanski did not complete an Investigatory Stop Report. Therefore, this allegation is **Sustained**.

b. Officer Spencer Engquist

COPA finds Allegation 1 that Officer Engquist improperly stopped [REDACTED] is **Exonerated**. As discussed above, the evidence is clear and convincing that Officer Engquist and his partners stopped [REDACTED] for violating state and local law by riding his bicycle on the sidewalk. Therefore, this allegation is **Exonerated**.

c. Officer Maria Sigartau

Allegation 1:

COPA finds Allegation 1 that Officer Sigartau improperly stopped [REDACTED] is **Exonerated**. As discussed above, the evidence is clear and convincing that Officer Sigartau and her partners stopped [REDACTED] for violating state and local law by riding his bicycle on the sidewalk. Therefore, this allegation is **Exonerated**.

Allegation 2:

COPA finds the allegation that Officer Sigartau improperly searched [REDACTED] is **Sustained**. COPA finds that Officer Sigartau was not justified in her pat down or her search of [REDACTED] because she had no articulable reasonable suspicion that [REDACTED] was armed and presently dangerous or probable cause that he had contraband. Moreover, Officer Sigartau improperly searched [REDACTED] in violation of policy which requires that searches be conducted by officers of the same gender as the person being searched. Lastly, Officer Sigartau did not have consent to search [REDACTED].

Legal Standard

The standard for justifying a protective pat down search is articulated in *Minnesota v. Dickerson*,

[W]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether

³² S04-13-09 VIII.A.1.

the person is in fact carrying a weapon." "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence . . ." Rather, a protective search -- permitted without a warrant and on the basis of reasonable suspicion less than probable cause -- must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed."³³

Illinois case law also holds that "*Terry* permits a protective search only when the suspect 'is armed and presently dangerous.'" *People v. Walker*, 2013 IL App (4th) 120118, ¶47(emphasis in original). The proper test is an objective one, not whether the officer subjectively believed that the person may be armed. *People v. Galvin*, 127 Ill. 2d 153, 167 (1989).

In order for an officer to search a individual, beyond a pat down, the officer must have consent or probable cause to support such search, including particularly describing the place to be searched and the things to be seized.³⁴ The Supreme Court has described "reasonable suspicion as 'a particularized and objective basis' for suspecting the person stopped of criminal activity, *United States v. Cortez*, 449 U. S. 411, 417-418 (1981), and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found," see *Brinegar v. United States*, 338 U. S. 160, 175-176 (1949); *Illinois v. Gates*, 462 U. S. 213, 238 (1983).³⁵

a. It was unreasonable for Officer Sigartau to believe ██████ was armed and presently dangerous to justify a pat down search.

Officer Sigartau's observations of ██████ and justification for searching him, were in essence that he was acting nervously—fidgeting, moving around, pulling away, and talking a lot. Mere nervousness around officers is insufficient to establish that a subject is armed and presently dangerous and does not justify a pat down search. See *People v Davis*, 352 Ill.App.3d 576, 581-82 (insufficient reasonable suspicion to pat down a Teen stopped for riding his bike without a light in what officers believed to be a high crime area, kept acting nervous and reaching for his pocket while being questioned); *People v. Green*, 358 Ill.App.3d 456, 462 (4th Dist. 2005)(finding no justification to pat down a teen who was acting nervously, and seemingly lying to officers); *People v. Kramer*, 208 Ill. App. 3d 818, 821 (3d Dist. 1991) (finding no justification for a pat down search because "the record does not reveal that the officer observed any suspicious behavior on the part of the defendants, other than their nervousness, that might indicate they were armed or dangerous."); *People v. Creagh*, 214 Ill. App. 3d 744, 747 (1st Dist. 1991)(finding that nervousness on the part of the subject does not justify a pat down search).

Moreover, the fact that ██████ was handcuffed throughout the entire encounter lessened any threat that ██████ may have caused, reducing the need to conduct a pat-down search. See *People v. Brown*, 2013 IL App (1st) 083158, ¶27 ("the immediate handcuffing of defendant upon being taken into custody eliminated the need to frisk him for officer safety."). Further weighing against Officer

³³ *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (internal citations omitted).

³⁴ General Order G02-02 B.1.

³⁵ *Ornelas et al. v. United States*, 517 U.S. 690, 696 (1996).

Sigartau justification to search, was the fact that ██████ was purportedly stopped only because he was riding his bike on the sidewalk, a non-violent crime where it cannot be presumed that ██████ would be armed. *See Creagh*, 214 Ill. App. 3d at 747 (discussing that the nature of the suspected crime can factor into evaluation of whether it is reasonable to believe the subject is armed and presently dangerous).

b. Officer Sigartau was not Justified to Search ██████

Officer Sigartau's search went beyond a protective pat down and what was reasonable under the circumstances without probable cause. Officer Sigartau admitted to performing a search of ██████. Officer Sigartau stated ██████ was nervous and pulled away from officers. When pressed, she said he also "bladed" his stance. Officer Sigartau's explanation of ██████ actions were not supported by the body worn camera videos. ██████ was handcuffed and physically compliant to officers, at most he was rocking back and forth and moving in place. While Officer Sigartau reached inside one of ██████ front jacket pockets—she claims this was because she felt a phone, however, when she reached inside the pocket there did not appear to be a phone. She proceeded to grab and reach inside each of ██████ pockets without providing a description of the contraband or weapon she believed was inside.

c. Officer Sigartau, as a female officer, improperly searched ██████

Not only was the search improperly conducted due to lack of probable cause, but Officer Sigartau violated Department Policy by searching a civilian of the opposite gender. According to Department policy a search of an individual should be conducted by an officer of the same gender, unless an officer of the same gender is not immediately available and officer or civilian safety would be compromised.³⁶ By all accounts, Officer Kostanski was immediately present throughout the entire encounter—indeed he made first contact with ██████. Moreover, Officer Engquist had exited the car and was standing immediately next to ██████ by the time ██████ was placed in handcuffs.³⁷ Two other male officers then arrived on scene about ten seconds later.³⁸ Officer Sigartau claims that Officer Kostanski was unavailable to conduct the search because he was retracing ██████ path, however, he was standing alongside ██████ for a good amount of time, and had not begun retracing the path until after Officer Sigartau had begun her search. Both of her male partners were present at the time, and one of them should have conducted the search.

Moreover, there is no evidence that officer or civilian safety would be compromised if Officer Engquist, or another male officer, conducted a search of ██████. Video contradicts Officer Sigartau's assertion that male officers were needed to handle potential issues posed by a crowd on scene. There was a group of civilians, in front the adjacent store front, approximately three car lengths away,³⁹ but the civilians did not interfere with the stop. At no point is any officer heard talking about a crowd forming, talking about any concerns or risks posed by individuals standing nearby. No officer is heard providing commands to control a crowd, nor does any civilian approach

³⁶ "Custodial searches will be conducted by a member who is the same gender as the arrestee; however, if a member of the same gender is not immediately available and officer or citizen safety is compromised absent an immediate search, members will not endanger themselves or the public to comply with this requirement." General Order G06-01-02 IV.C. See S04-13-09.

³⁷ Attachment 37 at 0:40.

³⁸ *Id.* at 0:51

³⁹ Attachment 37 at 2:23

or say anything to the officers. Moreover, neither Officers Kostanski or Engquist, in their interviews, expressed any safety concerns. Officer Kostanski indicated he was not too concerned about anything because he was whistling while he worked. Officer Engquist, mostly, stood in front of Officer Sigartau holding his flashlight in her direction before he left to run a name check. Therefore, a preponderance of the evidence establishes Officer Sigartau, as a female officer, improperly searched [REDACTED] because there were male officers immediately available and there was no danger to the public or the officers if a male officer had searched [REDACTED] instead of Officer Sigartau.

d. Officer Sigartau did not have consent to search [REDACTED] person.

An officer may search an individual without reasonable suspicion or probable cause, if the individual consents. Such consent must be unambiguous, and voluntarily given. *Green*, 358 Ill.App.3d at 462. Although Officer Sigartau admitted she did not ask [REDACTED] for consent to search his person, she asserted [REDACTED] consented to her looking inside his pocket when he kept saying that he just had a cell phone. Contrary to Officer Sigartau's assertion, [REDACTED] never said for her to "go ahead" and look in his pockets. Nothing [REDACTED] said could be interpreted as consent to search his coat pockets. *See Green*, 358 Ill.App.3d at 462 (a suspect telling officers that they do not have anything is an indication they do *not* consent to search and instead want officers to take their word that a search is not needed).

Based on the foregoing, a preponderance of the evidence establishes Officer Sigartau did not have reasonable suspicion to believe [REDACTED] while handcuffed, was presently armed and dangerous, she did not have probable cause to believe [REDACTED] had contraband, she did not particularly describe the place to be searched and things to be seized in accordance with the law, she, as a female officer, searched a male individual when a male officer was immediately available and officer or civilian safety would not have been compromised and she did not receive consent to search. Therefore, Officer Sigartau improperly searched [REDACTED] and this allegation is **Sustained**.

Allegation 3:

COPA finds the allegation that Officer Sigartau improperly searched [REDACTED] backpack is **Sustained**. COPA finds that Officer Sigartau was not justified in her search of [REDACTED] backpack, because she had no articulable reasonable suspicion that [REDACTED] was armed and presently dangerous nor did she have consent for the search. Officers may pat down the exterior of a bag as part of a consensual encounter but need probable cause to reach inside the bag. *United States v. McDonald*, 100 F.3d 1320, 1325 (7th Cir. 1996).

a. Officer Sigartau was not justified to search [REDACTED] backpack.

Officer Sigartau's justification for searching [REDACTED] bag was the same as her justification for searching his person. She felt that due to his nervousness, he might have something in his bag, she did not specify that it may be a weapon. Additionally, when she lifted his bag, she heard a clanking sound, which she thought may be a weapon.

Officer Sigartau did not have reasonable suspicion that he may be armed and presently dangerous, so she had no justification to search for weapons. In a similar factual situation, in *Green*, the court found that the officer had no reasonable suspicion to open a backpack as part of

a *Terry* search where the officer heard clanking jars, despite the subject saying only clothes were in the bag, because the jars could have been any number of innocent items. *Green*, 358 Ill.App.3d at 462. Likewise, here, there were any number of legitimate items which could have been clanking together in ██████ backpack. Indeed, he did have a speaker and what appeared to be a cellphone in the backpack. For the same reasons articulated above, Officer Sigartau had no reason to suspect that ██████ was armed and thus was not justified to search the backpack.

b. Officer Sigartau did not have consent to search ██████ backpack.

Even if an officer does not have reasonable suspicion or probable cause to search an individual, they may still search if the individual consents. Such consent must be unambiguous, and voluntarily given. *Green*, 358 Ill.App.3d at 462.

“The Seventh Circuit has outlined factors for a trial court to consider in evaluating voluntariness of consent, including ‘age, education and intelligence of the defendant; advisement of his rights; how long he was detained prior to the consent; repeated requests for consent; physical coercion; and whether he was in custody.’” *United States v. Renken*, No. 02 CR 1099, 2004 U.S. Dist. LEXIS 21707, at *9 (N.D. Ill. Oct. 27, 2004)(citing *United States v. LaGrone*, 43 F.3d 332, 334 (7th Cir. 1994)).

Officers Sigartau and Engquist indicated that Officer Sigartau was able to search ██████ backpack because ██████ provided consent when Officer Sigartau asked “you don’t mind if I check, right” and he replied, “you can check, I don’t have nothing.” This statement came after she’d looked inside his bag at the beginning of the encounter, she had looked inside the outer pockets of his backpack and removed items, and she had begun reaching into the backpack and manipulating the large speaker that was inside.

Based on the factors outlined above, no consent that ██████ may have provided was voluntary. He was only fifteen, and unexperienced with law enforcement. He suffers from Tourette’s. He was never advised of his rights to refuse the search. Crucially, he was in custody—handcuffed and surrounded by five officers—throughout the encounter. *See Green*, 358 Ill.App.3d at 462.

Even if ██████ provided voluntary consent to search his backpack, Officer Sigartau began searching his backpack prior to his consent. Officer Engquist admitted she began searching ██████ backpack prior to asking for consent. Officer Sigartau stated she, simultaneously, asked for permission to search and searched ██████ backpack. The video contradicts Officer Sigartau’s assertion of the timeline.⁴⁰ Almost immediately after handcuffing ██████ Officer Sigartau opened his backpack and looked inside it with a flashlight. She proceeded to reach inside multiple small exterior pouches of his backpack. This included unzipping one small pouch and removing what appeared to be multiple credit card sized items. It was not until after she had already reached inside the backpack and begun removing what turned out to be a speaker, that she asked anything that could be construed as a request for consent.

Officers Sigartau, Kostanski, and Engquist stated they did not use any factors to determine whether consent was provided. They believe if an individual responds affirmatively to a request to search, consent is given. Officer Sigartau stated she could not answer whether she believed ██████

⁴⁰ Attachment 39 at 1:13-1:19.

gave voluntary consent after knowing he was 15, handcuffed, surrounded by five officers, and had Tourette’s. She explained that she would have to be put in the situation to answer, even though these were the exact circumstances of her stop with [REDACTED]

Based on the foregoing, a preponderance of the evidence establishes Officer Sigartau improperly searched [REDACTED] backpack, and this allegation is **Sustained**.

Allegation 4:

COPA finds Allegation 4 that Officer Sigartau failed to properly complete an Investigatory Stop Report is **Sustained**. As discussed above, Officer Sigartau conducted an Investigatory Stop with [REDACTED] Officer Sigartau and her partners were required to submit a report, and no report was found. Therefore, a preponderance of the evidence establishes that Officer Sigartau did not submit an Investigatory Stop Report, and this allegation is **Sustained**.

VII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Jason Kostanski	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly stopped [REDACTED]	Exonerated
	2. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you failed to properly complete an Investigatory Stop Report.	Sustained
Officer Maria Sigartau	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly stopped [REDACTED]	Exonerated
	2. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly searched [REDACTED]	Sustained
	3. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you improperly searched [REDACTED] backpack.	Sustained
	4. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423 West Madison Street, you failed to properly complete an Investigatory Stop Report.	Sustained
Officer Spencer Engquist	1. It is alleged on June 9, 2018, at approximately 21:11, in the vicinity of 5423	Exonerated

West Madison Street, you improperly stopped
██████████

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Jason Kostanski

i. Complimentary and Disciplinary History

Officer Kostanski's complimentary, disciplinary and training history were considered when recommending discipline in this matter. Officer Kostanski received a reprimand for failure to perform any duty June 22, 2018.

Based on his disciplinary history, COPA recommends and 1-day suspension for Officer Kostanski failing to complete an Investigatory Stop Report in this matter.

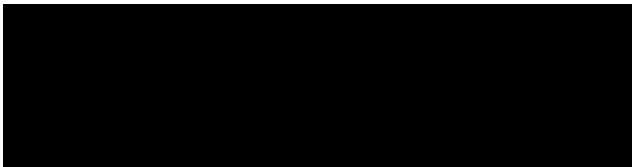
b. Officer Maria Sigartau

i. Complimentary and Disciplinary History

Officer Sigartau's complimentary, disciplinary and training history were considered when recommending discipline in the matter. Officer Sigartau does not have a history of discipline. However, COPA sustained that Officer Sigartau improperly searched ██████ person and backpack and failed to complete an Investigatory Stop Report. Although Officer Sigartau attempted to provide justification for the searches, including why as a female officer, minus true exigent circumstances, she could search ██████ it is important that Officers understand the legal and procedural rights of all individuals.

Therefore, COPA recommends that Officer Sigartau be retrained on the 4th Amendment and General Orders G02-02 and G06-01-02. It is also recommended that Officer Sigartau received a 1-day suspension.

Approved:



Andrea Kersten
Deputy Chief Administrator – Chief Investigator

April 24, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:	Six
Investigator:	Elizabeth Brett
Supervising Investigator:	Elaine Tarver
Deputy Chief Administrator:	Andrea Kersten