

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 20, 2018
Time of Incident:	10:50 pm
Location of Incident:	2615 W 66th Street
Date of COPA Notification:	July 25, 2018
Time of COPA Notification:	5:51 pm

On July 20, 2018, [REDACTED] ([REDACTED]) was driving with his cousin [REDACTED] ([REDACTED]) when Officer Arturo Villanueva (“Officer Villanueva”) and Officer Michael Durkin (“Officer Durkin”) stopped his vehicle to conduct a traffic stop. The officers searched [REDACTED] and [REDACTED] rental vehicle recovering multiple bags of suspect cannabis. [REDACTED] and [REDACTED] were arrested and transported to the 008th District.

[REDACTED] alleged that Officers Villanueva and Durkin stopped him, pointed their guns at [REDACTED] and [REDACTED] searched his vehicle, and arrested him without justification. [REDACTED] alleged that Officer Durkin searched his person without justification. [REDACTED] further alleged that Officers Villanueva and Durkin stole \$600 from him. After reviewing Body Worn Camera footage, COPA alleged that Officers Villanueva and Durkin failed to record the incident in its entirety on their body worn camera. COPA conducted a thorough investigation of the allegations. A detailed analysis of COPA’s findings is discussed below.

II. INVOLVED PARTIES

Involved Officer #1:	Arturo Villanueva, star #14209, employee ID# [REDACTED] Date of Appointment: June 4, 2007, PO, Unit 008, DOB: [REDACTED], 1979, Male, Hispanic
Involved Officer #2:	Michael Durkin, star #10663, employee ID# [REDACTED] Date of Appointment: May 1, 2006, PO, Unit 008, DOB: [REDACTED], 1981, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1982, Male, Black
Involved Individual #2:	[REDACTED] DOB: [REDACTED], 1994, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Arturo Villanueva	It is alleged that on July 20, 2018, in the vicinity of 2615 W 66th Street, at	

	<p>approximately 10:50 p.m., Officer Arturo Villanueva, Star No.: 14209, committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Displaying your gun at or in the direction of [REDACTED] without justification; 2. Stopping [REDACTED] vehicle without justification; 3. Searching [REDACTED] vehicle without justification; 4. Detaining [REDACTED] without justification; 5. Arresting [REDACTED] without justification; 6. Failing to inventory an additional \$600 in U.S. currency recovered from [REDACTED] and [REDACTED]; 7. Failed to record the incident in its entirety on body worn camera. 	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Sustained</p>
<p>Officer Michael Durkin</p>	<p>It is alleged that on July 20, 2018, in the vicinity of 2615 W 66th Street, at approximately 10:50 p.m., Officer Michael Durkin, Star No.: 10663, committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Displaying your gun at or in the direction of [REDACTED] without justification; 2. Stopping [REDACTED] vehicle without justification; 3. Searching [REDACTED] person without justification; 4. Searching [REDACTED] vehicle without justification; 5. Detaining [REDACTED] without justification; 6. Arresting [REDACTED] without justification; 7. Failing to inventory an additional \$600 in U.S. currency recovered from [REDACTED] and [REDACTED]; 8. Failed to record the incident in its entirety on body worn camera. 	<p>Unfounded</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Unfounded</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
 2. Rule 6: Disobedience of an order or directive, whether written or oral.
 3. Rule 38: Unlawful or unnecessary use or display of a weapon.
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General Orders

1. G02-02
 2. G03-02-01 Force Options
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Special Orders

1. S03-14 Body Worn Cameras
 2. S04-13-09 Investigatory Stop System
 3. S07-01-01 Inventorying Arrestees' Personal Property
 4. S07-01-02 Inventorying Money
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Federal Laws

1. United States Constitution, Amendment IV: Prohibits search and seizure without probable cause.¹

V. INVESTIGATION²

a. Interviews

In an **interview with COPA**, on July 25, 2018, ██████████ ██████████ stated, on July 20, 2018, he was driving a 2019 black Cadillac that he rented earlier in the week. ██████████ was stopped at a stop sign on 67th and Washtenaw when he saw a police vehicle, described as a blue Sports Utility Vehicle (“SUV”) with MP plates but no decals, go past him on 67th Street. ██████████ turned behind the police vehicle for less than a block before the police vehicle turned. After ██████████ turned on the next block heading North, ██████████ saw the police vehicle pass him going East. As ██████████ was about to turn, the police vehicle did a U-turn and blocked his car on the street. Two officers exited their vehicle with their guns out. Officer Villanueva, the driver,

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.

pointed his gun at [REDACTED] and screamed, “Don’t move. Turn the car off.”³ The other officer⁴ went around to the other side of the car and pointed his gun at [REDACTED] cousin, [REDACTED] ([REDACTED] turned off the car. Officer Villanueva opened [REDACTED] door, placed his gun back in his holster, told [REDACTED] to get out of the car, grabbed [REDACTED] by the back of his shirt, pulled him from the vehicle, and walked [REDACTED] over to the police vehicle.

Officer Villanueva asked [REDACTED] what they were doing. [REDACTED] explained they were going to his cousin’s house, who lived nearby. Officer Villanueva did not say why he stopped [REDACTED] and did not ask [REDACTED] for his license or insurance.⁵ Officer Durkin grabbed his cousin and asked if he had anything illegal on him. [REDACTED] said, “Yeah, I’ve got some marijuana.”⁶ [REDACTED] said there were no guns in the car and he did not threaten the officers. Officers asked who owned the car they were driving. [REDACTED] told the officers it was his rental and his agreement was in his email.⁷ No one asked [REDACTED] to see his phone or the agreement.

Additional officers arrived on scene, approximately four or five police vehicles. [REDACTED] and [REDACTED] were handcuffed and asked if there was anything in the car. [REDACTED] said no. [REDACTED] did not give officers permission to search his car. Officer Durkin searched the car, while Officer Villanueva stayed with [REDACTED] and [REDACTED]. Officer Villanueva asked [REDACTED] how much money he had on him. [REDACTED] had \$4,050.00. Officer Durkin, at the station, searched [REDACTED] and took his money. [REDACTED] only received \$3,450.00 back. [REDACTED] said he was positive about how much money he was carrying because he had counted it prior to leaving the house and it was enough to pay rent and gas.⁸ The officers charged [REDACTED] with criminal trespass to a vehicle and possession of marijuana. [REDACTED] said the drugs were found on [REDACTED] but only charged [REDACTED] with drinking alcohol. [REDACTED] denied driving down an alley that evening.⁹

In an **interview with COPA**, on November 20, 2018, **Officer Joseph Shanahan (“Officer Shanahan”)**, #14430, stated he had no independent recollection of the stop where [REDACTED] was arrested on July 20, 2018, including the reason for the stop or what was recovered and processed. Officer Shanahan did not know whether he was called to the scene or observed the police lights and stopped. Officer Shanahan explained, while on patrol, he would stop to confirm officers were safe and assist, if necessary. Officer Shanahan stated he would not be included on paperwork as an assisting officer if he stopped but did not get involved.¹⁰

In an **interview with COPA**, on November 20, 2018, **Officer Michael Power (“Officer Power”)**, #8661, stated he had no independent recollection of the stop where [REDACTED] was arrested on July 20, 2018, including the reason for the stop or what was recovered and processed. The paperwork did not refresh Officer Power’s memory and he did not recognize [REDACTED] or [REDACTED]. Officer Power explained the Strategic Anti-Violence Mission (“SAVM”) puts

³ Attachment 7 at 6:22-6:24.

⁴ Now known as Officer Durkin. Officer Durkin will be referred to by name for the remainder of this report.

⁵ Attachment 7 at 7:26-7:30.

⁶ *Id.* at 7:43-7:44.

⁷ Enterprise Rent-A-Car confirmed [REDACTED] was legally renting the 2019 Cadillac sedan on July 20, 2018. *See* Attachment 33.

⁸ [REDACTED] provided a bank statement indicating he had withdrawn the money earlier that day. *See* Attachment 11.

⁹ Attachment 7.

¹⁰ Attachment 36.

police presence in a specified area with high crime rate, referred to as a “hot” area. According to Officer Power the area of the arrest has been considered a “hot” area for at least the four years that he has been working in the area. While on patrol, anytime Officer Power observes police lights, he would stop to check on the officers.¹¹

In an **interview with COPA**, on November 27, 2018, **Officer Arturo Villanueva (“Officer Villanueva”)**, #14209, stated, on July 20, 2018, he was working as a tactical officer for the 008th district with his partner Officer Durkin in an unmarked vehicle. The officers were part of a violence reduction mission in a high crime area. Officer Villanueva first noticed [REDACTED] when [REDACTED] made an evasive move, quick left turn, into an alley. Officer Villanueva activated his emergency lights and approached [REDACTED] vehicle as [REDACTED] exited the alley, because using an alley as throughway is a traffic violation. Officer Villanueva, before exiting his vehicle, observed the passenger¹² making furtive movements.¹³ Officer Villanueva explained, in the academy, he was taught to watch individual’s hands because they indicate whether the person may have or is concealing something that could hurt you. Officer Villanueva exited his vehicle with his gun unholstered, in the low ready position with his elbow against his side because he feared the [REDACTED] and [REDACTED] may have a weapon. He ordered [REDACTED] and [REDACTED] to show their hands. Once they complied, Officer Villanueva holstered his weapon.

Officer Villanueva walked around to the passenger side of the vehicle and had [REDACTED] exit the vehicle for officer safety while the officers conducted an investigation. Once [REDACTED] and [REDACTED] were standing behind their vehicle, Officer Villanueva looked inside the vehicle and, in plain view, observed a bag of cannabis in the crevice of the front passenger seat. It is at this time, Officer Villanueva realized his camera was not on, so he activated his BWC and placed the cannabis back on the seat to show where he recovered it. Officer Villanueva asked [REDACTED] and [REDACTED] if there was any more cannabis, which they responded negatively. Officer Villanueva stated he did not ask and neither [REDACTED] nor [REDACTED] claimed ownership of the cannabis.

Officer Durkin took down their names to run a name check. Officer Villanueva asked [REDACTED] and [REDACTED] to relocate to the front of the police vehicle, so they were clear of the vehicle that is now in question. Officer Villanueva did not search [REDACTED] or [REDACTED] Officer Villanueva could not recall whether Officer Durkin searched [REDACTED] or [REDACTED] but he stated, at the time they were standing behind the vehicle, officers were allowed to conduct a pat down. Officer Villanueva asked [REDACTED] and [REDACTED] if they had a job, criminal background, and how much money they had.¹⁴ Officer Villanueva asked [REDACTED] why he used the alley, and believed [REDACTED] admitted to the violation when [REDACTED] related that he was trying to get to his friend’s house. Officer Villanueva stated that Officer Durkin also searched the vehicle, but he did not see Officer Durkin perform the search. Officer Villanueva stated he believed once cannabis is found, officers can search in the immediate area, wherever is accessible, inside the vehicle for any more cannabis. Officer Durkin came back showing a bag of cannabis he recovered.

¹¹ Attachment 38, 39.

¹² Now known as [REDACTED]

¹³ Officer Villanueva stated that [REDACTED] was moving around, crouching down trying to reach for or conceal something. Officer Villanueva stated, at this time, although it was raining, a light drizzle, he did not have any problems seeing because there was enough artificial lighting provided by street lights.

¹⁴ Officer Villanueva stated he was trying to determine whether they were selling narcotics.

Officer Villanueva stated that [REDACTED] was arrested for possession of cannabis because he was in control of the vehicle where the cannabis was found, and for criminal trespass to vehicle because [REDACTED] did not provide a rental agreement. While Officer Villanueva did not recall talking to [REDACTED] about the rental agreement, he stated that, based on the area where the arrest occurred, officers will not stay there and search for the agreement on [REDACTED] phone. [REDACTED] should have had a physical copy.

Officer Villanueva could not recall whether he was recovered any money from [REDACTED] but could see from the arrest report \$3,450.00 was recovered. Additionally, Officer Villanueva stated both he and Officer Durkin were present at the time [REDACTED] money was counted, but he could not recall whether he was the officer to count the money. Officer Villanueva denied taking any money. He pointed out that [REDACTED] told officers he had \$3,500.00 and \$3,450.00 was inventoried, while [REDACTED] told officers, he had \$1,500.00 and \$4,000.00 was inventoried.

With regards to his body worn camera (“BWC”), Officer Villanueva stated that he usually turns on his BWC at the beginning of an event, but here he was more focused on [REDACTED] actions than turning on his camera because he appeared to be trying to conceal or get something and they were in a violent zone. Officer Villanueva deactivated his BWC after the traffic stop ends. Officer Villanueva stated Officer Durkin drove [REDACTED] vehicle to the station but indicated he would not have recorded the vehicle transport on BWC.

In an **interview with COPA**, on November 30, 2018, **Officer Michael Durkin (“Officer Durkin”)**, #10663, stated, on July 20, 2018, he was on patrol, working with his partner Officer Villanueva in an unmarked vehicle, when he saw a Cadillac using an alley as a thru street.¹⁵ Officer Durkin thought it was an odd choice to go down an alley when there was a usable road nearby. In his experience, using the alley at night and in that area was suspicious behavior. Officer Durkin stated his weapon is always displayed because it is part of his uniform and it is visible, but his weapon was never removed from its holster during this incident. Officer Durkin believed he may remove his weapon from its holster when there is an imminent threat present. When Officer Durkin exited his vehicle, he moved around the back and stayed near his vehicle because he believed the driver, now known as [REDACTED] may try to take off and Officer Durkin was ready to jump in the police vehicle to follow.

Officer Durkin ordered [REDACTED] to turn the car off and hand the keys out. [REDACTED] complied. [REDACTED] without prompting, told Officer Durkin he had a bag of weed on him.¹⁶ [REDACTED] exited the vehicle and Officer Durkin placed him in handcuffs to prevent [REDACTED] from escaping or destroying evidence. Officer Durkin patted [REDACTED] down searching for any weapons and the weed [REDACTED] had said he had on him. Nothing was recovered. Officer Durkin searched the Cadillac for contraband because [REDACTED] admitted to having cannabis and Officer Durkin smelled cannabis on [REDACTED] person and the vehicle. Officer Durkin started searching the vehicle where he saw the passenger¹⁷ making furtive movements, which was the center console near the gear shift. Officer Durkin recovered a plastic bag containing six knotted bags containing suspect cannabis. Officer Durkin spoke to his partner and decided to arrest [REDACTED] for cannabis found in the vehicle. Officer

¹⁵ Officer Durkin stated the use of the alley was a Municipal Code violation for the City of Chicago. Attachment 50 at 32:40-32:46

¹⁶ Attachment 50 at 13:00 – 13:03.

¹⁷ Now known [REDACTED]

Durkin impounded [REDACTED] vehicle and performed an inventory search, where he recovered open alcohol inside the vehicle. [REDACTED] claimed ownership of the alcohol, but Officer Durkin did not hear [REDACTED] claim to possess any cannabis. Officer Durkin stated, when he held up the cannabis he found in the vehicle, [REDACTED] said he forgot the cannabis was in the car.

Officer Durkin stated [REDACTED] was charged with trespass to vehicle because [REDACTED] failed to produce the rental agreement. [REDACTED] said the rental agreement was on his phone, but Officer Durkin could not remove [REDACTED] handcuffs on the scene of arrest and Officer Durkin could not search [REDACTED] phone without a search warrant. Officer Durkin drove [REDACTED] vehicle to the station because the vehicle was illegally parked, not secure, and belonged to the City of Chicago because it was impounded for narcotics.

At the 008th District Station, Officer Durkin recovered \$3,450.00 from three different pockets on [REDACTED] person. Officer Durkin counted the money in his office, while [REDACTED] was inside the processing room. Officer Durkin denied taking \$600. At the time, Officer Durkin stated he was surrounded only by officers and his BWC must have deactivated.

With regards to his BWC, Officer Durkin stated he activated his BWC before exiting his police vehicle because that was the beginning of the investigation. Office Durkin deactivated his BWC when he was leaving the scene because he was no longer engaged in any law enforcement activity. He did not record the transport of the rental vehicle to the station because that was an administrative related activity, not law enforcement related. The vehicle was impounded, not seized. There was not enough cannabis recovered to seize the vehicle.

b. Digital Evidence

Body Worn Camera Video (“BWC”) obtained from Officer Durkin shows Officers Durkin and Villanueva conduct a traffic stop involving [REDACTED] and [REDACTED] Officer Durkin’s BWC was activated as Officer Durkin exited and moved to the rear of his vehicle. Officer Villanueva has his weapon drawn, yelling “...not dig. Do not dig. What are you digging over there for?”¹⁸ Officer Villanueva moves around the back of [REDACTED] vehicle and speaks to [REDACTED] Officer Durkin moves toward [REDACTED] driver side window and appears to be shining a flashlight inside the vehicle. Officer Durkin and [REDACTED] have a conversation about [REDACTED] possessing a bag cannabis as [REDACTED] exits the vehicle.¹⁹ [REDACTED] and [REDACTED] are taken to the rear of [REDACTED] vehicle and handcuffed. Officer Durkin searched [REDACTED] and [REDACTED] obtained identification information from both [REDACTED] and [REDACTED] and ran a name check. Officer Durkin asked [REDACTED] and [REDACTED] whether there was anything in the vehicle and received a negative response. Officer Durkin searched the vehicle and recovered a clear plastic bag containing a green substance, now known as cannabis, and alcohol. Officers Durkin and Villanueva discussed arresting both [REDACTED] and [REDACTED] Officer Durkin told Officer Villanueva he would drive [REDACTED] vehicle in. Officer Durkin deactivated his BWC while at his vehicle repeating the Officer of Emergency Management and Communications (“OEMC”) Event Number.²⁰

¹⁸ Attachment 25 at 0:31-0:41.

¹⁹ Attachment 25 at 1:03-1:10.

²⁰ Attachment 25.

Body Worn Camera Video (“BWC”) obtained from Officer Villanueva did not begin recording for approximately 3 minutes. Officer Villanueva’s BWC shows he searched [REDACTED] vehicle from the front passenger side and had a clear plastic bag containing a green substance, now known as cannabis. Officer Villanueva spoke to [REDACTED] and [REDACTED] about where they worked, lived, and whether they have been arrested before. [REDACTED] responded to Officer Villanueva he was on the rental agreement for the vehicle. Officer Villanueva asked [REDACTED] “Why were you using the alley as a throughway?” [REDACTED] explained that he was trying to get to his cousin’s house and he always went that way.²¹ Officer Villanueva asked how much money the individuals have on them. [REDACTED] responded fifteen hundred and [REDACTED] responded thirty-five hundred.²² Officer Villanueva spoke to officers that pulled up in an unmarked vehicle, who told Officer Villanueva [REDACTED] had history on Winchester. Officer Villanueva told the officers [REDACTED] may have had the cannabis on him because he might have been trying to tuck it in.²³ After a discussion with Officer Durkin on arresting [REDACTED] and [REDACTED] Officer Villanueva called for a transport. Officer Villanueva deactivated his BWC after stating the OEMC Event Number.²⁴

c. Documentary Evidence

According to **Department Reports** documented under RD #JB358522, on July 20, 2018, Officers Villanueva and Durkin (“the officers”), while assigned to SAVM mission, observed a vehicle use an alley as a thru street, a traffic violation. The officers activated emergency lights and conducted a traffic stop. On approach, the officers observed the front seat passenger,²⁵ while looking at the officers’ direction, make “furtive movements towards center radio console.”²⁶ Based on experience, the officers believed [REDACTED] was attempting to conceal a weapon. The officers requested all occupants²⁷ to exit the vehicle. The officers searched the vehicle for weapons. Officer Durkin recovered a clear plastic bag containing 6 clear plastic bags of suspect cannabis from inside the radio console and one clear bag. “[REDACTED] stated, not verbatim, that he forgot the weed was in there.”²⁸ The officers recovered \$3,450.00²⁹ from [REDACTED] and \$4,490.00 from [REDACTED]. Both [REDACTED] and [REDACTED] related they won the money playing a dice game. The officers, after discovering [REDACTED] and [REDACTED] had a history of narcotics arrests, believed the money was narcotics proceeds and ordered a money sniff by a K-9 unit. [REDACTED] was charged with possession of cannabis, criminal trespass to vehicle and issued a citation for using an alley as a through street. [REDACTED] was charged with drinking alcohol in a public way.³⁰

According to **Vehicle Inventory No. 2855000**, Form CPD-34.347 completed by Officers Durkin and Villanueva documented the 2019 Cadillac driven by [REDACTED] was impounded for unlawful drugs in the vehicle, noting 26 grams of cannabis.

²¹ Attachment 26 at 2:02-2:09.

²² *Id.* at 6:24-6:36.

²³ *Id.* at 14:26-14:33.

²⁴ Attachment 26.

²⁵ Now known as [REDACTED]

²⁶ Attachment 15, page 2.

²⁷ Now known to be [REDACTED] driver, and [REDACTED]

²⁸ Attachment 15, page 2.

²⁹ Inventory No. 14221462 documented [REDACTED] owned \$3,450.00, inventoried on July 21, 2018. Attachment 17.

³⁰ Attachments 13-16.

VI. ANALYSIS

A. Officer Arturo Villanueva

1. Allegation 1: Displayed his gun at or in the direction of [REDACTED] without justification.

COPA finds Allegation 1 that Officer Villanueva displayed his gun at or in the direction of [REDACTED] without justification is **Exonerated**. Rule 38 prohibits an officer from “unlawful or unnecessary use or display of a weapon.” Determining whether Officer Villanueva’s display of his firearm was proper is fact dependent.

[REDACTED] stated Officer Villanueva exited his vehicle with his gun out and pointed his gun at [REDACTED]. Officer Villanueva placed his gun back in its holster after he opened [REDACTED] door. Officer Villanueva admitted that he exited his vehicle with his gun drawn, holding the gun in the low ready position, because he feared [REDACTED] may have a weapon. Officer Villanueva stated he was working on a violence reduction mission in a high crime area, [REDACTED] driving was suspicious, and [REDACTED] was making furtive movements which led Officer Villanueva to believe he may be trying to conceal a weapon. Officer Villanueva further stated he re-holstered his weapon once he could see [REDACTED] and [REDACTED] hands. Officer Durkin stated he did not unholster his weapon during this incident, but initially he feared [REDACTED] was going to take off in the car and he would have to pursue him. Video confirms Officer Villanueva had his gun drawn and said, “...not dig. Do not dig. What are you digging over there for?”³¹ Then, Officer Villanueva did not open [REDACTED] door, but instead went around the rear of [REDACTED] vehicle to the passenger side and spoke to [REDACTED]. It is unclear from the video whether Officer Villanueva pointed his gun at [REDACTED] or [REDACTED].

Based on the totality of the circumstances, Officer Villanueva reasonably believed there may have been a weapon inside the vehicle that could have been used against him or his partner. Even though it was determined that neither [REDACTED] or [REDACTED] had a weapon, it was reasonable for Officer Villanueva to take the precaution of having his gun drawn. The evidence is clear and convincing that Officer Villanueva’s weapon was displayed at or in the direction of [REDACTED] for a reasonable period of time until the safety threat was neutralized. Therefore, this allegation is **Exonerated**.

2. Allegation 2: Stopped [REDACTED] vehicle without justification.

COPA finds Allegation 2, that Officer Villanueva stopped [REDACTED] vehicle without justification is **Exonerated**. 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.”³² Chicago Municipal Code prohibits an individual from using an alley as a through way.³³ A lawful traffic stop requires “at least [an] articulable and reasonable suspicion that the particular person stopped is breaking the law,” including traffic 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)). Articulable and reasonable suspicion

³¹ Attachment 25 at 0:31-0:41.

³² Special Order S04-13-09 V.A.

³³ MCC 9-20-010(c).

means that the police “must be able to identify some ‘particularized and objective basis’ for thinking that the person to be stopped is or may be about to engage in unlawful activity,” amounting to more than a hunch. *United States v. Miranda-Sotolongo*, 827 F.3d 663, 666 (7th Cir. 2015) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Police need not meet the higher threshold of probable cause to perform a traffic stop, but if the stop is supported by probable cause, its lawfulness is still evaluated under *Terry*. *Rodriguez v. United States*, 135 S. Ct. 1609, 1617-18 (2015). See also *People v. Cosby*, 231 Ill. 2d 262, 274 (2008) (“this court and many other courts have analyzed traffic stops under *Terry* principles, regardless of whether the initial stop was supported by probable cause”); *People v. Jones*, 215 Ill. 2d 261, 271 (2005) (analyzing reasonableness under *Terry* where the officer’s “initial stop of the vehicle was supported by probable cause”). An officer’s subjective intent does not enter into the analysis; even where officers hope to effectuate a goal unrelated to addressing a traffic violation (such as uncovering criminal activity), intent alone does not invalidate a stop that is otherwise objectively justified by reasonable articulable suspicion. See *Whren v. United States*, 517 U.S. 806, 812 (1996).

██████ denied driving down an alley. Officers Villanueva stated he stopped ██████ because he observed ██████ drive down an alley, which was a traffic violation. Officer Villanueva added that he believed ██████ admitted to the violation when he asked ██████ why he went down the alley and ██████ related that he was trying to get to his friend’s house. Officer Durkin stated he found ██████ use of the alley, at that time of night, suspicious behavior. While there is no video evidence to determine whether ██████ drove down an alley, BWC video shows Officer Villanueva asked ██████ why he used the alley as a throughway and ██████ responded, “I was just trying to get right here to this building. I always come from my house and come right through there.”³⁴ ██████ arrest report documented he was issued a citation for using the alley as a throughway.

Based on the foregoing, it is substantially more likely that ██████ used the alley as a street. Therefore, Officer Villanueva was within CPD policy to stop ██████ for violating a traffic law, and this allegation is **Exonerated**.

3. Allegation 3: Searched ██████ vehicle without justification.

COPA finds Allegation 3 that Officer Villanueva searched ██████ vehicle without justification is **Exonerated**. When officers perform a traffic stop, they may search the passenger compartment for weapons if they “possess an articulable and objectively reasonable belief that the suspect is potentially dangerous.” *Michigan v. Long*, 463 U.S. 1032, 1051 (1983).

Officer Villanueva, in his interview with COPA, stated, due to ██████ behavior, he believed ██████ may have a weapon. Officer Villanueva ordered ██████ to exit the vehicle for safety reasons. Once ██████ was standing outside and behind the vehicle, Officer Villanueva looked inside of the vehicle and, in plain view, saw a bag of suspect cannabis on the passenger seat. Officer Villanueva denied searching the car further. Officer Villanueva’s BWC was not activated prior to his discovery of the cannabis, but Officer Durkin’s BWC video supports Officer Villanueva’s account of the incident. Additionally, Officer Villanueva’s BWC confirms he did not search the vehicle beyond the passenger area where a weapon may be found.

³⁴ Attachment 26 at 2:02-2:09.

Based on the foregoing, the evidence is clear and convincing that Officer Villanueva reasonably believed [REDACTED] and [REDACTED] may have a weapon in the car and, initially posed a danger to him and his partner. Therefore, Officer Villanueva was able to search the vehicle's passenger compartment, and upon recovering the bag of suspect cannabis, he was able to further search the vehicle, without warrant, anywhere cannabis could be contained. Thus, this allegation is **Exonerated**.

4. Allegation 4: Detained [REDACTED] without justification.

COPA finds Allegation 4 that Officer Villanueva detained [REDACTED] without justification is **Exonerated**. Officers may detain an individual for a length of time reasonably necessary to confirm or dispel the suspicion of criminal activity.³⁵ A routine traffic stop is more analogous to a so-called 'Terry stop' than to a formal arrest. *Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); see also *Arizona v. Johnson*, 555 U.S. 323, 330 (2009). Like a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop and attend to related safety concerns, *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); see also, *United States v. Sharpe*, 470 U.S. 675, 685 (1985); *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification.").

Officer Villanueva stated he requested [REDACTED] to exit the vehicle for safety concerns and so he could determine whether there was a weapon in the vehicle. Officer Durkin ordered [REDACTED] out of the vehicle at the same time and collected [REDACTED] and [REDACTED] information to run a name check. After cannabis was recovered from the vehicle, Officer Villanueva ordered [REDACTED] and [REDACTED] to relocate to the front of the police vehicle, and a further search of the vehicle was performed by Officer Durkin. Officer Durkin recovered another bag of cannabis and [REDACTED] was arrested. Both officers indicated, based on BWC, the entire incident lasted around twenty minutes. BWC and Department reports completed by the officers corroborate the officers' description of the incident.

Based on the foregoing, it was reasonable to detain [REDACTED] while Officer Villanueva confirmed there were no weapons in the vehicle and considering how quickly the officers became aware of the presence of cannabis, [REDACTED] was not held an unreasonable amount of time. Therefore, this allegation is **Exonerated**.

5. Allegation 5: Arrested [REDACTED] without justification.

COPA finds Allegation 5 that Officer Villanueva arrested [REDACTED] without justification is **Exonerated**. A peace officer may arrest a person when he has reasonable grounds to believe that the person has committed an offense.³⁶ The question here is not whether [REDACTED] is guilty of committing the offenses he was charged, but whether, at the time of his arrest, Officer Villanueva had reasonable grounds to believe [REDACTED] committed the offenses.

³⁵ Special Order S04-13-09 II.A.

³⁶ 725 ILCS 5/107-2(1)(c)

First, █████ committed a traffic violation when he drove down the alleyway. The traffic violation alone is an arrestable offense. Although █████ denies doing so, Officer █████ and Villanueva's account of the events were more credible.

Second, █████ was arrested for possession of cannabis because he was in control of the vehicle where the cannabis was found. █████ admitted that he had a bag of weed on him. Neither █████ never claimed ownership of the cannabis. Video corroborates the officers' statements that cannabis was recovered from inside the vehicle. Officer Durkin's BWC captures, at the start of the stop, a conversation where █████ says, "bag of weed," and Officer Durkin asks █████ if he only has one bag and █████ says, "that's it."³⁷ After a search of the vehicle, Officer Durkin recovered 6 additional knotted plastic bags of cannabis.

Second, █████ stated he should not have been arrested for criminal trespass to vehicle³⁸ because he had rented the car. Officer Villanueva and Durkin stated █████ was charged with criminal trespass to vehicle because he failed to produce the rental agreement. While Officer Villanueva did not recall █████ saying he had a copy of the rental agreement in his email, Officer Villanueva stated he would not have gone through █████ phone to find the rental agreement. Officer Durkin also stated he would not have gone through █████ phone for the rental agreement because he could not search █████ phone without a search warrant and he could not remove █████ handcuffs to have him search. Vehicle impoundment documents note the vehicle was owned by Enterprise Rent-A-Car, and █████ had rented the vehicle. Additionally, COPA contacted Enterprise Rent-A-Car and confirmed █████ was legally renting the vehicle on July 20, 2018.

There is clear and convincing evidence that █████ committed a traffic violation, cannabis was found inside the vehicle and █████ did not provide Officer Villanueva with a physical copy of his rental agreement, at the time of his arrest. Therefore, this allegation is **Exonerated**.

6. Allegation 6: Failed to inventory an additional \$600 in U.S. currency recovered from █████

COPA finds Allegation 6 that Officer Villanueva failed to inventory an additional \$600 in U.S. currency recovered from █████ is **Not Sustained**. When money is evidence or suspected criminal proceeds, it will be inventoried as money, classified as "Narcotics Seizure to be Deposited" and held for investigation.³⁹

█████ stated he had \$4,050.00, but only \$3,050.00 was returned to him. █████ believed it was Officer Villanueva who searched and took his money at the station. Officer Villanueva did not recall recovering the money, however, Officer Durkin stated, he recovered \$3,450.00 from three different pockets on █████ person while at the police station. Officer Villanueva stated █████ told officers he had \$3,500.00 and \$3,450.00 was inventoried, while █████ told officers he had \$1,500.00 and \$4,000.00 was inventoried. Department reports documented \$3,450.00 was recovered from █████ and inventoried under Officers Villanueva and Durkin. Video confirms █████ and █████ stated they had \$3,500.00 and \$1,500.00, respectively. However, there is no

³⁷ Attachment 25 at 1:03-1:10.

³⁸ A person commits criminal trespass to vehicles when he or she knowingly and without authority enters any part of or operates any vehicle, aircraft, watercraft or snowmobile. 720 ILCS 5/21-2(a).

³⁹ Special Order S07-01-01 III.E. and Special Order S07-01-02 V.B.1.

video or witness statements verifying how much money ██████ possessed. Therefore, there is insufficient evidence to determine, by a preponderance of the evidence, whether Officer Villanueva recovered an additional \$600 in U.S. currency from ██████ and failed to inventory it. Thus, this allegation is **Not Sustained**.

7. Allegation 7: Failed to record the incident in its entirety on body worn camera.

COPA finds Allegation 7 that Officer Villanueva failed to record the incident in its entirety on body worn camera is **Sustained**. An officer will start recording, on BWC, “at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. If circumstances prevent activating the BWC at the beginning of the incident, the member will activate the BWC as soon as practical.”⁴⁰ Officer Villanueva stated he did not activate his BWC because he was focused on the individuals’ movements inside the vehicle and believed there may be a weapon inside the vehicle. Then, he activated his BWC once he realized it was not recording. Officer Villanueva did not activate his BWC for approximately three minutes. Officer Villanueva is seen with ██████ at the back of the vehicle, placed ██████ in handcuffs, spoke to ██████ and he is heard responding that he has it, when Officer Durkin asks ██████ where the weed is at because he can smell it.⁴¹ Officer Villanueva’s then moves to the inside of the vehicle and conducts a search. BWC is then activated approximately 30 seconds after the search.⁴²

Based on the foregoing, a preponderance of the evidence establishes that although it was reasonable for Officer Villanueva to be more focused on the perceived immediate threat of a weapon inside the vehicle, there was no longer a threat after ██████ was placed in handcuffs at the back of the vehicle. Officer Villanueva should have activated his BWC when he began questioning ██████ and before searched the vehicle. Therefore, Officer Villanueva failed to record the entire incident, and this allegation is **Sustained**.

B. Officer Michael Durkin

1. Allegation 1: Displayed his gun at or in the direction of ██████ without justification.

COPA finds Allegation 1 that Officer Durkin displayed his gun at or in the direction of ██████ without justification is **Unfounded**. General Order G03-02-01 regulates when an officer can deploy their firearm, but the order does not address when an officer can or cannot draw their firearm from their holster. Rule 38 prohibits an officer from “unlawful or unnecessary use or display of a weapon.” Determining whether Officer Villanueva’s display and use of his firearm was proper is fact dependent.

██████ stated Officer Durkin exited his vehicle with his gun out, ran around to the other side of ██████ vehicle and pointed his gun at ██████. Contrarily, Officer Durkin stated his weapon is always visible as part of his uniform, but his weapon was never removed from its holster during this incident. BWC confirms Officer Durkin remained at the rear of the police vehicle until Officer Villanueva, who had his weapon drawn while standing at ██████ driver side window, ran around

⁴⁰ Special Order S03-14 III.A.2.

⁴¹ Attachment 25 at 3:06 - 3:09.

⁴² Attachment 25 at 3:27 and Attachment 26 at 0:30.

the back of [REDACTED] vehicle to the passenger side. Then, Officer Durkin approached [REDACTED] driver side window, where it appeared Officer Durkin had a flashlight in his hand that he was shining inside the vehicle.

Based on the foregoing, it appears [REDACTED] was confused about what actions Officer Durkin took that evening, and there is clear and convincing evidence that Officer Durkin had his flashlight in his hands rather than his gun. Therefore, this allegation is **Unfounded**.

2. Allegation 2: Stopped [REDACTED] vehicle without justification.

As discussed above, COPA finds the evidence is clear and convincing that [REDACTED] used the alley as a street, and Officer Durkin was within CPD policy to stop [REDACTED] for violating a traffic law. Therefore, this allegation is **Exonerated**.

3. Allegation 3: Searched [REDACTED] person without justification.

COPA finds Allegation 3 that Officer Durkin searched [REDACTED] person without justification is **Exonerated**. During a stop, if an officer has reasonable articulable suspicion that an individual is armed and dangerous, the officer may perform a pat down of the outer clothing of a person for weapons. This limited search, Protective Pat Down, “is not a general exploratory search for evidence of criminal activity.”⁴³ If an officer wants to search an individual, beyond a pat down, the officer must have probable cause to support such search.⁴⁴ 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).⁴⁵

As discussed above, based on [REDACTED] movements, officers were concerned there may be a weapon in the vehicle or on [REDACTED] or [REDACTED]. Officer Durkin patted [REDACTED] down searching for any weapons and the cannabis [REDACTED] said he had on him. Video shows Officer Durkin speaking to [REDACTED] about one bag of weed as [REDACTED] was ordered out of the vehicle. After Officer Durkin placed [REDACTED] in handcuffs, he searched [REDACTED] pockets while asking where the weed was because he could smell it.

Considering, [REDACTED] admitted to possessing cannabis and Officer Durkin stated, in his statement to COPA, Department reports and on BWC, he could smell cannabis, there is clear and convincing evidence that Officer Durkin had probable cause to search [REDACTED]. Therefore, this allegation is **Exonerated**.

4. Allegation 4: Searched [REDACTED] vehicle without justification.

COPA finds Allegation 4 that Officer Durkin searched [REDACTED] vehicle without justification is **Exonerated**. “After an officer is in possession of facts sufficient to support probable

⁴³ Special Order S04-13-09 II.B.

⁴⁴ General Order G02-02 III.B.1.

⁴⁵ *Ornelas et al. v. United States*, 517 U.S. 690, 696 (1996).

cause to believe that a vehicle contains contraband, the vehicle may be searched without a warrant and the search area includes any interior compartment of the vehicle that might reasonably contain the contraband.” *People v. Contreras*, 2014 IL App (1st) 131889, ¶ 28. Under the “automobile exception” to the search warrant requirement, “law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize.” *People v. James*, 163 Ill. 2d 302, 312 (Ill. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). “When officers have such probable cause, the search may extend to ‘all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks.’” *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)).

██████████ stated, upon request, he told the officers he had nothing in the car, and Officer Durkin searched his car without his permission. Officer Durkin stated he searched the vehicle for contraband because ██████████ admitted to having cannabis and Officer Durkin smelled cannabis on ██████████ person and the vehicle. Video supports Officer Durkin’s description of the incident. Additionally, video shows Officer Villanueva remove a plastic bag of cannabis from the front passenger side of the vehicle.

Based on the foregoing, there is clear and convincing evidence that Officer Durkin had probable cause to believe the vehicle contained cannabis and was able to perform a warrantless search of ██████████ vehicle anywhere cannabis may be stored. Therefore, this allegation is **Exonerated**.

5. Allegation 5: Detained ██████████ without justification.

As discussed above, COPA finds Allegation 5 that Officer Durkin detained ██████████ without justification is **Exonerated**.

6. Allegation 6: Arrested ██████████ without justification.

As discussed above, COPA finds clear and convincing evidence that Officer Durkin had justification to arrest ██████████ and therefore, this allegation is **Exonerated**.

7. Allegation 7: Failed to inventory an additional \$600 in U.S. currency recovered from ██████████

As discussed above, COPA finds there is insufficient evidence to determine, by a preponderance of the evidence, whether Officer Durkin recovered an additional \$600 in U.S. currency from ██████████ and failed to inventory it. Thus, this allegation is **Not Sustained**.

8. Allegation 8: Failed to record the incident in its entirety on body worn camera.

COPA finds Allegation 8 that Officer Durkin failed to record the incident in its entirety on body worn camera is **Exonerated**. An officer will start recording, on BWC, “at the beginning of an incident and will record the entire incident for all law-enforcement-related activities.”⁴⁶ An

⁴⁶ S03-14 III.A.2.

officer will stop recoding once the officer has recorded the entire incident and is no longer engaged in any law-enforcement activity, such as when the officer leaves the scene and when the arrestee is secured in processing and the officer is alone or in the presence of only other police officers.⁴⁷ Officers may use discretion to activate BWC for non-law-enforcement-related activities.⁴⁸ Officer Durkin stated he activated his BWC at the beginning of his investigation, and deactivated BWC when he was leaving the scene because he was no longer engaged in any law enforcement activity. Officer Durkin stated he did not need to record transporting the rental vehicle to the station because it was an administrative related activity not law enforcement related, and the vehicle was not seized as evidence. Additionally, Officer Durkin stated his BWC was deactivated when he counted [REDACTED] money because he was in the processing area of the station surrounded only by other officers. Officer Durkin's BWC documented that Officer Durkin activated his BWC as he exited his vehicle and deactivated his BWC after repeating the OEMC Event Number out loud. The vehicle impoundment/seizure form completed by Officers Durkin and Villanueva documented the vehicle violation was for impoundment only, not impoundment and seizure.

Based on the foregoing, Officer Durkin properly activated and deactivated his BWC while on scene. While activating BWC during a vehicle transport and inventorying an arrestee's money would serve a police purpose of documenting evidence collection and providing support for whether particular items were found or collected, CPD policy does not mandate the use of BWC in these situations but gives officers discretion. Therefore, there is clear and convincing evidence that Officer Durkin was not required under CPD policy to activate his BWC while transporting [REDACTED] rental vehicle to the station or counting [REDACTED] money, and this allegation is **Exonerated**.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Arturo Villanueva

i. Complimentary and Disciplinary History

Officer Villanueva's complimentary, disciplinary and training history were considered when recommending discipline in this matter. Officer Villanueva's training records does reflect him completing a training on the use of Body Worn Cameras. Officer Villanueva does not have a history of discipline.

Therefore, COPA recommends training on Body Worn Camera and discipline of violation-noted.

VIII. CONCLUSION

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

⁴⁷ S03-14 III.B.1.a.

⁴⁸ S03-14 III.A.3.

Officer	Allegation	Finding / Recommendation
Officer Arturo Villanueva	<p>It is alleged that on July 20, 2018, in the vicinity of 2615 W 66th Street, at approximately 10:50 p.m., Officer Arturo Villanueva, Star No.: 14209, committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Displaying your gun at or in the direction of ██████████ without justification; 2. Stopping ██████████ vehicle without justification; 3. Searching ██████████ vehicle without justification; 4. Detaining ██████████ without justification; 5. Arresting ██████████ without justification; 6. Failing to inventory an additional \$600 in U.S. currency recovered from ██████████ and ██████████ 7. Failed to record the incident in its entirety on body worn camera. 	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Sustained</p>
Officer Michael Durkin	<p>It is alleged that on July 20, 2018, in the vicinity of 2615 W 66th Street, at approximately 10:50 p.m., Officer Michael Durkin, Star No.: 10663, committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Displaying your gun at or in the direction of ██████████ without justification; 2. Stopping ██████████ vehicle without justification; 3. Searching ██████████ person without justification; 4. Searching ██████████ vehicle without justification; 5. Detaining ██████████ without justification; 6. Arresting ██████████ without justification; 7. Failing to inventory an additional \$600 in U.S. currency recovered from ██████████ and ██████████ 8. Failed to record the incident in its entirety on body worn camera. 	<p>Unfounded</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Unfounded</p>

Approved:



April 30, 2019

Andrea Kersten
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

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