

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	May 1, 2019
Time of Incident:	4:00 PM
Location of Incident:	7200 S. Ada St. Chicago, Illinois 60636
Date of COPA Notification:	May 1, 2019
Time of COPA Notification:	4:25 PM

On May 1, 2019, at approximately 4:00 p.m., near the vicinity of 7200 S. Ada St., Chicago, Il 60636, Officers Bernadette Kelly #7186 (“Officer Kelly”) and Gabriela Santana #16129 (“Santana”) conducted the traffic stop of Complainant [REDACTED] (“[REDACTED]”). [REDACTED] alleged that during the traffic stop, Officer Kelly and Santana searched his person and his vehicle without justification. The Civilian Office of Police Accountability (“COPA”) conducted a thorough investigation of the allegations and recommends they be Exonerated.

II. INVOLVED PARTIES

Involved Officer #1:	Bernadette Kelly, Star # 7186, Employee ID# [REDACTED] DOA: 10/17/11, Rank: Police Officer, Unit of Assignment: 7 <sup>th</sup> District, DOB: [REDACTED]/82, Female, White.
Involved Officer #2:	Gabriela Santana, Star # 16129, Employee ID# [REDACTED] DOA: 10/26/15, Rank: Police Officer, Unit of Assignment: 7 <sup>th</sup> District, DOB: [REDACTED]/85, Female, Hispanic.
Involved Individual #1:	[REDACTED] DOB: [REDACTED]/85, Male, Black.
Involved Individual #2:	[REDACTED] DOB: [REDACTED]/90, Male, Black.

III. ALLEGATIONS

Officer	Allegation	Finding/Recommendation
Officer Bernadette Kelly	1. It is alleged by ██████████ that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his person without justification in violation of Rules 1 and 2.	Exonerated
	2. It is alleged by ██████████ that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his vehicle without justification in violation of Rules 1 and 2.	Exonerated
Officer Gabriela Santana	1. It is alleged by ██████████ that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his person without justification in violation of Rules 1 and 2.	Exonerated
	2. It is alleged by ██████████ that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his vehicle without justification in violation of Rules 1 and 2.	Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

**Rule 1:** Violation of any law or ordinance.

**Rule 2:** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Federal Laws

**United States Constitution 4<sup>th</sup> Amendment:** 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.

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

### a. Interviews

COPA conducted complainant [REDACTED] (“[REDACTED] audio recorded statement on May 7, 2019. [REDACTED] stated that on May 1, 2019, he observed Officers Kelly and Santana following his vehicle for two blocks. [REDACTED] stated that he activated his turning signal when Officers Kelly and Santana pulled him over. [REDACTED] stated that Officers Kelly and Santana came out of their vehicle with their guns drawn yelling at him to put his hands in the air. [REDACTED] stated that Officer Santana asked him for his driver’s license and insurance which he provided. [REDACTED] stated that Officer Santana ran his information and when she returned, she asked him to step out of his car. [REDACTED] stated Officer Kelly pulled open his passenger’s side door ready to search the vehicle. [REDACTED] stated that he refused to let the officers search the vehicle and asked for a supervisor. [REDACTED] stated that Officers Kelly and Santana told him that they smelled marijuana. [REDACTED] stated that Sergeant Rumsa<sup>2</sup> came on scene and ordered him and his cousin out of the vehicle because he too smelled marijuana. [REDACTED] stated that Officers Kelly and Santana searched his vehicle as well as him and his cousin. [REDACTED] stated the officers ran their hands up and down his leg, between his buttocks moving his penis and testicles from side to side. [REDACTED] stated that Officers Kelly and Santana initially told him the reason for the stop was for not signaling and then told him it was because his cousin did not have on a seat belt.<sup>3</sup>

COPA conducted accused **Officer Bernadette Kelly’s Star#7186 (“Officer Kelly”)**, audio statement on June 3, 2019. Officer Kelly stated that on May 1, 2019, she was on duty working with Officer Santana. Officer Kelly stated that at approximately 4:00 p.m. near the location of 7200 S. Ada St. she and her partner conducted a “no turn signal” traffic stop. Officer Kelly stated that Officer Santana turned on the emergency equipment to curb the vehicle. Officer Kelly stated the vehicle came to a stop and she observed [REDACTED] as the driver of the vehicle and another male in the passenger seat. Officer Kelly stated that Officer Santana requested identification and [REDACTED] complied. Officer Kelly stated that she asked [REDACTED] and the passenger to exit the vehicle because she smelled marijuana in the vehicle. Officer Kelly stated she believed the smell was marijuana based on her 8 years of experience as a police officer. Officer Kelly stated that [REDACTED] and the passenger refused to exit the vehicle and requested a supervisor. Officer Kelly stated that she requested a supervisor on scene. Officer Kelly stated that Sergeant Rumsa arrived on scene and ordered [REDACTED] and the passenger to exit the vehicle. Officer Kelly stated that at that point [REDACTED] and the passenger complied. Officer Kelly that once [REDACTED] and the passenger exited the vehicle, she and Officer Santana conducted a narcotics search of the vehicle and the occupants. Officer Kelly stated that she first conducted a narcotics search of [REDACTED] and the passenger. Officer Kelly explained that a narcotics search is different from a protective pat down in that she searched [REDACTED] whole body including any clothing pockets. Officer Kelly stated that she ran her hands on [REDACTED] chest, pockets, waistband area, and legs. Officer Kelly stated that she used a sideways open palm to check [REDACTED] upper thigh. Officer Kelly stated that she did not touch [REDACTED] genitals. Officer Kelly stated that no contraband

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

<sup>2</sup> Sergeant Nicholas Rumsa

<sup>3</sup> Attachments 8, 9

was found on either [REDACTED] or the passenger. Officer Kelly stated she then conducted a narcotics search of the vehicle in which she searched the center console, underneath the seats, the glove box, the back seat, and trunk. Officer Kelly stated nothing was found in the vehicle. Officer Kelly stated an Administrative Notice of Ordinance Violation (“ANOV”) was issued to the passenger for not wearing his seatbelt. Officer Kelly stated she used her discretion and did not issue [REDACTED] a ticket for the turning signal violation. Officer Kelly further added that she performs narcotics searches of individuals and vehicles on a daily basis.<sup>4</sup>

COPA conducted accused **Officer Gabriela Santana’s, Star#16129 (“Officer Santana”)** **audio statement** on June 3, 2019. Officer Santana stated that on May 1, 2019, she was on duty and working with Officer Kelly. Officer Santana stated that at approximately 4:00 p.m., she conducted the traffic stop of [REDACTED] near the location of 7200 S. Ada St. for not activating his turn signal. Officer Santana stated that once the vehicle came to a stop, she informed [REDACTED] of the reason she stopped him and asked him for his driver’s license and insurance. Officer Santana stated [REDACTED] complied but was visibly upset. Officer Santana stated that she smelled cannabis in the vehicle and informed [REDACTED]. Officer Santana stated that she knew the particular smell was cannabis based on her four years of experience as a police officer. Officer Santana stated that at that point Officer Kelly was standing on the passenger side of the vehicle next to the passenger of the vehicle. Officer Santana stated that she ordered [REDACTED] and the passenger out of the vehicle. Officer Santana stated that [REDACTED] and the passenger refused to exit the vehicle and requested a supervisor. Officer Santana stated that Officer Kelly requested a sergeant over the radio. Officer Santana stated Sergeant Rumsa arrived and also stated he smelled cannabis. Officer Santana stated Sergeant Rumsa ordered [REDACTED] and the passenger out of the vehicle. Officer Santana stated that [REDACTED] and the passenger exited the vehicle at that time. Officer Santana stated that she and Officer Kelly conducted a narcotics search of [REDACTED] and the passenger as well as the vehicle. Officer Santana stated that she searched [REDACTED] waistband, pockets, and anywhere narcotics can be placed. Officer Santana stated that she ran her hand up and down [REDACTED] legs including the inner thigh. Officer Santana stated that she did not find anything on [REDACTED] person. Officer Santana stated that she then searched the vehicle looking underneath the seats, in the glove compartment, center console, rear passenger seat, and the trunk. Officer Santana stated that Sergeant Rumsa was on scene as she and Officer Kelly searched [REDACTED] and the vehicle. Officer Santana stated that she used her discretion and did not issue [REDACTED] a ticket for the turn signal violation but Officer Kelly issued the passenger an ANOV for not wearing his seatbelt. Officer Santana added that in her experience as a police officer, she has conducted prior narcotics searches of male subjects.<sup>5</sup>

COPA conducted witness **Sergeant Nicholas Rumsa’s, Star#1371 (“Sergeant Rumsa”)** **audio statement** on June 20, 2019. Sergeant Rumsa stated that on May 1, 2019, at approximately 4:00 p.m., he was called to the location of 7200 S. Ada St. by officers on scene who needed a supervisor. Sergeant Rumsa stated that once he arrived on scene, he observed Officers Kelly and Santana conducting a traffic stop. Sergeant Rumsa stated that Officer Kelly informed him that she and Officer Santana smelled marijuana in the vehicle and wanted the occupants to exit the vehicle. Sergeant Rumsa stated that he then approached the vehicle and smelled the odor of cannabis. Sergeant Rumsa stated that he was able to determine the odor was cannabis from his previous

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<sup>4</sup> Attachment 14

<sup>5</sup> Attachment 15

police experience. Sergeant Rumsa stated that at that time he requested the occupants to exit the vehicle. Sergeant Rumsa stated that the occupants were visibly agitated but complied with his request. Sergeant Rumsa stated that Officers Kelly and Santana searched the vehicle for narcotics. Sergeant Rumsa stated that he did not recall Officers Kelly and Santana searching the occupants of the vehicle. Sergeant Rumsa stated that a narcotics search of a person is more than a pat down and officers are taught to search with a bladed hand to make sure that narcotics are not concealed on the person. Sergeant Rumsa stated that there have been incidents where individuals have concealed guns and large amounts of drugs in the groin area. Sergeant Rumsa stated that depending on the exigency it is not incorrect for a female officer to search a male subject.<sup>6</sup>

#### b. Digital Evidence

Officer Santana's **Body Worn Camera ("BWC")**<sup>7</sup> depicts her exiting the police vehicle's driver's side and asking to see [REDACTED] hands. As Officer Santana approaches, [REDACTED] is seen in the driver's side and there is a passenger in the vehicle. Officer Kelly approaches the passenger's side. [REDACTED] puts his hands on the wheel and Officer Santana informs him that he did not use a turn signal and asks for [REDACTED] driver's license and insurance. [REDACTED] replies that he did use his turning signal and complies with showing Officer Santana his driver's license and insurance. [REDACTED] informs Officer Santana that he was coming from the liquor store and he is in his grandfather's vehicle. Officer Santana returns to the police vehicle to run [REDACTED] name. When Officer Santana returns to the vehicle Officer Kelly informs [REDACTED] that she smells marijuana in the vehicle. Officer Santana asks [REDACTED] whether he and his passenger have been smoking. [REDACTED] replies that he does smoke because of his work and requests a Sergeant come on scene. Officer Kelly immediately requests a Sergeant come to the area. Sergeant Rumsa arrives on scene and [REDACTED] tells him that Officer Santana and Kelly said they smelled marijuana and asks him whether he smells the same. Sergeant Rumsa states that he does smell a little bit of marijuana and asks [REDACTED] whether he was smoking earlier. [REDACTED] says he is a truck driver who takes random drug tests and does not smoke. Sergeant Rumsa asks [REDACTED] to step out the vehicle. [REDACTED] and the passenger comply. Sergeant Rumsa informs [REDACTED] that he is being detained. Officer Santana places handcuffs on [REDACTED] Officer Santana searches [REDACTED] by running her hand across his waist band, patting up and down and between his legs. Officer Santana briefly searches the vehicle. Officer Santana searches the passenger on the vehicle in the same way she searched [REDACTED] including checking inside of pockets. Officer Kelly can be seen searching [REDACTED] is heard saying that a female officers are not supposed to search males. Officer Santana returns to search the vehicle including seats, center console, items in the vehicle, and the truck. No contraband was found in either the vehicle or the occupants of the vehicle. Officer Santana, completes an investigatory stop receipt. [REDACTED] and the passenger are unhandcuffed and provided the receipts.

Officer Kelly's **BWC**<sup>8</sup> depicts the same events as described in Officer Santana's BWC. Officer Kelly is the first officer to ask the passenger to step out of the vehicle because she can smell marijuana. Officer Kelly wrote the passenger of the vehicle a ticket for not wearing his seat belt.

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<sup>6</sup> Attachment 28

<sup>7</sup> Attachments 24, 26

<sup>8</sup> Attachments 23, 25

Sergeant Rumsa's **BWC**<sup>9</sup> depicts the same events as describes in Officer Santana's BWC. Sergeant Rumsa stands by as Officers Santana and Kelly search the vehicle and the occupants. Sergeant Rumsa also searches the vehicle. Sergeant Rumsa tells [REDACTED] that there is no problem with Officers Santana and Kelly searching them.

**c. Documentary Evidence**

The **Investigatory Stop Receipt 10565** provides Officers Kelly and Santana's identifying information.

The **Administrative Notice of Ordinance Violation** [REDACTED] indicates it was provided to [REDACTED] for failure to wear a seatbelt in a moving vehicle.

**VI. ANALYSIS**

**a. Legal Standard**

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is more likely than not that the conduct 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

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<sup>9</sup>Attachment 20



	<p>2. It is alleged by [REDACTED] that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his vehicle without justification in violation of Rules 1 and 2.</p>	
<p>Officer Gabriela Santana</p>	<p>1.It is alleged by [REDACTED] that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada. St. Chicago, Illinois 60636, you searched his person without justification in violation of Rules 1 and 2.</p> <p>2.It is alleged by [REDACTED] that on May 1, 2019, at approximately 4:00 p.m., at or near the location of 7200 S. Ada St. Chicago, Illinois 60636, you searched his vehicle without justification in violation of Rules 1 and 2.</p>	<p>Exonerated</p> <p>Exonerated</p>

Approved:

[REDACTED SIGNATURE]

Angela Hearts-Glass  
 Deputy Chief Administrator – Chief Investigator

7-23-19

Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	10
<b>Investigator:</b>	Sandra Trujillo
<b>Supervising Investigator:</b>	Erica Sangster
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass

