

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 6, 2019
Time of Incident:	5:50 p.m.
Location of Incident:	12700 South Indiana Avenue, Chicago, Illinois
Date of COPA Notification:	February 7, 2019
Time of COPA Notification:	8:02 a.m.

On February 6, 2019, [REDACTED] ([REDACTED]) was stopped for a traffic violation, and Officer Thomas Fennell searched his vehicle. [REDACTED] alleged officers stopped him, handcuffed him and searched his vehicle without justification.

The Civilian Office of Police Accountability (“COPA”) conducted a thorough investigation of the allegations. COPA’s investigation found there was insufficient evidence to determine whether [REDACTED] used his turn signal to cause officers to stop him. It was clear that, at the time of the stop, Officer Fennell and Officer Cirello reasonably believed [REDACTED] may have a weapon, and, in accordance with Department policy handcuffed [REDACTED] and the passenger in the [REDACTED] vehicle for officer safety. Accordingly, that allegation was not served in this matter. Additionally, Officer Fennell acted in accordance with Department policy when he searched [REDACTED] vehicle. A detailed analysis of COPA’s findings is discussed below.

II. INVOLVED PARTIES

Involved Officer #1:	Thomas Fennell, star #15220, employee ID# [REDACTED] Date of Appointment: October 31, 2012, PO, Unit 005, DOB: [REDACTED], 1986, Male, White
Involved Officer #2:	Cynthia Cirello, star #15671, employee ID# [REDACTED] Date of Appointment: December 14, 2012, PO, Unit 005, DOB: [REDACTED], 1985, Female, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1985, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Thomas Fennell	It is alleged by [REDACTED] that on or about February 6, 2019 at approximately 5:50 p.m. at or near 12700 South Indiana Avenue, Officer Thomas Fennell, star #15220, committed misconduct through the following acts or omissions, by:	

	1. stopping [REDACTED] without justification;	Not Sustained
	2. searching [REDACTED] vehicle without justification; and	Exonerated
	3. failing to comply with S03-14 by failing to timely activate your body worn camera.	Sustained
Officer Cynthia Cirello	It is alleged by [REDACTED] that on or about February 6, 2019 at approximately 5:50 p.m. at or near 12700 South Indiana Avenue, Officer Cynthia Cirello, star #15671, committed misconduct through the following acts or omissions, by stopping [REDACTED] [REDACTED] without justification.	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules
Rule 6: Disobedience of an order or directive, whether written or oral.
General Orders
G02-02 The First Amendment and Police Actions
Special Orders
1. S04-13-09 Investigatory Stop System
2. S03-14 Body Worn Cameras
Federal Laws
United States Constitution, Amendment IV: Prohibits search and seizure without probable cause. ¹

V. INVESTIGATION²

a. Documentary Evidence

In his **Initiation Report**, Sergeant Wojciech Dratwa, star #1651 (“Sgt. Dratwa”) document, on February 6, 2019, [REDACTED] ([REDACTED] stated he was pulled over. A male officer, now known as Officer Thomas Fennell (“Officer Fennell”), approached on the driver side, and asked [REDACTED] for his driver’s license and insurance card. [REDACTED] did not comply and asked why he was stopped. Officer Fennell refused to tell [REDACTED] the reason for the stop, opened the

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.

driver's side door, grabbed [REDACTED] left hand and placed a handcuff on it,³ and then removed [REDACTED] from his vehicle. Officer Fennell handcuffed [REDACTED] and moved him to the rear of his vehicle. Officer Fennell searched [REDACTED] vehicle. [REDACTED] was uncuffed and told to leave.⁴

Investigatory Stop Reports documented [REDACTED] was stopped for turning without using a turn signal.⁵ Officers activated emergency equipment and [REDACTED] vehicle came to a stop approximately one block later. Officers used the spotlights affixed to the police vehicle to illuminate the inside of [REDACTED] vehicle and observed [REDACTED] making movements toward the floor and back seat. Officers approached and asked for [REDACTED] driver's license. [REDACTED] informed officers he only had a State Identification. [REDACTED] and his passenger, [REDACTED] ([REDACTED] were ordered to exit the vehicle. A pat down was conducted on [REDACTED]. A cursory search of the vehicle was conducted. Nothing was recovered. A name check on [REDACTED] returned clear.⁶

b. Interviews

In an **interview with COPA**, on August 27, 2019, **Officer Cynthia Cirello** (“**Officer Cirello**”) stated, on February 6, 2019, while on patrol she and her partner, Officer Thomas Fennell, observed a vehicle turn without using a turn signal. The officers activated the emergency lights and attempted to stop the vehicle. The vehicle traveled approximately a block before stopping. The officers turned their spotlights on the vehicle and observed the driver, [REDACTED] moving around, reaching for the floor and back, which Officer Cirello distinguished from someone reaching for their identification in pockets. Officer Fennell spoke with driver. Officer Cirello did not recall hearing the conversation, but did not think there was any issue. When [REDACTED] did not produce a driver's license, only a State Identification Card, the officers had [REDACTED] and his passenger, [REDACTED] exit the vehicle and placed them in handcuffs for officer safety. Officer Fennell searched the vehicle for concealed weapons. Officers believed there may be weapons in the vehicle because [REDACTED] did not immediately pull over and the movements he made inside the vehicle. Officer Cirello ran a name check for both [REDACTED] and [REDACTED]. Officer Cirello believed the computer showed [REDACTED] had a valid driver's license. Officers released [REDACTED] and [REDACTED] without writing a citation.⁷

In an **interview with COPA**, on September 13, 2019, **Officer Thomas Fennell** (“**Officer Fennell**”) provided a consistent statement as Officer Cirello with the following additional details. Officer Fennell described [REDACTED] movements as his shoulders moving and turning toward the floor and rear seat. Officer Fennell approached the vehicle cautiously, by going wide, the vehicle was illuminated so he could see inside, he used [REDACTED] vehicle as cover, and he did not want to draw his weapon because it could be perceived as overly aggressive and send someone into a flight or fight response. Officer Fennell handcuffed [REDACTED] for officer safety and to ensure [REDACTED] did not flee. Officer Fennell did a quick cursory search of [REDACTED] vehicle in the areas

³ [REDACTED] stated he experienced minor pain to his left wrist when Officer Fennell placed the cuffs on him, but he refused medical attention. Sgt. Dratwa did not observe any injury. BWC shows [REDACTED] did not complain his handcuffs were too tight or uncomfortable during the stop. *See Attachments 21, 22.*

⁴ Attachment 5.

⁵ *See 625 ILCS 5/11-804.*

⁶ Attachment 16, 17.

⁷ Attachment 28.

he saw [REDACTED] reaching and where [REDACTED] had immediate access, which included front area, back seat, and glove box.

Officer Fennell stated his body worn camera (“BWC”) shows it was activated for the entire incident. Officer Fennell stated he would have to refer to the BWC order before you could answer at what point he is supposed to begin recording on his BWC. Officer Fennell did not know why he did not activate his BWC as he exited his vehicle, as he normally does, but he must have activated it as soon as he realized it was not recording.⁸

c. Digital Evidence

Body Worn Camera (“BWC”) obtained from Officer Fennell shows, during the thirty second buffer period that contains no audio, Officer Fennell approaches the driver side, and shortly after leaning inside the window, Officer Fennell opens the car door. Officer Fennell places a handcuff on [REDACTED] left wrist as [REDACTED] exits the vehicle. Once [REDACTED] is outside of the vehicle, Officer Fennell cuffs his right wrist and walks him to the rear of the vehicle, between [REDACTED] vehicle and the police vehicle. At this point, Officer Fennell activates his BWC. Officer Fennell asks [REDACTED] where his license is located, [REDACTED] replies that he is not talking. Officer Fennell retrieves an item from [REDACTED] pocket and tosses it on top of the police vehicle’s hood. Officer Fennell searches inside of [REDACTED] vehicle.⁹

Officer Cirello approaches the passenger side of the vehicle. The vehicle’s window is rolled up, Officer Cirello looks inside using her flashlight. After Officer Fennell tells [REDACTED] to step out of the vehicle, Officer Cirello opens the passenger side door and tells [REDACTED] to exit the vehicle. Officer Cirello asks [REDACTED] if he has ID, places handcuffs on him, and walks him to the back of the vehicle where [REDACTED] is located. Officer Cirello tells [REDACTED] he is not under arrest, and locates his ID in his coat. [REDACTED] tells Officer Cirello he was pulled over for no reason and he did not consent to a search and seizure of his vehicle. [REDACTED] tells Officer Fennell that he does not consent to his vehicle being searched multiple times. Officer Cirello tells [REDACTED] he was pulled over because he did not use his turn signal. [REDACTED] argues he did use his turn signal. [REDACTED] adds, it is not reasonable to search an individual’s vehicle because they did not use a turn signal. Officer Cirello zips up [REDACTED] coat at his request. Officer Cirello enters [REDACTED] driver’s license number and [REDACTED] State Identification number into the police vehicle’s computer. Officer Cirello returns [REDACTED] and [REDACTED] IDs. Officers remove [REDACTED] and [REDACTED] handcuffs and release them without any citation.¹⁰

There was no **in-car camera** video that captured this incident.¹¹

VI. 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;

⁸ Attachment 33.

⁹ Attachment 23.

¹⁰ Attachment 22.

¹¹ Attachment 21.

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 defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

COPA finds the allegation that Officer Cirello and Officer Fennell stopped ██████████ without justification is **Not Sustained** because there is insufficient evidence to determine whether ██████████ used his turn signal. 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 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)). Officers Cirello and Fennell (the "officers") stated ██████████ was stopped because he failed to use a turn signal while making a turn. ██████████ disagreed, stating he used his turn signal. The officers' ISR is consistent with their statements to COPA. However, there is no video or independent witness statements to corroborate ██████████ or the officers' version of the incident, and COPA finds the officers and ██████████ equally credible. Therefore, this allegation is **Not Sustained**.

COPA finds the allegation that Officer Fennell 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). While there is a question of fact about whether ██████████ violated a traffic law, the officers did perform a traffic stop. ██████████ did not consent to his vehicle being searched and did not believe

the officers had a right to search his vehicle. Conversely, Officers Fennell and Cirello believed [REDACTED] may be concealing a weapon, based on his actions inside the car and the time he took to pull over. Therefore, Officer Fennell could search the vehicle’s passenger compartment without consent. COPA finds Officer Fennell reasonably believed [REDACTED] may possess a weapon and only searched the passenger compartment. Therefore, this allegation is **Exonerated**.

COPA finds the allegation that Officer Fennell failed to comply with S03-14 by failing to timely activate his body worn camera is **Sustained**. An officer will start recording on BWC and will record the entire incident for all investigatory stops. If circumstances prevent activating the BWC at the beginning of the incident, the member will activate the BWC as soon as practical.¹² Officer Fennell did not know why he did not activate his BWC when he exited the vehicle, or what prompted him to activate it when he did. While Officer Fennell explained, as he approached [REDACTED] vehicle, he wanted his hands free to reach for his weapon and radio if necessary. Officer Fennell not provide any details that would prevent him from tapping his BWC after activating his lights to pull over Fennell, as he exited his vehicle or during his approach. Therefore, this allegation is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS¹³

a. Officer Thomas Fennell

Officer Fennell’s complimentary, training and disciplinary history was considered in recommending discipline in this matter. Officer Fennell received a reprimand for July 2, 2018 for a Preventable Accident.

COPA recommends Officer Fennell complete Body Worn Camera training. In his statement, Officer Fennell stated that he was not aware of when he needed to activate his camera and needed to refer to the general order. COPA also recommends Officer Fennel receive a reprimand.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Thomas Fennell	It is alleged by [REDACTED] that on or about February 6, 2019 at approximately 5:50 p.m. at or near 12700 South Indiana Avenue, Officer Thomas Fennell, star #15220, committed misconduct through the following acts or omissions, by: 1. stopping [REDACTED] without justification;	Not Sustained

¹² Special Order S03-14 III.A.2.

¹³ Only include this section for investigations with at least one sustained allegation.

	2. searching [REDACTED] vehicle without justification; and 3. failing to comply with S03-14 by failing to timely activate your body worn camera.	Exonerated Sustained/Reprimand
Officer Cynthia Cirello	It is alleged by [REDACTED] that on or about February 6, 2019 at approximately 5:50 p.m. at or near 12700 South Indiana Avenue, Officer Cynthia Cirello, star #15671, committed misconduct through the following acts or omissions, by stopping [REDACTED] without justification.	Not Sustained

Approved:

[REDACTED]

October 30, 2019

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

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