

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 25, 2019
Time of Incident:	9:48 pm
Location of Incident:	81 st Street and Colfax Avenue
Date of COPA Notification:	February 28, 2019
Time of COPA Notification:	1:40 pm

On the night of February 25, 2019, near 81st Street and Colfax Avenue, Officer Jeffrey Budz and former Police Officer Joseph Guarascio effected a traffic stop of [REDACTED] on the reported basis that Mr. [REDACTED] had failed to come to a complete stop at a stop sign and was operating a motor vehicle without its rear license plate illuminated. As Officer Budz initiated contact with Mr. [REDACTED] a disagreement about the basis for the stop occurred. Mr. [REDACTED] requested Officer’s Budz’s name and badge number at which point Officer Budz ordered Mr. [REDACTED] to exit the vehicle and directed Mr. [REDACTED] to turn around as the officers secured Mr. [REDACTED] in handcuffs. Upon Officer Budz’s order to exit the vehicle, Mr. [REDACTED] began vocally challenging the basis for the stop, the immediate order to exit the vehicle, and the immediate use of handcuffs, repeatedly alleging throughout the encounter that the officers were harassing him. A prolonged argument ensued between the officers and Mr. [REDACTED]. Against Mr. [REDACTED] protests, the officers searched Mr. [REDACTED] vehicle and searched his person. However, despite Officer Budz’s multiple statements that Mr. [REDACTED] had committed two traffic violations, that his vehicle smelled of cannabis, that Mr. [REDACTED] may have been intoxicated by alcohol, that he had identified in Mr. [REDACTED] car a baggie containing white powder, and that Mr. [REDACTED] had “baggies all over” his vehicle, Officer Budz nonetheless let Mr. [REDACTED] leave in his vehicle with only a verbal warning. Soon thereafter, Mr. [REDACTED] contacted COPA, alleging that the stop, detention, and searches were improper and constituted harassment.

II. INVOLVED PARTIES

Involved Officer #1:	Jeffrey Budz, Star #2931, Employee ID# [REDACTED], Date of Appointment: October 31, 2016, Rank: Police Officer, Unit of Assignment: Unit 004, DOB: [REDACTED], 1991, Gender: Male, Race: White
Involved Officer #2:	Joseph Guarascio II, Star # 13853 [Inactive/Resigned], Date of Appointment: February 29, 2016, Date of Resignation: October 29, 2019, Employee ID# [REDACTED] [Former], Rank [Former]: Police Officer, Unit of Assignment [Former]: Unit [Former] 004, DOB: [REDACTED] 1990, Gender: Male, Race: White

Involved Individual #1: [REDACTED] DOB: [REDACTED], 1978, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Jeffrey Budz	1. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz handcuffed [REDACTED] without justification.	Exonerated
	2. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz searched [REDACTED] without justification.	Not Sustained
	3. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz searched [REDACTED] vehicle without justification.	Not Sustained
	4. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz failed to complete and provide an Investigatory Stop Receipt during an Investigatory Stop involving a search of [REDACTED] person and vehicle.	Sustained
	5. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz failed to correctly identify himself by giving his name and star number when so requested by [REDACTED]	Unfounded

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance
2. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department
3. Rule 5: Failure to perform any duty

4. Rule 8: Disrespect or maltreatment of any person, while on or off duty

5. Rule 37: Failure of a member, whether on or off duty, to correctly identify himself by giving his name, rank and star number when so requested by other members of the Department or by a private citizen.

General Orders

1. General Order G02-01

2. General Order G02-03

3. General Order G03-02

Special Orders

1. Special Order S04-13-09

Federal Laws

1. Fourth Amendment to the United States Constitution

State Laws

1. Art. I, Sec. 6 of the Constitution of the State of Illinois

V. INVESTIGATION

a. Interviews

1. Civilian Interview

In an **interview with COPA on February 28, 2019**, ██████████ states that on the night of February 25, 2019, he was proceeding southbound in his vehicle on Saginaw Avenue toward 79th Street when he noticed a dark-colored, unmarked police SUV driving westbound on 79th Street. In his statement, Mr. ██████ relates the vehicle drove past him on 79th Street before executing a “U-turn” as Mr. ██████ proceeded southbound on Saginaw, resulting in the police vehicle driving after Mr. ██████ at a high rate of speed down a residential street to ultimately pull him over near 81st Street and Colfax Avenue.

Mr. ██████ states that when Officer Budz initiated first contact at the driver’s side window, he informed Mr. ██████ that his license plate light was out, of which Mr. ██████ states he was not aware. Mr. ██████ then asked for Officer Budz’s name and badge number, taking pen and paper in hand. Upset, Officer Budz ordered Mr. ██████ from the vehicle and placed Mr. ██████ in handcuffs, asking for his driver’s license. Mr. ██████ states that both officers then searched his vehicle, falsely claiming they could not find his driver’s license.

Mr. █████ further relates that, during the incident, Officer Budz falsely claimed he had found a bag containing white powder and additional evidence of illegal drug possession in Mr. █████ vehicle, had assumed Mr. █████ was drunk, and had threatened to take Mr. █████ to jail. Mr. █████ states the officers searched his person, including patting his pants and reaching inside his pockets. Mr. █████ states he was “making a scene being loud” throughout the encounter because he was upset at what he perceived to be police harassment and unjustified stopping, handcuffing, and searching, and because he wished to call attention to nearby residents due to fears the officers were attempting to plant drugs on him. Finally, Mr. █████ states Officer Budz claimed his in-car computer system was not working and that he was going to give Mr. █████ a break and allow him to depart the scene of the stop. Mr. █████ states the officers did not provide him an Investigatory Stop Receipt at any point during the stop.

1. Officer Interview

In an interview with COPA on January 27, 2019, Officer Jeffrey Budz states that, due to the approximately 11 months that had passed since the encounter with Mr. █████ on February 25, 2019, he did not remember where he was located when he first spotted Mr. █████ in his vehicle, which direction he was traveling, nor which direction Mr. █████ was traveling. In his statement to COPA, Officer Budz affirms he and Officer Joseph Guarascio¹ stopped Mr. █████ for disobeying a stop sign and driving with his rear license plate light out. Officer Budz states that as he approached Mr. █████ vehicle, he viewed Mr. █████ rolling his window down. Officer Budz further states that Mr. █████ leaned forward in his seat and turned toward Officer Budz, squaring his shoulders in an apparent attempt to block Officer Budz’s view of the car’s center console. Officer Budz states that he saw empty bags on the center console containing white residue. Officer Budz states that Mr. █████ made fast, furtive movements and was acting in an evasive manner, and then began yelling, “what’s your name and star number,” at which point Officer Budz asked him to exit the vehicle.

According to Officer Budz’s statement, Officer Budz and Officer Guarascio handcuffed Mr. █████ as he exited the vehicle due to concerns for officer safety, stating that Mr. █████ possession in his vehicle of bags or baggies containing a white powdery substance, his furtive movements, and his extreme level of irritation including loud “screaming” and “yelling” directed at Officer Budz gave him legal cause to handcuff Mr. █████ Officer Budz notes that it is his normal practice to place a driver in handcuffs if he has made the decision to order the driver from the vehicle, with perhaps some exceptions based on, e.g., location of the stop, whether he is working alone or with a partner, or whether there are narcotics involved. Additionally, Officer Budz states that when Mr. █████ had exited the vehicle and began “screaming” at him, Officer Budz indeed responded to Mr. █████ request for his name and badge number, saying, “Budz, 2931.”

Officer Budz states he had suspicions Mr. █████ was intoxicated by some kind of narcotic or possibly alcohol. Officer Budz states he asked Mr. █████ “are you drunk,” to which Mr. █████ replied that he was not.

¹ Officer Joseph Guarascio, former Star No. 13853, resigned from Chicago Police Department employment effective October 29, 2019 and is therefore no longer subject to COPA’s jurisdiction.

Officer Budz affirms that he searched Mr. [REDACTED] vehicle due to Mr. [REDACTED] reported furtive movements, possession in his vehicle of bags containing white powdery residue, and due to what he knows from review of his Body Worn Camera video to have been an odor of cannabis present in Mr. [REDACTED] vehicle.² During his search, Officer Budz states, he found several baggies in Mr. [REDACTED] vehicle, with “a few” located in the front center console and “a few” located on the back floorboard. In his interview with COPA, Officer Budz states that he does not recall a specific number of bags or baggies found, does not recall how many of the total number of bags present he personally examined, nor what steps he took to determine whether the reported bags did or did not contain illegal substances. Officer Budz states he does not recall what type of bag or baggie the white powdery residue was contained in, how much white powdery residue was contained in the reported bag, nor what he did with the baggie containing the reported substance.

Officer Budz confirms that, with the aid of Officer Guarascio, he indeed searched Mr. [REDACTED] person due to his suspicion that Mr. [REDACTED] may have been in possession of narcotics. Officer [REDACTED] states that he and Officer Guarascio searched all of Mr. [REDACTED] pockets, specifically his coat pockets and pants pockets. Officer Budz states he searched Mr. [REDACTED] in accordance with what he understands to be the Illinois Supreme Court’s “plain smell doctrine” (discussed *infra*) which Officer Budz understood as empowering him to “go through all the occupants [of a vehicle] and the vehicle [itself].” Officer Budz states that, based on his review of his Body Worn Camera video, he believes he did not find any narcotics on Mr. [REDACTED] person upon searching.

In response to COPA investigators’ questions regarding why he made the decision not to arrest Mr. [REDACTED] despite the reported traffic violations, uncommonly irate behavior, suspicion of intoxication by narcotics and/or alcohol, odor of cannabis in the vehicle, bag or baggie containing white powdery residue, and the several bags or baggies found throughout Mr. [REDACTED] vehicle, Officer Budz stated that, essentially, he utilized his officer discretion in order to avoid needlessly damaging CPD relations with a community member. Officer Budz stated that CPD in his district routinely encounter problems posed by gangs and large-scale narcotics traffickers; in this instance, he utilized his officer discretion in letting Mr. [REDACTED] his view, likely only a possible drug user—depart the stop with only a verbal warning. Officer Budz’s stated reasons for doing so include: the baggies he located in Mr. [REDACTED] vehicle were empty, with one containing only possible narcotics residue; he inquired twice into whether Mr. [REDACTED] was intoxicated by alcohol and Mr. [REDACTED] replied both times he was not; he observed no swaying or similar indicia of alcohol intoxication on the part of Mr. [REDACTED] given the many serious problems in his district, including high narcotics trafficking, gangs, robberies, shootings, and murders, it would not have been an optimal use of CPD time and resources to arrest only a possible drug user in possession of, at most, drug paraphernalia; in view of Mr. [REDACTED] rather *de minimis* violations, thusly utilizing his officer discretion could be a productive way to “bridge the gap between the police and the community,” allowing for improved relations with an irate community member who, one day, could be asked by CPD to serve as a witness to a serious crime; Officer Budz’s in-car LEADS system had

² Officer Budz states during his interview with COPA that, although he knows from reviewing his Body Worn Camera video that he stated he smelled cannabis in Mr. [REDACTED] vehicle, he nonetheless no longer personally recalls smelling cannabis during the event in question due to the approximately 11 months that had passed since searching Mr. [REDACTED] vehicle. Officer Budz thus states he was unable to recall whether he had smelled burnt or unburnt cannabis, nor whether he found cannabis or any evidence of cannabis possession during his search.

malfunctioned, and so, due to the computer error, he presumably was not able to complete a full investigation into Mr. [REDACTED] driver history, criminal record, or the existence of active warrants.

Asked by COPA investigators if he had provided to Mr. [REDACTED] an Investigatory Stop Receipt in accordance with CPD Special Order S04-13-09 VIII. A. 3³, Officer Budz replied that, he was not able to do so upon completion of the stop and Mr. [REDACTED] release from handcuffs. Officer Budz states that he does not generally write Investigatory Stop Receipts when subjects are still handcuffed. He explains that, by the point in an encounter when issuance of an Investigatory Stop Receipt has become appropriate, his reason for detaining the subject has terminated; therefore, with no cause for further detention, the subject must be released from handcuffs and is free to leave if they so choose. Officer Budz states that although it is his normal practice to do so when possible, in the case of Mr. [REDACTED] on February 25, 2019, he did not write an Investigatory Stop Receipt due to the fact that, immediately upon release from his handcuffs, Mr. [REDACTED] in an irate manner, returned directly to his vehicle and drove away from the scene of the stop, leaving no opportunity to properly provide the Investigatory Stop Receipt. Had Mr. [REDACTED] come later to the police station to obtain an Investigatory Stop Receipt, Officer Budz affirms, he indeed would have provided him one.

b. Digital Evidence

A recording from Officer Budz's Body Worn Camera⁴ captured the events of February 25, 2019 at approximately 9:48 pm. The recording is silent for the first thirty seconds. The recording begins as Officer Budz and Officer Guarascio are riding in their police vehicle, coming to a stop just prior to the encounter with Mr. [REDACTED]. Officer Budz approaches Mr. [REDACTED] vehicle as Mr. [REDACTED] is seated in his vehicle's driver seat. Mr. [REDACTED] begins rolling down his window as Officer Budz comes to stand next to the driver's side door and window. Officer Budz is captured asking if Mr. [REDACTED] has his driver's license, to which Mr. [REDACTED] responds, "Yeah. What's the problem?" Officer Budz states, "Your plate light's out on your car, man, and you rolled through that stop sign." Mr. [REDACTED] replies, "I didn't roll through shit. You fuckin' bust a bird and fuckin' pulled all up behind me. What's your name and badge number?" As Mr. [REDACTED] asks for Officer Budz's name and badge number, Mr. [REDACTED] is seen picking up a pen and a piece of paper or napkin from his console area. To [REDACTED] first request for name and badge number, Officer Budz responds, "I'm sorry?" [REDACTED] asks again for name and badge number and leans slightly forward, gesturing with pen and paper in hand as if about to begin writing on the paper with the pen. To that second request for name and badge number, Officer Budz replies, "Get out of the car, man. Step out of the car." At this point, Mr. [REDACTED] becomes irate with Officer Budz and the encounter escalates to several minutes of shouting, expletives, claims of harassment and arguing between Mr. [REDACTED] and the officers about the basis for the stop and the officers' actions throughout the remainder of the stop.

As Mr. [REDACTED] exits his vehicle, Officer Budz instructs him to turn around. As he stands up from the driver's seat, Mr. [REDACTED] asks why he's being asked to exit the vehicle, Officer Budz grabs

³ Special Order S04-13-09 VIII. A. 3 states in relevant part that, "[u]pon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number."

⁴ Attachment 1.

a hold of [REDACTED] left arm, and Officer Guarascio places Mr. [REDACTED] in handcuffs. At this point, Mr. [REDACTED] insists twice that the officers are harassing him. Officer Budz states "Officer Budz, 2931" and informs Mr. [REDACTED] that his Body Worn Camera is activated. Mr. [REDACTED] informs Officer Budz he intends to file a complaint about the incident, and Officer Budz states, "That's fine." Mr. [REDACTED] then refers to Officer Budz as a "pussy ass" and Officer Budz walks around to the rear of the vehicle to capture the vehicle's unilluminated rear license plate with his Body Worn Camera, stating that the license plate light is out and that Mr. [REDACTED] had disobeyed a stop sign. Officer Guarascio is overheard asking where Mr. [REDACTED] driver's license is located, and Mr. [REDACTED] shouts "It's in the motherfuckin' armrest. Leave me the fuck alone." Throughout the duration of the stop, Mr. [REDACTED] repeats at least nine times that his license is in the "armrest" or "console." In addition, throughout the stop, Mr. [REDACTED] tells the officers to leave him alone at least seven times.

Just prior to leaning into Mr. [REDACTED] driver's side door, ostensibly to locate the driver's license Mr. [REDACTED] had stated was located in his armrest, Officer Budz asks Mr. [REDACTED] if he is drunk, to which Mr. [REDACTED] replies he is not. Officer Budz then leans into the vehicle, placing his left knee on the driver's seat, and begins searching in and/or around the armrest/console area. Officer Budz is then heard saying at a low vocal volume, "and the car smells like weed," which appears not to have been directed at nor overheard by Mr. [REDACTED] standing outside of the vehicle arguing with Officer Guarascio. Officer Budz then stands up from the vehicle and asks Mr. [REDACTED] "What's the white powder in the bag right there?" Mr. [REDACTED] replies, "There ain't no goddamn white powder in shit, dumbass." Officer Budz again leans toward the interior of the driver's side and appears to search in and around the driver's seat and driver's side door areas. Officer Budz then reemerges again and directs Mr. [REDACTED] to stand at the rear of the vehicle, which he does.

Officer Budz opens the rear driver's side door and Mr. [REDACTED] is overheard asking, "What the fuck you all in my goddamn car for? I'm filing a fuckin' complaint." Officer Budz replies, "Because you got—you got baggies all over the place" and begins to momentarily touch what appear to be two plastic shopping bags in the vehicle's backseat area. Mr. [REDACTED] contests the factual basis of Officer Budz's assertion there are baggies in the vehicle, and as Officer Budz reemerges from his search of the back seat, Mr. [REDACTED] continues to berate Officer Budz, questioning the legal basis for the stop. Officer Budz then makes his second and final inquiry into Mr. [REDACTED] sobriety with respect to alcohol inebriation, asking again, "Are you drunk?" Mr. [REDACTED] again denies imbibement of alcohol, in turn asking Officer Budz, "Are you drunk, pulling motherfuckers over for kicks? Leave me the fuck alone."

Officer Budz and Mr. [REDACTED] then engage in an argument about the legality of each other's actions during the officers' initiation of the stop. Mr. [REDACTED] again states his identification is located in his armrest, and again states that Officer Budz will be receiving a complaint the following morning, to which Officer Budz replies, "I don't give a shit, that's fine," reminding Mr. [REDACTED] "This whole thing's on body camera." The two accuse each other of breaking the law. Mr. [REDACTED] states Officer Budz has broken the law for ordering him from his car over a purported traffic violation, to which Officer Budz yells, "You've got baggies all over your car!" Mr. [REDACTED] challenges Officer Budz's assertion, shouting, "Show me a goddamn bag!" Officer Budz tells Mr. [REDACTED] to stand in front of the vehicle and not to move, to which Mr. [REDACTED] shouts again, "Show me a goddamn bag!" As Mr. [REDACTED] is seen shifting slightly to his right, Officer Budz threatens to bring Mr. [REDACTED] to jail "for obstructing" if he fails to stand where directed.

Officer Budz then asks Mr. [REDACTED] his name, to which Mr. [REDACTED] again states that his identification is in his armrest and, upon further request, states to Officer Budz that his name is [REDACTED]. Officer Budz asks for additional identifying information about Mr. [REDACTED] including birthdate and residence, which Mr. [REDACTED] provides, and Officer Budz appears to attempt to search Mr. [REDACTED] identity with his in-car computer. After approximately one minute and forty-five seconds of interacting with his in-car computer, Officer Budz is overheard stating to himself, "Of course LEADS is not working." Mr. [REDACTED] is overheard outside the vehicle responding repeatedly to Officer Guarascio's requests for his identification, again stating his identification is located in the armrest, and directing Officer Guarascio to precisely where in the armrest it would be found.

Officer Budz emerges from his vehicle to a dispute between Officer Guarascio and Mr. [REDACTED] over the location of his driver's license, with Mr. [REDACTED] insisting it is in the armrest. After Officer Guarascio inquires to Officer Budz whether Mr. [REDACTED] is "good" (appearing to refer to whether Officer Budz has located any additional cause for further detention), an argument then takes place about the basis for the stop and the level of respect being shown between the parties present. Mr. [REDACTED] demands to be taken out of the handcuffs to which both officers reply, "No," and Officer Budz explains, "That's not how this works." The parties again argue about the location of Mr. [REDACTED] license and the presence of a bag containing white powder in the vehicle, to which Mr. [REDACTED] shouts in reply, "I ain't got no goddamn bag!"

The officers then approach Mr. [REDACTED] to remove the handcuffs and Officer Budz verbally warns Mr. [REDACTED] that he needs to have a driver's license while driving, to which Mr. [REDACTED] responds, shouting, "It's in there, motherfucker!" Officer Budz tells Mr. [REDACTED] to calm down and that he is giving him a break, which Mr. [REDACTED] contests, shouting, "You ain't giving me no break, shit!" Officer Budz then pauses unhandcuffing Mr. [REDACTED] and asks, "So I'm bringing you to jail?"

Officer Budz and Mr. [REDACTED] then warn each other to calm down, with Mr. [REDACTED] telling officer Budz, "You better watch yourself" and "You better be careful," explaining again "You're fuckin' harassing me. You're getting a complaint in the morning." The officers respond that they have no problem with Mr. [REDACTED] filing all the complaints he wants, Officer Budz tells Mr. [REDACTED] to calm down and removes the handcuffs, and Mr. [REDACTED] again state's he will be filing a complaint against Officer Budz the following morning. Officer Budz responds, "No problem, you're on—on video camera. Audio and video recorded the whole time, buddy. Okay. Thank you, sir." Mr. [REDACTED] gets in his car and yells, "Man, shut the fuck up," and drives away. As Mr. [REDACTED] departs the scene, laughter is overheard by Officer Guarascio and two additional officers who have just arrived on scene. Officer Budz states "Stop is over" and then ends his Body Worn Camera recording.

A **recording from Officer Guarascio's Body Worn Camera**⁵ captured the events of February 25, 2019 at approximately 9:48 pm. The recording is silent for the first thirty seconds. The recording largely duplicates Officer Budz's Body Worn Camera video and provides little, if any, additional probative evidence. Notably, however, at no point in the recording does Officer Guarascio make any statement indicating he has sensed the odor of cannabis in or around Mr. [REDACTED] vehicle or person, or any reference to cannabis whatsoever, nor does he make any reference to seeing bags, baggies, or white powder or residue.

⁵ Attachment 2.

c. Documentary Evidence

An **Investigatory Stop Report, ISR No. ISR000925306, for Event No. 15271**,⁶ dated February 25, 2019, reports an Investigatory Stop occurring on that date at time 2148 by Beat 0465B at or near 8100 S Colfax Ave, Chicago, IL 60617. That ISR reports an interaction with a “Doe, John” matching [REDACTED] description and whose vehicle bore [REDACTED] vehicle’s license plate number. The ‘Investigatory Stop Narrative’ of the ISR reads as follows:

“1 BWC Event#15271 In summary, R/O’s observed the above vehicle driving w/b on 81st Street with no plate light illuminated and the vehicle also drove through the stop sign at 8100 S Colfax without stopping. Upon contact with the driver, R/O observed a clear plastic baggie with a white powdery residue sitting on top of the center console. R/O asked for a driver’s license at which time the driver yelled at R/O. R/O asked the driver to exit the vehicle at which time the driver began to make over [sic] movements toward the center console. R/O’s detained the driver and searched the vehicle. R/O’s detained the driver and searched the vehicle. R/O notes that R/O’s in car computer was not working due to LEADS being down. The driver did not have a license on his person and R/O was unable to verify the driver’s identity. R/O let the driver go with a verbal warning. Driver refused to speak to officers and left without an ISR receipt.”

Officer Jeffrey Budz, Star No. 2931, is listed as the First Officer on the ISR. Officer Joseph Guarascio, Star No. 13853, is listed as Second Officer on the ISR. Sgt. Jaime Alvarado, Star No. 1722, is listed as the Reviewing Supervisor approving the ISR.

Chicago Police Department **Attendance & Assignment Records for Unit 004 on February 25, 2019, 4th Watch**⁷ show Officers Jeffrey Budz and Joseph Guarascio both present for duty and assigned to Car# 4584 and Beat# 465B from 5:00 pm on February 25, 2019 until 2:00 am on February 26, 2019.

PMIS GPS 001 Reports⁸ show Officers Budz’s and Guarascio’s assigned car, Car# 4584, and assigned beat, Beat# 465B, with Officer Guarascio’s PC Number logged into Car# 4584’s in-car computer, located in the vicinity of the stop that occurred near 81st Street and Colfax Avenue at approximately 9:48 pm.

A **Chicago Police Department Event Query Report from the Office of Emergency Management and Communications**⁹ shows Event Details of Event Number 1905615271, a Traffic Stop occurring on February 25, 2019 at time 21:48:10.0 in Unit 004 at the Address of Occurrence of 81st Street and Colfax Avenue. That Event Query Report shows Officer Budz’s and Officer Guarascio’s beat, Beat # 465B, conducting a query for [REDACTED] at times 21:49:46 and 21:51:08.

⁶ Attachment 3.

⁷ Attachment 4.

⁸ Attachment 5.

⁹ Attachment 6.

A **PDT Messages Report from the Office of Emergency Management and Communications**¹⁰ displays all CAD Messages queried from the PMDT Work Station, [REDACTED], corresponding to Officer Guarascio's PC Number, and corresponding to Officers Budz's and Guarascio's beat, Beat#465B. That Report includes a Message displaying a query by an officer assigned to Beat#465 (Officers Budz or Guarascio) searching for an individual with the last name [REDACTED] and reporting results of at least three individuals with the last name of [REDACTED] none of which were [REDACTED]

A **Chicago Police Department Resignation Submission Receipt #8049**¹¹ documents the Approved resignation of former Police Officer Joseph A. Guarascio II, former Star No. 13853, former Employee Number [REDACTED]. Former Officer Guarascio's resignation was effective October 29, 2019.

II. 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 reviewed complied with 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 conduct complied with Department policy than that it did not, 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.

III. ANALYSIS

¹⁰ Attachment 7.

¹¹ Attachment 8.

Allegation 1:

COPA finds Allegation 1 that Officer Budz handcuffed Mr. ██████ without justification **exonerated** because Officer Budz had a reasonable basis for fearing for officer safety due to Mr. ██████ increasingly irate behavior at the time of the handcuffing. At the time of the stop, Mr. ██████ license plate light was not properly operating. BWC captures the officers show Mr. ██████ the plate light.

In general, police officers effecting a traffic stop may order the vehicle's driver from the vehicle due to concern for officer safety without violating the Fourth Amendment.¹² Officer Budz states his reasons for ordering Mr. ██████ from his vehicle included: Mr. ██████ leaning forward in his seat and turning toward Officer Budz, squaring his shoulders in an apparent attempt to block Officer Budz's view of the car's center console; Officer Budz viewing "a few" empty bags on the center console, with one containing white residue; Mr. ██████ made fast, furtive movements; Mr. ██████ acting in an evasive manner, yelling at Officer Budz.

Video from Officer Budz's Body Worn Camera calls into question some of Officer Budz's stated perception of the stop, for example video evidence clearly suggests Mr. ██████ was attempting to write down Officer Budz's name and star number rather than conceal evidence of a crime. Mr. ██████ did lean slightly forward while holding a piece of white paper or napkin on his steering wheel, gesturing with a pen as if about to write with the pen on the paper, at no point did Mr. ██████ turn toward Officer Budz, nor "square his shoulders" as if attempting to block Officer Budz's view. On the other hand, Mr. ██████ spoke with a raised tone and in an aggressive manner contesting the officer's justification and reasoning for the stop. COPA acknowledges that Mr. ██████ reaction was understandable under the circumstances. Nonetheless, it was reasonable for Officer Budz to not only order Mr. ██████ from the car but considering Mr. ██████ demeanor place him in handcuffs temporarily. As such the allegation is exonerated.

Allegation 2 and 3:

COPA finds Allegation 2 that Officer Budz searched Mr. ██████ person and Allegation 3 that Officer Budz searched Mr. ██████ vehicle without justification **not sustained**.

Officer Budz entered Mr. ██████ vehicle to search for his driver's license with verbal consent. Within several seconds of Officer Budz entering the vehicle and searching in and around the armrest/console area, presumably for Mr. ██████ identification, Officer Budz is overheard on Body Worn Camera video stating in a low tone of voice, "and the car smells like weed." If true, Officer Budz' detection of the scent of Cannabis would justify both a search of the car and of Mr. ██████ person. Mr. ██████ was never asked, and thus never denied the smell of marijuana in his car.

However, based on several inconsistencies in Officer Budz description of his interaction, COPA finds that his statement that the car smelled like marijuana is not dispositive. As such COPA lacks the evidence evidence to meet the higher standard of proof, clear and convincing, to

¹² Pennsylvania v. Mimms, 434 U.S. 106 (1977).

exonerate Officer Budz. Additionally, without evidence indicating there was no cannabis, paraphernalia, or any other object or material carrying the scent of cannabis located in or around the vehicle or Mr. ██████ person at the time of Officer Budz' initial entry into the vehicle, COPA finds these allegations are not sustained.

Due to the vaporous nature of both burnt and unburnt cannabis odor, and the impossibility of effectively capturing and preserving as evidence such an odor before dissipation, it is impossible to determine with any accuracy whether Officer Budz in fact smelled cannabis in Mr. ██████ vehicle as he stated. Given that Officer Budz's Body Worn Camera video captures no mention of the odor to his partner, Officer Guarascio, nor any confrontation of Mr. ██████ about the odor, nor any further inquiry or line of questioning to Mr. ██████ about possible ingestion of cannabis, possession of cannabis, or possession of cannabis paraphernalia that might carry the odor of cannabis, Officer Budz's statement that he smelled cannabis remains unverifiable. When confronted by COPA investigators with the question of whether he smelled cannabis, Officer Budz stated only that he knows from review of his Body Worn Camera video that he did smell cannabis, though he could no longer personally remember smelling cannabis and could not remember whether it was the odor of burnt or unburnt cannabis.

Nonetheless, without additional evidence indicating there was no cannabis, paraphernalia, or any other object or material carrying the scent of cannabis located in or around the vehicle or Mr. ██████ person at the time of Officer Budz' initial entry into the vehicle, there is no evidence on the record speaking to the issue except for Officer Budz's single statement uttered at a low volume, captured on the officer's Body Worn Camera. That single utterance is not, by itself, enough to settle the question of whether the odor of cannabis was present in or around the vehicle during that stop; however, if true, it would have been enough evidence of criminal conduct to give Officer Budz Probable Cause to search Mr. ██████ person for narcotics or other indicia of narcotics possession, use, or intoxication.¹³ Upon review and without further evidence to the contrary meeting the legal standard of a *preponderance of the evidence*, Officer Budz's search of Mr. ██████ person was not without justification, and therefore the allegation is not sustained.

Allegation 4:

COPA finds Allegation 4 that Officer Budz failed to provide an Investigatory Stop Receipt during an Investigatory Stop involving a search of ██████ person and vehicle **sustained**. Chicago Police Department Special Order S04-13-09 (VIII)(A)(3) states in relevant part that, “[u]pon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number.” Officer Budz contests the applicability of this rule in this case due to Mr. ██████ immediate departure from the scene of the stop upon his release from handcuffs, leaving no opportunity to issue the Investigatory Stop Receipt. Officer Budz reasons that he would never issue a Receipt while a subject is still in handcuffs because, by the time the stop has reached its endpoint—the moment when the reason for the stop has been resolved and the issuance of a Receipt has become appropriate (i.e. in Mr. ██████ case, when Mr. ██████ had sufficiently calmed down to the officers' satisfaction)—the officers' legal basis for

¹³ People v. Stout, 106 Ill.2d 77, 87 (1985).

continuing to detain the subject in handcuffs has terminated. Impliedly, Officer Budz must release the subject from handcuffs before turning to the matter of the receipt. Due to Mr. [REDACTED] immediate departure at the moment of release from handcuffs, Officer Budz reasons, he was, therefore, unable to complete that final task in the stop.

Officer Budz's provided reasoning is unsupported in several ways. First, while Officer Budz is indeed correct that it would have been unlawful to continue Mr. [REDACTED] detention beyond the moment at which it was properly determined the officers' lawful cause for restraint had terminated,¹⁴ nonetheless, nothing prevented Officer Budz from verbally raising the final matter of the Investigatory Stop Receipt at any time prior to the moment of complete release from handcuffing and prior to Mr. [REDACTED] entering his vehicle and driving away from the stop. Specifically, from the moment the officers first initiated Mr. [REDACTED] release from handcuffs until they in fact released him completely from those handcuffs, a full fifty (50) seconds had elapsed. From the moment of initiation of Mr. [REDACTED] release until Mr. [REDACTED] began driving his vehicle from the stop, sixty (60) seconds had elapsed. That sixty second period was more than enough time for Officer Budz to verbally raise the matter of the Investigatory Stop Receipt, putting Mr. [REDACTED] on notice that he indeed had a reason to remain on scene—i.e. to receive his due documentation of the stop.

Second, during the sixty second period between initiation of [REDACTED] release and his departure from the scene, it is not clear from Body Worn Camera evidence that Officer Budz was engaged in some other police activity which prevented him from verbally raising the matter of the Receipt. Instead, Officer Budz appears to be engaging in a power struggle with Mr. [REDACTED] about the conditions of his release from restraint. Faced with Mr. [REDACTED] legally valid demand to be released from what was, in [REDACTED] clearly held view¹⁵, an improper and unlawful detention, Officer Budz replies, "No, that's not how this works." Faced with Mr. [REDACTED] refusal to accept that the officers were "giving [him] a break," Officer Budz paused his unhandcuffing of Mr. [REDACTED] and replied, "So I'm bringing you to jail?" and went on to repeatedly order Mr. [REDACTED] to "calm down," implying to [REDACTED] he would not be released from police detention until he 'calmed down' to Officer Budz's liking.

However, thusly "calm[ing] down" from a loud vocal volume and irate vocal tone was not a legal requirement to which Mr. [REDACTED] was subject. Further, although obviously upset, irate, and, in his own words, "making a scene being loud," on the side of the road that night, Mr. [REDACTED] was, nonetheless, exceedingly compliant with the officers' directions and investigation. Mr. [REDACTED] exited the vehicle when directed; he turned around to face the vehicle when directed; he allowed the officers to place him in handcuffs without resistance; he repeatedly responded to the officers about the location of his driver's license; he responded to officers' investigatory questions regarding his sobriety and whether he was in possession of narcotics or narcotics paraphernalia; he moved where the officers directed him to move without resistance; he stood where officers directed him to stand without resistance; he allowed himself to be searched without resistance; he provided his name to

¹⁴ People v. Brownlee, 186 Ill.2d 501 (1999).

¹⁵ Regardless of whether Mr. [REDACTED] was correct or incorrect in his analysis of the legality of the stop and detention, Mr. [REDACTED] nonetheless had a well-recognized legal interest under the Fourth Amendment to be free from seizure of his person any longer than necessary for the officers to confirm or dispel their suspicion Mr. [REDACTED] was engaged in criminal conduct and/or presently armed and dangerous. Terry v. Ohio, 392 U.S. 1 (1968); People v. Brownlee, 186 Ill.2d 501 (1999); People v. Harris, 228 Ill.2d 222 (2008) citing Illinois v. Caballes, 534 U.S. 405, 407 (2005).

Officer Budz within five seconds of his request; he immediately repeated his last name when asked to do so; he spelled his first name when asked to do so; he responded that he had no middle initial when asked to provide one; he provided his birthdate when asked to do so; he provided his location of residence when asked to do so. Indeed, the sole request of the officers with which Mr. [REDACTED] refused to comply until the very end of his detention was that he lower his level of volume and irritation in the course of his repeated accusations the officers were acting unlawfully and improperly. Mr. [REDACTED] was subject to no such legal requirement.

Third, Mr. [REDACTED] stated to Officer Budz during the stop six (6) times that he intended to file a complaint against Officer Budz. Officer Budz was thereby given ample notice (above and beyond his general duty to know and comply with CPD Rules and Regulations) that Mr. [REDACTED] would require documentation that the stop occurred, including the Event Number, the Officer's name and Star Number, and the reason(s) for the stop. Repeated statements a member of the public intends to file a complaint create special cause for any reasonable officer to ensure he utilize whatever opportunity presents itself to fulfill his legal obligation to provide the Receipt—in this case, the sixty seconds that elapsed after initiation of release and before Mr. [REDACTED] departure from the scene.

Instead of taking that opportunity to fulfill his legal duty and provide Mr. [REDACTED] the documentation for which [REDACTED] had repeatedly indicated he would have a specific administrative use, Officer Budz (1) threatened to delay Mr. [REDACTED] release from restraint, and (2) continued to argue with Mr. [REDACTED] a subject who had stated ten (10) separate times he felt he was being harassed by the officers and had said to the officers seven (7) separate times, "leave me [. . .] alone." Officer Budz engaged in the above conduct for a full sixty seconds at the end of the stop—his last and, perhaps, only opportunity to fulfill his obligation to provide Mr. [REDACTED] with an Investigatory Stop Receipt.

Finally, Officer Budz's contention Mr. [REDACTED] might have taken his own initiative to come to the 4th District Police Station to obtain from Officer Budz an Investigatory Stop Receipt constitutes an impermissible shifting of Officer Budz's legal burden under CPD Special Order S04-13-09 VIII to issue the Receipt "upon completion of [the] Investigatory Stop" involving a search of Mr. [REDACTED] person and vehicle. For the above reasons, Officer Budz failed to comply with his obligation under CPD Special Order S04-13-09 VIII, and the allegation is sustained.

Allegation 5:

COPA finds Allegation 5 that Officer Budz failed to correctly identify himself by giving his name and star number when so requested by [REDACTED] **unfounded**. Review of video evidence from Officer Budz's Body Worn Camera reveals that, approximately 50 seconds after start of recording, upon Mr. [REDACTED] first accusation that Officer Budz was harassing him, Officer Budz states aloud, "Officer Budz, 2931," fulfilling his requirement under Rule 37 of CPD Rules and Regulations to provide his name, rank, and star number when so requested by a private citizen. Although an order to exit a vehicle is generally not a proper answer to a citizen's request for an officer's name and badge number, nonetheless, officers are permitted to use their discretion to ensure officer safety and public safety by asking a driver to exit his or her vehicle during a traffic stop. Within fifteen (15) seconds of Mr. [REDACTED] first request for name and badge number, Officer Budz asked Mr. [REDACTED] to exit the vehicle reportedly for officer safety and had provided his name,

rank, and star number to Mr. █████ COPA finds Officer Budz did in fact comply with Rule 37 of CPD Rules and Regulations without impermissible delay, and the allegation is therefore unfounded.

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Jeffrey Budz

i. Complimentary and Disciplinary History

Officer Budz’s has received 45 total awards, including 1 Department Commendation, 43 Honorable Mentions, and 1 Problem Solving Award. Officer Budz has no publishable disciplinary history.

ii. Recommended Penalty, by Allegation

1. Allegation No. 4

Based on Officer Budz’ complimentary and disciplinary history, COPA recommends a one-day suspension.

V. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Jeffrey Budz	1. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz handcuffed █████ without justification.	Exonerated
	2. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz searched █████ without justification.	Not Sustained
	3. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz searched █████ vehicle without justification.	Not Sustained
	4. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz failed to complete and provide an Investigatory Stop Receipt during an Investigatory Stop involving a search of █████ person and vehicle.	Sustained/1 day Suspension

5. It is alleged that on February 25, 2019 at approximately 9:48 p.m. accused Officer Jeffrey Budz failed to correctly identify himself by giving his name and star number when so requested by [REDACTED]

Unfounded

Approved:

[REDACTED]

March 30, 2020

Andrea Kersten
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	Four
Investigator:	Daniel Thetford
Supervising Investigator:	James Murphy-Aguilu
Deputy Chief Administrator:	Andrea Kersten