

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 19, 2021
Time of Incident:	4:00 pm
Location of Incident:	3506 W.78 th Place, Chicago, IL
Date of COPA Notification:	October 20, 2021
Time of COPA Notification:	10:09 am

On October 20, 2021, [REDACTED] made a third-party web complaint that her son, [REDACTED] was cut off in his car by a marked CPD vehicle containing **Officers Enrique Delgado Fernandez, Erik Perez Saucedo, and Lawrence Kerr**. The officers approached [REDACTED] and asked about a shooting in the area. [REDACTED] told the officers he did not know about a shooting. The officers began to leave and [REDACTED] began to park the vehicle he was driving. The officers then activated their vehicle’s emergency lighting, reversed direction, and commenced a traffic stop on [REDACTED] for traffic violations of illegally parked twelve inches from the curb and tinted driver and front passenger windows. Upon review of the evidence, COPA issued allegations to Officers Delgado Fernandez, Perez Saucedo, and Kerr for stopping, detaining, and searching [REDACTED] without justification, for searching [REDACTED] vehicle without justification, and for failing to properly document the detention of [REDACTED]. Following its investigation, COPA reached a **sustained** finding against Officer Delgado Fernandez for searching the vehicle of [REDACTED] without justification.

II. INVOLVED PARTIES

Involved Officer #1:	Delgado Fernandez, Enrique A, Star # 6261, Employee ID# [REDACTED], Date of Appointment: 10/31/2022, Police Officer, UOA: 9 th District, DOB: [REDACTED]/1984, Male, White Hispanic
Involved Officer #2:	Kerr, Lawrence W, Star# 4871, Employee ID# [REDACTED], Date of Appointment: 03/25/2002, Police Officer, UOA: 716, DOB: [REDACTED]1978, Male, White
Involved Officer #3:	Perez Saucedo, Erik E, Star# 7271, Employee ID# [REDACTED], Date of Appointment: 09/18/17, Police Officer, UOA: 211, DOB: [REDACTED]1989, Male, White Hispanic

Involved Individual #1: [REDACTED], DOB: [REDACTED]/2002, Male, Black

III ALLEGATIONS

Officer	Allegation	Finding
Officer Delgado Fernandez	It is alleged that on or around October 19, 2021, at approximately 4:00 p.m., at or near 3506 W. 78 th Place, Chicago, IL, Officer Delgado Fernandez:	
	1. Stopped [REDACTED] without justification.	Exonerated
	2. Detained [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] without justification.	Unfounded
	4. Searched the vehicle of [REDACTED] without justification.	Sustained
	5. Failed to properly document the detention of [REDACTED]	Not Sustained
Officer Kerr	It is alleged that on or around October 19, 2021, at approximately 4:00 p.m., at or near 3506 W. 78 th Place, Chicago, IL, Officer Kerr:	
	1. Stopped [REDACTED] without justification.	Exonerated
	2. Detained [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] without justification.	Unfounded
	4. Searched the vehicle of [REDACTED] without justification.	Unfounded
	5. Failed to properly document the detention of [REDACTED]	Not Sustained
Officer Perez Saucedo	It is alleged that on or around October 19, 2021, at approximately 4:00 p.m., at or near 3506 W. 78 th Place, Chicago, IL, Officer Perez Saucedo:	

1. Stopped [REDACTED] without justification.	Exonerated
2. Detained [REDACTED] without justification.	Exonerated
3. Searched [REDACTED] without justification.	Unfounded
4. Searched the vehicle of [REDACTED] without justification.	Unfounded
5. Failed to properly document the detention of [REDACTED]	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

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

Special Orders

1. **Special Order S04-13-09:** Investigatory Stop System (Effective Date: July 19, 2017 to present)

Federal Laws

1. **4th Amendment,** U.S. Constitution

V. INVESTIGATION¹

a. Interviews

On August 29, 2022, **Officer Lawrence Kerr** gave COPA an audio recorded interview.² He related that on October 19, 2021, at approximately 4:00 pm, he and his partners, Officers Delgado Fernandez and Perez Saucedo, responded in their marked CPD vehicle to an Office of Emergency Management and Communications (OEMC) call of shots fired in the area of 3506 W.

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

² Att. 22

78th Place. One of his partners directed his attention to a vehicle parked more than twelve inches from the curb with tinted windows. Officer Kerr stated that as the subject inside the vehicle noticed [them]” he “started reaching towards the center of the vehicle before [they] even exited [their] vehicle.”³ They conducted a traffic stop based on the illegal parking and the shots fired call.⁴

Officer Kerr approached the driver’s side of the vehicle and asked [REDACTED] for his driver’s license. Officer Kerr stated that [REDACTED] was visibly shaking and “kept making movements towards the center console where [he] c[ould] not see [REDACTED] hands anymore.”⁵ Officer Kerr asked [REDACTED] “a couple of different times...to stop reaching towards the center compartment of the vehicle.”⁶ Officer Kerr asked [REDACTED] “why he was shaking so bad,”⁷ but did not recall [REDACTED] response.

[REDACTED] was asked to step out of the vehicle due to the shots fired call and [REDACTED] nervousness and continual reaching towards the center of the vehicle. Officer Kerr patted down [REDACTED] waist area for the same reasons he was asked to step out of the vehicle and because there was “a very large bulge”⁸ in [REDACTED] right pocket. However, Officer Kerr did not go into that pocket to determine what the bulge was, nor did he recall if he patted down the pocket area.⁹

Officer Kerr took [REDACTED] driver’s license and returned to his vehicle and wrote tickets for parking more than twelve inches from the curb and tinted front passenger and driver’s side windows. Officer Kerr did not search [REDACTED] vehicle.

Officer Kerr did not recall a description of the shooter or a vehicle given from the radio call of shots fired. Officer Kerr’s unit did not have an ISR receipt to issue [REDACTED] as documented in the ISR. Officer Kerr did not recall if other beat units were near their location to stop by and give the officers a receipt.

On June 21, 2022, **Officer Delgado Fernandez** told COPA in an audio-recorded interview¹⁰ that he had no independent recollection of the events, but watched his BWC video prior to answering questions. Officer Delgado Fernandez stated that he was driving eastbound on 78th Place when, approximately a half block from the shots fired call, he noticed an illegally parked vehicle. He stopped and then reversed his vehicle to conduct a traffic stop. He reversed because he could not see if anyone was occupying the vehicle until he pulled in front of it.¹¹ When he did, one of his partners mentioned that the occupant was reaching for an unknown item.¹²

³ Att. 22, pg. 16.

⁴ Att. 22, pgs. 18-19, 28

⁵ Att. 22, pgs. 23-24.

⁶ Att. 22, pg. 13, ln 22-24

⁷ Att. 22, pg. 13, ln 3-7

⁸ Att. 22, pg. 15, ln 15-16

⁹ Att. 22, pg. 29.

¹⁰ Att. 21

¹¹ Att. 21, pg. 14.

¹² Att. 21, pg. 13, ln 6-7

As Officer Delgado Fernandez approached the passenger door of the vehicle, one of his partners said, “[t]here’s movement, reaching for an unknown item.”¹³ Officer Delgado Fernandez immediately opened the passenger side door because the window was tinted and he could not see inside.

According to Officer Delgado Fernandez, the driver, ██████████ “seem[ed] visibly nervous”¹⁴; he was “visibly shaking, in that his hands were uncontrollably moving his fingers back and forth.”¹⁵ Officer Delgado Fernandez asked ██████████ if he suffered from anxiety,” and if he was “generally nervous.”¹⁶ ██████████ responded in the affirmative. Officer Delgado Fernandez explained that in his experience as a police officer, “[i]ndividuals that do exhibit an onset of sudden nervousness around [his] presence, coupled with certain questions when they’re posed, generally leads to [him] asking more or having those individuals exit out of the vehicle to determine what—what exactly is going on, just as a reasonable suspicion that they might be armed.”¹⁷ Officer Delgado Fernandez’s goal is to find out if the nervousness is because someone is a nervous person or “if it was just out of criminal activity”¹⁸ because Officer Delgado Fernandez does not “know the guy, [he’s] not going to make an assumption, he might suffer from anxiety.”¹⁹

Officer Delgado Fernandez’s partners told ██████████ he was stopped for illegal parking and tinted windows.²⁰ Officer Delgado Fernandez asked ██████████ if he had a firearm. Officer Delgado Fernandez told ██████████ to exit the vehicle because Officer Delgado Fernandez did not know what he was reaching for. ██████████ mentioned that he was reaching for food, but Officer Delgado Fernandez was unable to see that food when he was standing or sitting in the CPD vehicle at the start of the traffic stop.²¹

Officer Delgado Fernandez searched the immediate area under ██████████ control: “which is the passenger, driver’s seat. And I opened the back doors to see if I can see anything.”²² Officer Delgado Fernandez was unaware whether Officers Kerr or Perez Saucedo did a pat-down. Officer Delgado Fernandez ran a check on ██████████ driver’s license and the vehicle’s license plate. ██████████ was issued two citations for traffic infractions.

██████████ mom appeared during the traffic stop. Officer Delgado Fernandez did not remember ██████████ telling her that the police “said there was a shooting.”²³ Officer Delgado Fernandez remembered that he himself made the comment that they were there for shots fired.²⁴ Officer Delgado Fernandez did not think they mentioned the shots fired until ██████████ was on the sidewalk with him towards the end of the stop.²⁵ Although they were in the area for shots fired,

¹³ Att. 21, pg. 16.

¹⁴ Att. 21, pg. 13, ln 12

¹⁵ Att. 21, pg. 16-17.

¹⁶ Att. 21, pg. 16.

¹⁷ Att. 21, pg. 17, ln 8-15

¹⁸ Att. 21, pg. 17

¹⁹ Att. 21, pgs. 17-18.

²⁰ Att. 21, pg. 21, ln 10-19

²¹ Att. 21, pg. 13.

²² Att. 21, pg. 22, ln 17-19

²³ Att. 21, pg. 19.

²⁴ Att. 21, pg. 19.

²⁵ Att. 21, pg. 32.

Officer Delgado Fernandez insisted that [REDACTED] was only stopped because the vehicle was illegally parked and that when they exited the vehicle, [REDACTED] was reaching.²⁶

Officer Delgado Fernandez did not look at the physical description of the shooter provided in the OEMC Event Query Report. He was responding to the location of the shots fired because, “generally, when we get to that area, either we’re looking for a car leaving at a high rate of speed or somebody holding their side, running away.”²⁷ Officer Delgado Fernandez recounted that [REDACTED] was not driving at a high rate of speed or running away.²⁸

Officer Delgado Fernandez wrote in the Investigative Stop Report (ISR) that the officers were in the area investigating shots fired and observed the illegal violations of [REDACTED] vehicle. Officer Delgado Fernandez did not issue [REDACTED] an ISR receipt because he did not have any. At times, there are none available at his work location. But he could not definitively say if there were or were not ISR receipts available at his work location on this occasion.

On June 23, 2022, **Officer Erik Perez Saucedo** gave COPA an audio-recorded interview.²⁹ He also had no independent recollection of the events and was basing his answers off his viewing of his BWC video. Officer Perez Saucedo stated that he and his partners observed an illegally parked vehicle in the area of a shots fired call. Upon approaching the vehicle, one of his partners alerted Officer Perez Saucedo that the occupant of the vehicle was “reaching.”³⁰ While his partners were speaking with [REDACTED] about the traffic infractions, [REDACTED] mother, [REDACTED] approached in an irate manner. Officer Perez Saucedo focused his attention on her. [REDACTED] was issued citations for illegally parking twelve inches from the curb and for tinted windows. According to Officer Perez Saucedo, an ISR receipt was not available to give [REDACTED]

Officer Perez Saucedo did not recall whether a physical description was included in the radio broadcast of “shots fired.” Although the Event Query shows a description of a male Hispanic aged 15 to 18, they would not have seen that unless they looked up the event number on their PDT themselves or put themselves down for the assignment.³¹

b. Digital Evidence

The **body worn camera (BWC) video of Officers Kerr³², Delgado Fernandez³³, and Perez Saucedo³⁴** showed the following. Officer Delgado Fernandez was driving, Officer Kerr was the front seat passenger, and Officer Perez Saucedo was the back seat passenger of a marked CPD SUV. During the buffer period, Officer Delgado Fernandez and Officer Kerr appear to be engaged in a conversation for about a minute and a half before Officer Delgado Fernandez backed the

²⁶ Att. 21, 32-33.

²⁷ Att. 21, pgs. 29-30

²⁸ Att. 21, pg. 30.

²⁹ Att. 22

³⁰ Att. 22, pg. 17, ln 21-22

³¹ Att. 23, pgs. 15-16

³² Att. 2

³³ Att. 1

³⁴ Att. 3

vehicle up.³⁵ When the sound goes on, Officer Kerr can be heard stating, “told you he’s reaching.”³⁶ Officer Kerr stated, “what’s he reaching ...” and then exited the vehicle.³⁷

As Officer Kerr approached the driver’s side of the vehicle, [REDACTED] from the driver’s seat said something, to which Officer Kerr responded, “Huh? Oh, you’re parked twelve inches from the curb, I just want to see your driver’s license.”³⁸ Officer Perez Saucedo approached the vehicle and stood in between the hood and the open driver’s side door, while Officer Delgado Fernandez went to the passenger’s side.

[REDACTED] who had his cell phone in his right hand, a surgical mask on his lap, and a large, clear plastic fast-food cup filled with an orange-colored drink in his cup holder, asked why Officer Kerr needed his driver’s license, explaining that he was “sitting in front of [his] house.”³⁹ Officer Kerr asked [REDACTED] which house was his. [REDACTED] moved his cellphone from his right hand into his left and gestured with his right hand towards his house, stating, “right there.”⁴⁰ Officer Delgado Fernandez then opened the passenger’s side door.⁴¹ [REDACTED] asked why Officer Delgado Fernandez opened the door, and Officer Delgado Fernandez stated that he could not see through the window.⁴²

Officer Kerr informed [REDACTED] that his vehicle had illegally tinted windows. [REDACTED] took his driver’s license out of his wallet.⁴³ Officer Kerr asked [REDACTED] if he had a FOID or CCL. [REDACTED] responded, “Yes sir.”⁴⁴ Officer Kerr asked if [REDACTED] had a gun on him. [REDACTED] said no, and handed Officer Kerr his driver’s license from his wallet.⁴⁵

Officer Kerr asked [REDACTED] “Why [are] you shaking so bad?”⁴⁶ Officer Delgado Fernandez ordered [REDACTED] to step out of the vehicle.⁴⁷ Although [REDACTED] did not appear on the video to be shaking, [REDACTED] responded, “I’m shaking cause I don’t know what’s going on,” and proceeded to place the items in his hands into his lap, and placed his hand next to him on the seat and appeared to be prepared to raise himself to get out of the vehicle.⁴⁸ Officer Kerr again asked [REDACTED] if he had a weapon on him, and told him not to “reach for anything.”⁴⁹ [REDACTED] said he was not reaching for anything, and raised his hands in the air.⁵⁰ Officer Kerr again asked [REDACTED] if he had a FOID and a CCL. [REDACTED] said he had a FOID. Officer Delgado Fernandez asked him where he kept his weapon. [REDACTED] said he did not have a weapon, and that he was in

³⁵ Att. 2 at 0:00 to 1:44

³⁶ Att. 2 at 2:04

³⁷ Att. 3 at 2:04.

³⁸ Att. 2 at 2:12

³⁹ Att. 2 at 2:20

⁴⁰ Att. 2 at 2:25

⁴¹ Att. 2 at 2:25

⁴² Att. 2 at 2:28

⁴³ Att. 1 at 2:35

⁴⁴ Att. 2 at 2:38.

⁴⁵ Att. 2 at 2:40

⁴⁶ Att. 1 at 2:44; Att. 2 at 2:45; Att. 3 at 2:43.

⁴⁷ Att. 3 at 2:45.

⁴⁸ Att. 2 at 2:47; Att. 3 at 2:44.

⁴⁹ Att. 1 at 2:50.

⁵⁰ Att. 1 at 2:52.

his mom's car.⁵¹ [REDACTED] moved the items off his lap in order to step out of the car, and Officer Delgado Fernandez again told him to "stop" and asked him why he keeps "reaching."⁵² [REDACTED] said he was not doing anything.⁵³

[REDACTED] mom, [REDACTED] then came out of her house trying to find out what was going on.⁵⁴ Officer Perez Saucedo walked over to her to explain it was a traffic stop.⁵⁵

Officer Delgado Fernandez then went inside the front passenger seat of [REDACTED] car where a fast-food bag and straw could be seen on the front passenger seat, and ladies' shoes could be seen on the floor of the driver's seat. He opened the center console to reveal another large plastic fast-food cup in the cup holder filled with what appeared to be a pink smoothie. Officer Delgado Fernandez again told [REDACTED] to step out of the vehicle. Next to [REDACTED] right leg on the driver's seat appears to be a surgical mask and a wallet. Officer Delgado Fernandez asked [REDACTED] if he had a weapon on him. [REDACTED] said no, and "my hands, my hands, do you see my hands?"⁵⁶ Officer Delgado Fernandez asked [REDACTED] how old he was. [REDACTED] said, "18 years old."⁵⁷ Officer Delgado Fernandez continued, "Alright, you positive you don't have it on you?" [REDACTED] said, "I don't have it on me."⁵⁸

Officer Delgado Fernandez then asked [REDACTED] if he was a "nervous individual."⁵⁹ [REDACTED] stated, "Well, I'm nervous as hell now."⁶⁰ Officer Delgado Fernandez then began to repeatedly ask if [REDACTED] was "generally nervous" or "had anxiety" to which [REDACTED] stated, "yes."⁶¹ Officer Delgado Fernandez stated that because [REDACTED] was nervous, it made him think that [REDACTED] had a gun.⁶²

[REDACTED] said something about them pulling up on him for no reason asking about shots fired.⁶³ Officer Delgado Fernandez said that he "informed [REDACTED] what it was," and added, "then you are completely illegally parked."⁶⁴ [REDACTED] pointed out that he was just sitting in his car with bags of food and drinks.⁶⁵ Officer Delgado Fernandez asked him to step out of the vehicle again.⁶⁶ [REDACTED] complied. The BWC shows [REDACTED] standing outside the vehicle with his arms raised. While a quick image is shown of Officer Kerr's hand touching [REDACTED] waist, a

⁵¹ Att. 1 at 2:55.

⁵² Att. 1 at 3:03; Att. 2 at 3:03

⁵³ Att. 2 at 3:08.

⁵⁴ Att. 2 at 3:12

⁵⁵ Att. 3 at 3:15

⁵⁶ Att. 1 at 3:18

⁵⁷ Att. 1 at 3:22

⁵⁸ Att. 1 at 3:25

⁵⁹ Att. 1 at 3:27

⁶⁰ Att. 1 at 3:29.

⁶¹ Att. 1 at 3:30.

⁶² Att. 1 at 3:40

⁶³ Att. 1 at 3:50; Att. 2 at 3:52.

⁶⁴ Att. 1 at 3:55

⁶⁵ Att. 1 at 4:04

⁶⁶ Att. 1 at 4:10

full showing of the pat down is not captured on the BWC.⁶⁷ The BWC did not show a bulge in [REDACTED] pocket.⁶⁸

[REDACTED] asked her [REDACTED] what happened, and he said the officers said there were “shots fired nearby.”⁶⁹ [REDACTED] told the officers that [REDACTED] did not own a firearm and that it was her car.⁷⁰ After searching the rear passenger floor and under the front passenger seat, [REDACTED] told him he had no right to search her car,⁷¹ and explained that her son just picked up food for them.⁷² Officer Delgado Fernandez told [REDACTED] that “I’m not having a discussion with you.”⁷³ Officer Delgado Fernandez continued to search the driver’s side, looking at the driver’s area, lifting and examining inside the center console cover, and then the rear floor area behind the driver’s seat.⁷⁴ On the driver’s seat was a Dunkin Donuts bag, a mask, a cell phone, and what looked like a wallet.⁷⁵

Officer Delgado Fernandez then called in for a check of [REDACTED] driver’s license and the license plate of the vehicle. [REDACTED] was issued traffic citations, but he refused to take them. Officer Perez Saucedo placed the tickets inside [REDACTED] vehicle.

c. Documentary Evidence

The **Investigative Stop (ISR) Report**⁷⁶ completed by Officer Delgado Fernandez showed that at approximately 4:11 p.m., on October 19, 2021, Officers Delgado Fernandez, Perez Saucedo, and Kerr were investigating shots fired when they observed [REDACTED] near the location parked behind the wheel of a 2015 silver BMW SUV. [REDACTED] was observed parked more than twelve inches from the curb, and the front driver and passenger windows were tinted in violation of the Municipal Code of Chicago 9-76-220 (B). The officers performed a traffic stop of the said vehicle, observing [REDACTED] to be shaking and very nervous, along with reaching through the front area of the vehicle prior to and during the stop.

The ISR stated that due the nature of the call, the subject’s nervous behavior, and the reaching, the officers asked him to step out of the vehicle. Upon his exit of the vehicle, a protective pat down and a look in the areas where [REDACTED] was previously observed reaching was conducted to ensure that he was not concealing a weapon. [REDACTED] was issued two traffic citations, named checked via LEADS, and released. [REDACTED] was not issued an ISR Receipt because the officers did not have receipts at that time.

⁶⁷ Att. 2 at 4:21

⁶⁸ Att. 2 at 4:15- 5:05, 11:13; Att. 1 at 7:35

⁶⁹ Att. 1 at 4:22

⁷⁰ Att. 1 at 4:25

⁷¹ Att. 1 at 4:44

⁷² Att. 3 at 5:12

⁷³ Att. 1 at 4:35

⁷⁴ Att. 1 at 5:12

⁷⁵ Att. 1 at 5:18.

⁷⁶ Att. 7

An **OEMC Event Query Report**⁷⁷ showed that at approximately 3:40 p.m., a radio call of a shots fired occurred at or near 3515 W. 78th Street. The description provided is that of three Hispanic males, ages 15 to 18, unknown to the caller, were shooting at his vehicle, and caused property damage.

COPA made numerous attempts to contact [REDACTED] and [REDACTED] for interviews by phone and email on October 20-21, 2021, November 3, 2021, and December 21, 2021, February 16, 2022, and February 22, 2022. On December 5, 2022, a face-to-face contact attempt was made by COPA investigators at the residence of [REDACTED]. Later the same day, [REDACTED] spoke with COPA via phone, stating she did not want her son talking to the police. After explaining the role of COPA in police misconduct investigations, [REDACTED] said she would ask her son, and if he were interested, he would be in contact with the agency. On December 27, 2022, a letter⁷⁸ was sent via certified and regular mail by COPA to [REDACTED] requesting an interview. Neither [REDACTED] nor [REDACTED] have replied for an interview with COPA.

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;
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. Coany*, 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.

⁷⁷ Att. 5

⁷⁸ Att. 19

VII. ANALYSIS

Allegations #1 and #2 – Stopped and Detained [REDACTED] without justification

The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁷⁹ “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision.” *Id.* “An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Id.*

Here, [REDACTED] vehicle was parked more than twelve inches from the curb, in violation of MCC 9-64-020(a). Upon further investigation, the officers also noted that [REDACTED] vehicle violated 9-76-220 (B), tinted windows. Thus, the officers’ traffic stop of [REDACTED] was supported by probable cause. Accordingly, by upon clear and convincing evidence, COPA **Exonerates** Officers Delgado Fernandez, Kerr, and Perez Saucedo from the allegations of stopping and detaining [REDACTED] without justification.

Allegations #3 and #4 – Searched [REDACTED] without justification, and Searched the vehicle of [REDACTED] without justification.

A police officer may perform a protective pat-down search where, after making a lawful stop, the officer has a reasonable articulable suspicion that he or another is in danger of attack because the defendant is armed and dangerous.⁸⁰

CPD defines a protective pat down as: “A limited search during an investigatory stop in which a sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area.”⁸¹ CPD defines reasonable articulable suspicion as “an objective legal standard that is less than probable cause, but more than a hunch or general suspicion. Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member’s training and experience.”⁸² Therefore, “[f]or a protective pat down, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area.”⁸³ Further, if an officer who, during the pat down, “touches an object the sworn member reasonably believes is a weapon” to reach into that area of clothing and retrieve the object.⁸⁴

Additionally, after conducting a traffic stop, if the police have a reasonable suspicion based on specific and articulable facts to believe that a vehicle occupant may be armed and dangerous,

⁷⁹ *Whren v. United States*, 517 U.S. 806, 809-810 (1996).

⁸⁰ *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001).

⁸¹ Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

⁸² Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

⁸³ Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

⁸⁴ Att. 26, S04-13-09(II)(B)

they may not only conduct a protective search for weapon of the person, but also of the passenger compartment of the automobile.⁸⁵ However, police may not use a traffic stop as a pretext to search for evidence.⁸⁶

In her complaint to COPA, ██████████ mother, ██████████ indicated that the officers first cut off her son's car, approached him, and asked about a shooting in the area. ██████████ told the officers he did not know about a shooting, and when the officers began to leave, ██████████ parked the vehicle he was driving. The officers then reversed back, activated their emergency lights, and commenced a traffic stop on ██████████ for traffic violations of illegally parked twelve inches from the curb and tinted driver and front passenger windows. While it is true that neither ██████████ nor ██████████ came to COPA for a formal interview, the evidence suggests that there was an initial encounter with ██████████ prior to what is portrayed on the BWC video.

None of the officers acknowledged an initial interaction with ██████████ in any of their reports or in their interviews with COPA. However, just a couple of minutes into the traffic stop, and without a single mention of "shots fired" by any of the officers, in response to Officer Delgado Fernandez's questions about whether ██████████ had anxiety, ██████████ stated "yes, I have anxiety, cause you pulled up on me for no reason asking me [inaudible] and then shots fired."⁸⁷ In response, Officer Delgado Fernandez stated, "I informed you what it was, and then you completely illegally parked."⁸⁸ Then, when ██████████ exited the vehicle and his mom asked him what happened, he told her, "I don't know what happened, they there's shots fired."⁸⁹

Even though these statements were captured on Officer Delgado Fernandez's BWC, in his COPA interview, he stated that he thought he himself made that comment, and believed he did not mention the shots fired until he and ██████████ were on the sidewalk together, minutes later.⁹⁰ Officer Delgado Fernandez also claimed that he did not believe he had passed ██████████ car before he came back and reversed, and did not know until he reversed if it was even occupied.⁹¹

While COPA recognizes that the officers indicated that they did not have an independent recollection of the incident and were answering questions based on watching their BWC video, COPA finds that ██████████ could not have made the statement about the officers telling him about "shots fired" unless there was a prior interaction where the officers told him that.

Too, the BWC video showed that the officers were talking in their car during the buffer and then reversed, and when the sound went on, Officer Kerr stated, "I told you he was reaching... what's he reaching..."⁹² Thus, it appears that after their initial stop of ██████████ the officers were still interested in him and, prior to the traffic stop, interested in searching for what it was they believed he was allegedly "reaching" for.

⁸⁵ *Michigan v. Long*, 463 U.S. 1032, 1048-49 (1983).

⁸⁶ *U.S. v. Willis*, 61 F.3d 526, 530 (7th Cir. 1995), citing, *U.S. v. Leftkowitz*, 285 U.S. 452, 467 (1932).

⁸⁷ Att. 2 at 3:49.

⁸⁸ Att. 2 at 3:54.

⁸⁹ Att. 2 at 3:12.

⁹⁰ Att. 21, pgs. 19, 32

⁹¹ Att. 21, pg. 14-15.

⁹² Att. 2 at 2:04.

So, while [REDACTED] illegal parking of the vehicle gave them the justification they needed to perform a traffic stop, it did not give them the justification to search [REDACTED] or his car based on a reasonable articulable suspicion that he was armed and dangerous.

The factors the officers provided to support the pat down and the search of the vehicle as documented in the ISR were: (1) “due to the nature of the call” (shots fired); (2) the subject’s “nervous behavior”: and (3) the subject’s “reaching through the front portion of the vehicle.”⁹³ In addition, in his COPA interview, Officer Kerr added that [REDACTED] had a “very large bulge” in his right pocket, around his waistband area.⁹⁴ However, neither the interviews, nor the BWC video support these factors.

First, while it is true that there was a call of shots fired 20 minutes⁹⁵ earlier to a location one half block south of the location of the traffic stop,⁹⁶ the description of the shooters was of three male Hispanics between the ages of 15 and 18.⁹⁷ Although the officers denied that they were aware of the description,⁹⁸ with Officer Delgado Fernandez explaining that when they arrive at the area they are just “looking for a car leaving at a high rate of speed or somebody holding their side, running away,” Officer Delgado Fernandez admitted that [REDACTED] was doing neither.⁹⁹ Thus, COPA finds that it is not objectively reasonable to believe a person of any description doing anything anywhere near the area of a prior shooting is armed and dangerous.

In terms of [REDACTED] alleged “reaching,” it should initially be noted that the officers never described that the “reaching” was in any type of a furtive or abnormal manner. Nor did they suggest the “reaching” was in response to their inevitable approach or in defiance of any of their commands.

The first instance of “reaching” the officers referred to was while the officers were watching [REDACTED] from inside their vehicle before they approached him, without [REDACTED] knowledge that they were planning to come back and interact with him again after they had already left from their prior encounter. The evidence showed that [REDACTED] had just arrived home, and was stopped in front of his own house, with bags of food and drinks for him and his mom on the front passenger seat and in the cupholders in the center console and in front of the passenger seat.¹⁰⁰ [REDACTED] also had a facemask and his phone on his lap while still seated in his vehicle.¹⁰¹ So, although Officer Delgado Fernandez told COPA that he was not been able to see the food that [REDACTED] told him he was reaching for when Officer Delgado Fernandez was sitting in the CPD vehicle or upon approach at the start of the traffic stop,¹⁰² this does not provide justification for a search of the vehicle or a pat down of [REDACTED] both of which occurred *after* the officers could clearly see the food and drinks and other items, corroborating [REDACTED] statement about what

⁹³ Att. 7.

⁹⁴ Att. 22, pg. 15.

⁹⁵ Att. 6, pg. 1; Att. 21, pg. 20.

⁹⁶ Att. 21, pg. 12.

⁹⁷ Att. 6, pg. 1.

⁹⁸ Att. 21, pgs. 19-20; Att. 22, pgs. 17-18; Att. 23, pg. 15.

⁹⁹ Att. 21, pgs. 29-30,

¹⁰⁰ Att. 1 at 3:13, 5:18; Att. 2 at 2:20; Att. 3 at 5:12.

¹⁰¹ Att. 2 at 2:20

¹⁰² Att. 21, pg. 13.

he was reaching for. As such, the preponderance of the evidence does not show that any movements ██████ was making in the front area of his vehicle could be considered furtive or abnormal, or in response to the officers approaching him, rather than just gathering and organizing the items he needed to bring into his house.

Next, the BWC video contradicts that ██████ was “reaching” on the two occasions that Officer Kerr could be heard accusing him of “reaching.” The first time was after ██████ was ordered to step out the vehicle.¹⁰³ When ██████ placed the items that were in his hands into his lap, and placed his right hand next to him on the seat in order to raise his body to get out of the vehicle,¹⁰⁴ Officer Kerr told him not to “reach for anything.”¹⁰⁵ ██████ said he was not reaching for anything, and immediately, without being commanded to, raised his hands in the air.¹⁰⁶ The second time Officer Kerr claimed ██████ was “reaching,” was, again, during ██████ second attempt to raise himself to step out of the vehicle as commanded.¹⁰⁷ The BWC video shows that ██████ simply moved items off his lap in order to do so. Therefore, the preponderance of the evidence does not support that ██████ was reaching at all, much less doing so with furtive or abnormal motives providing a particularized suspicion that he was armed and dangerous. None of the movements was consistent with weapons concealment or any other criminal activity. ██████ was merely attempting to comply with the order to step out of his car by placing things down and using his hand to support himself as he lifted himself out of the car. See, *U.S. v. Johnson*, 2022 U.S. Dist. LEXIS 4954, 26 (E.D. Wisc. 2022) (it is not clear why reaching behind a seat is suspicious where it is common for people with a passenger in the front seat to place their belongings in the back seat”). Consequently, “reaching” will not be included in the reasonable suspicion analysis. *Id.*

With regards to the ██████ “nervous behavior,” both officers told COPA that ██████ was “visibly shaking,”¹⁰⁸ and the BWC video shows Officer Kerr asking ██████ “why are you shaking so bad.”¹⁰⁹ However, even though ██████ responded that it was because he did not know what was going on, the BWC video does not show ██████ visibly shaking.¹¹⁰

Even so, Officer Delgado Fernandez proceeded to interrogate ██████ about whether he was a “generally” nervous person and had “anxiety,” explaining to ██████ that his “nervousness” made him think ██████ had a weapon.¹¹¹ However, in his COPA interview, Officer Delgado Fernandez recognized that people it is feasible that people are nervous when stopped by the police, but explained that in his experience as a police officer, “[i]ndividuals that do exhibit an onset of sudden nervousness around [his] presence, coupled with certain questions when they’re posed, generally leads to [him] asking more or having those individuals exit out of the vehicle to determine what—what exactly is going on, just as a reasonable suspicion that they

¹⁰³ Att. 3 at 2:45.

¹⁰⁴ Att. 2 at 2:47; Att. 3 at 2:44.

¹⁰⁵ Att. 1 at 2:50.

¹⁰⁶ Att. 1 at 2:52.

¹⁰⁷ Att. 1 at 3:03; Att. 2 at 3:03

¹⁰⁸ Att. 21, pg. 17, Att. 22, pg. 23.

¹⁰⁹ Att. 2 at 1:43.

¹¹⁰ Att. 2 at 1:45.

¹¹¹ Att. 1 at 3:27.

might be armed.”¹¹² He further added that that the reason he asks those questions is to determine if the nervousness was because someone is a nervous person or “if it was just out of criminal activity,”¹¹³ because if Officer Delgado Fernandez does not “know the guy, [he’s] not going to make an assumption, he might suffer from anxiety.”¹¹⁴

So, according to Officer Delgado Fernandez, even though it is feasible that people are nervous when stopped by the police, or even if someone is “generally” a nervous person or suffers from anxiety and their nervousness is *not* out of “criminal activity,” there is reasonable suspicion they may be armed. The Seventh Circuit has found otherwise. See, *U.S. v. Williams*, 731 U.S. 678, 687 (7th Cir. 2013)(“Most people, when confronted by an officer are likely to act nervous, avoid eye contact, and even potentially shift their bodies as if to move away from the area, thus making behaviors of very little import to a reasonable suspicion determination”).

As such, COPA will assign very little import to [REDACTED] nervousness in its reasonable suspicion determination, to whatever extent he exhibited signs of it.

Finally, with regards to an alleged “very large bulge” in [REDACTED] pocket, Officer Kerr recounted that when [REDACTED] got out of the vehicle, “his pocket looked pretty heavy.”¹¹⁵ However, when asked if he could remember what the “bulge” turned out to be after patting [REDACTED] down, Officer Kerr stated, “I never went into his pockets.”¹¹⁶ In fact, Officer Kerr stated that he could not recall if he even “patted that area down.”¹¹⁷

More significantly, however, the BWC does not show any type of bulge, much less a “very large bulge” in [REDACTED] right pocket when he exited the vehicle, nor later when the BWC captured a better view of [REDACTED].¹¹⁸ Thus, where the “very large bulge” that Officer Kerr reported as a factor for the reasonable articulable suspicion that [REDACTED] was armed and dangerous was not deemed important enough to document in the ISR, was not threatening enough to even pat to determine what the bulge was, and cannot be seen in the BWC, COPA will not consider it in its reasonable suspicion analysis.

All told, what COPA is left with to consider in its reasonable suspicion analysis is that [REDACTED] was located one half block from where a shooting occurred 20 minutes earlier but did not match the description of the shooter, and that he exhibited or admitted to some degree of nervousness when three police officers surrounded his car and interrogated him while parked (albeit, more than 12 inches from the curb) in front to his house about to bring in food for him and his mother. COPA finds that it was not objectively reasonable based on these factors to suspect that [REDACTED] was armed and dangerous.

¹¹² Att. 21, pg. 17, ln 8-15

¹¹³ Att. 21, pg. 17

¹¹⁴ Att. 21, pgs. 17-18.

¹¹⁵ Att. 22, pgs. 28-29.

¹¹⁶ Att. 22, pgs. 28-29.

¹¹⁷ Att. 22, pg. 29.

¹¹⁸ Att. 2 at 4:15- 5:05, 11:13; Att. 1 at 7:35

Additionally, COPA will consider that the officers stopped [REDACTED] prior to this traffic stop about the shots fired in the area and were still interested in him and expressed interest in learning what he was “reaching” for inside his car. Therefore, COPA finds by the preponderance of the evidence that the search of [REDACTED] and the passenger compartment of his vehicle were based on pretextual factors that do not establish justification for either.

Consequently, Allegation #3 – searching [REDACTED] without justification – is **Sustained** against Officer Kerr, but **Unfounded** against Officers Delgado Fernandez and Perez Saucedo; and Allegation #4 – searching [REDACTED] vehicle without justification – is **Sustained** as to Officer Delgado Fernandez, but unfounded as to Officers Kerr and Perez Saucedo.

Allegation #5 – Failed to properly document the detention of [REDACTED]

CPD policy requires that “upon the 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.”¹¹⁹

In the ISR, Officer Delgado Fernandez noted that [REDACTED] was not issued an ISR Receipt because the officers did not have receipts at that time. In their COPA interviews, Officer Delgado Fernandez said that their work location was periodically out of ISR receipts, while Officers Kerr, and Perez Saucedo said that ISR receipts were not available. Based upon insufficient evidence to prove the allegations by a preponderance of the evidence, COPA renders a **Not Sustained** for Officers Delgado Fernandez, Kerr, and Perez Saucedo for the allegation of failed to properly document the detention of [REDACTED]

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATION

a. Officer Enrique Delgado Fernandez

i. Complimentary and Disciplinary History

Officer Delgado Fernandez has received 352 various achievement awards including thirteen Department Commendation awards for an outstanding act or achievement that brings great credit to the Department and involves performance above and beyond that required by the member’s basic assignment. Additionally, Officer Delgado Fernandez received four Honorable Mention Ribbon Awards for demonstrating outstanding performance and has received 307 Honorable mentions.

Officer Delgado Fernandez’s disciplinary history includes five reprimands since 2021, four involving preventable accidents. Additionally, in 2018, Officer Delgado

¹¹⁹ Att. 24, S04-13-09(VIII)(A)(1)

Fernandez received a violation noted for violating inventory procedures, and in 2019, a ten-day suspension for excessive force unnecessary physical contact-no injury.

ii. Recommended Discipline

COPA has sustained Officer Delgado Fernandez's allegation of searched the vehicle of [REDACTED] without justification. In mitigation, COPA will consider his over ten and a half years of service, along with numerous awards. In aggravation, COPA will consider that as an experienced member of the Chicago Police Department, Officer Delgado Fernandez should have a fundamental understanding of 4th Amendment guarantees provided in the U.S. Constitution that ensure citizens protection against unwarranted and unlawful searches by law enforcement. Additionally, COPA will consider the pretextual nature of the search his overzealousness in seeking to search individuals without sufficient justification. COPA will further consider that Officer Delgado Fernandez has been a significant disciplinary history.

COPA recommends that Officer Delgado Fernandez receive a suspension of 10 days.

b. Officer Lawrence Kerr

i. Complimentary and Disciplinary History

Officer Kerr has received 367 various achievement awards including 15 Department Commendation awards for an outstanding act or achievement that brings great credit to the Department and involves performance above and beyond that required by the member's basic assignment. Additionally, Officer Delgado Fernandez received two Honorable Mention Ribbon Awards for demonstrating outstanding performance and has received 341 Honorable mentions.

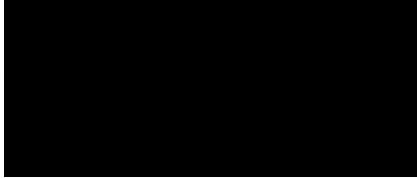
Officer Kerr has no disciplinary history.

ii. Recommended Discipline

COPA has sustained Officer Kerr's allegation of searched [REDACTED] without justification. In mitigation, COPA will consider his over 21 years of service, his numerous awards, and lack of any disciplinary history. In aggravation, COPA will consider that as an experienced member of the Chicago Police Department, Officer Kerr should have a fundamental understanding of 4th Amendment guarantees provided in the U.S. Constitution that ensure citizens protection against unwarranted and unlawful searches by law enforcement. Additionally, COPA will consider the pretextual nature of the search his overzealousness in seeking to search individuals without sufficient justification.

COPA recommends that Officer Lawrence Kerr receive a suspension of 10 days.

Approved:



5/22/2023

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date