

**SUMMARY REPORT OF INVESTIGATION**

Date/Time/Location of Incident:	March 13, 2022 / 3:31 p.m. / 727 E 111 <sup>th</sup> St—005 <sup>th</sup> District Parking Lot
Date/Time of COPA Notification:	March 13, 2022 / 4:23 p.m.
Involved Officer #1: <sup>1</sup>	Clifford Martin Jr. / Star #18859 / Employee # [REDACTED] / Date of Appointment: 1/16/18 / Rank: Patrol Officer / Unit: 005 / DOB: [REDACTED]/96 / M / B
Involved Officer #2	Miguel Anderson / Star #6547 / Employee # [REDACTED] / Date of Appointment: 2/19/13 / Rank: Patrol Officer / Unit 005; DOB: [REDACTED]/79 / M / B
Involved Officer #3	Colleen Konagel / Star #1367 / Employee # [REDACTED] / Date of Appointment: 12/18/00 / Rank: Sergeant / DOB: [REDACTED]/76 / F / W
Subject #1:	[REDACTED] / DOB: [REDACTED]/1994 / M / B

**I. ALLEGATIONS**

Officer	Allegation	Finding
Officer Miguel Anderson	1. Performing an unlawful search of [REDACTED]	Exonerated
	2. Disrespect of [REDACTED]	Sustained
Sergeant Colleen Konagel	1. Attempting to coerce Officer Martin into arresting [REDACTED] without justification	Not Sustained

**II. SUMMARY OF EVIDENCE<sup>2</sup>**

<sup>1</sup> COPA did not interview Officer Martin because he was on indefinite medical leave throughout the duration of the investigation.<sup>1</sup> After reviewing BWC, COPA determined by clear and convincing evidence that Officer Martin did not commit the allegation alleged against him. Officer Martin was professional while interacting with [REDACTED] Officer Martin performed a brief investigatory stop, after which he provided [REDACTED] with an ISR. As such, COPA determined that Officer Martin’s statement was unnecessary and his allegations would be Administratively Closed.

<sup>2</sup> COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases summarized more succinctly in a Modified Summary Report of Investigation.

On March 13, 2022, at approximately 3:31 p.m., ██████ stood on the sidewalk near the 005<sup>th</sup> District rear parking lot. ██████ was facing towards the parking lot and appeared to be looking on his phone.<sup>3</sup> ██████ wore tapered “jogger” sweatpants and a zip-up hoodie, held his phone in his right hand, and kept left hand in his hoodie pocket. Officer Clifford Martin Jr. approached ██████ and conducted an investigatory stop after a radio call that ██████ was canvassing the parking lot. Officer Martin sounded frustrated and requested assistance from additional officers over his radio. Officer Martin then performed an investigatory stop on ██████ who refused to answer questions and refused to move his left hand from his sweatshirt pocket. ██████ appeared to record this interaction with his phone.<sup>4</sup>

Officer Martin began to conduct a protective pat down when Officer Miguel Anderson arrived in his patrol car. Officer Anderson approached ██████ and grabbed the outside of his sweatpants pockets.<sup>5</sup> ██████ asked why Officer Anderson grabbing him, and Officer Anderson replied, “Because I’m the fucking police and I can.”<sup>6</sup> Officer Martin then handcuffed ██████

At least seven additional officers arrived in the parking lot and stood near the scene. ██████ argued with Officer Martin and other officers about whether he was trespassing by standing on the sidewalk. Sergeant Colleen Konagel said ██████ “[knew] how to play the game” by suing the police.<sup>7</sup> At one point ██████ told Officer Martin he would not be a police officer for long because of a pending lawsuit. Officer Martin interpreted this statement as a threat towards him. Officer Martin gave ██████ an investigatory stop receipt and released ██████ without charge. Officer Martin submitted an Investigatory Stop Report (ISR).<sup>8</sup>

COPA interviewed ██████ on March 22, 2022. ██████ said he was walking along the sidewalk near the 005<sup>th</sup> District police station when Officer Martin approached and began questioning him. Sergeant Konagel repeatedly tried to talk Officer Martin into arresting him, but Officer Martin eventually released him without charges.

COPA interviewed Officer Anderson on June 15, 2022. Officer Anderson said he approached ██████ and Officer Martin and began searching ██████. He believed ██████ was armed because of Officer Martin’s tone of voice and because of a bulge in ██████ pocket. He reached into ██████ pocket when he could not identify the object after performing a protective pat down. ██████ asked Officer Anderson why he was searching through his pockets, to which Officer Anderson replied, “Because I’m the fucking police and I can.” In hindsight, Officer Anderson would not have used that language or spoken that way when he answered ██████

COPA interviewed Sergeant Konagel on September 9, 2022. Sergeant Konagel provided little information. She claimed she did not understand the question when asked to describe what she remembered about her interaction with ██████. She reviewed BWC and believed that she spoke with ██████ briefly but did not remember what she or ██████ said during the interaction.

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<sup>3</sup> Attachment 2: BWC of PO Clifford Martin Jr. at 0:49-2:37.

<sup>4</sup> Attachment 2 at 2:38. ██████ was a complainant in additional COPA cases and failed turn over cellphone video after multiple requests for video in all COPA cases. *See*, 2022-0001165 and 2022-0001192.

<sup>5</sup> Attachment 1: BWC of PO Miguel Anderson at 1:06-1:17.

<sup>6</sup> Attachment 2: at 4:00.

<sup>7</sup> Attachment 2: at 5:19-5:28.

<sup>8</sup> Attachment #8: ISR of PO Clifford Martin Jr. of ██████

She could not hear what she said to [REDACTED] or other officers on BWC, even when the video was played at maximum volume. She did not remember what she said to the other officers. She believed that Officer Martin released [REDACTED] from CPD custody and did not charge him with a crime.

COPA did not interview Officer Martin because he was on indefinite medical leave throughout the duration of the investigation.<sup>9</sup> After reviewing BWC, COPA determined by clear and convincing evidence that Officer Martin did not commit the allegation alleged against him. Officer Martin was professional while interacting with [REDACTED]. Officer Martin performed a brief investigatory stop, after which he provided [REDACTED] with an ISR. As such, COPA determined that Officer Martin's statement was unnecessary to determine by clear and convincing evidence that his conduct was valid.

### III. LEGAL STANDARDS

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

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

An allegation is supported by a preponderance of the evidence when “it is more likely than not” that the facts alleged occurred.<sup>10</sup> COPA must sustain such an allegation. Conversely, COPA cannot sustain an allegation when it is more likely than not that the facts alleged did not occur.<sup>11</sup> The clear and convincing evidence standard is a higher burden of proof than a preponderance of the evidence.<sup>12</sup> However, clear and convincing evidence is a lower burden of proof than the “proof beyond a reasonable doubt” required for a criminal conviction.<sup>13</sup>

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<sup>9</sup> Attachment #7: Email - Re Request for interview statement for P.O. Clifford Martin Jr.

<sup>10</sup> *See, e.g., 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”).

<sup>11</sup> *See id.*

<sup>12</sup> *See, e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>13</sup> *See id.*; for further analysis of burdens of proof *see also, Sawyer v. Whitley*, 505 U.S. 333 (1992).

## IV. ANALYSIS

### a. Search and Seizure Allegations

Officers may conduct an investigatory stop if they have reasonable articulable suspicion (“reasonable suspicion”) that a suspect is about to commit or has committed a criminal offense.<sup>14</sup> Officers conduct an investigatory stop—also known as a *Terry* stop—by temporarily detaining and questioning a suspect.<sup>15</sup> Officers may conduct such an investigatory stop for the time needed to confirm or deny reasonable suspicion of criminal activity.<sup>16</sup>

Reasonable suspicion consists of specific facts and observations about a suspect, taken in context of specific factual circumstances known to the officers.<sup>17</sup> Reasonable suspicion “is an objective legal standard that is less than probable cause but more substantial than a hunch or general suspicion.”<sup>18</sup>

An officer conducting an investigatory stop may conduct a brief frisk for the purpose of finding weapons or threats to officer safety.<sup>19</sup> To conduct such a frisk, an officer must have reasonable suspicion that the suspect is armed and dangerous.<sup>20</sup> An officer must limit such frisks—or protective pat downs—to a suspect’s outer clothing.<sup>21</sup> An officer cannot reach into article of clothing to retrieve an object unless he feels the object during the frisk of the suspect’s outer clothing.<sup>22</sup>

#### 1. Officer Anderson’s Protective Frisk was Valid.

Officer Anderson’s search of [REDACTED] pockets did not exceed the scope of the protective pat down allowed under S04-13-09 and *Terry*. Officer Anderson approached [REDACTED] while Officer Martin was conducted a valid protective pat down. Therefore, he had the required reasonable suspicion to believe [REDACTED] was armed.

Officer Anderson approached [REDACTED] from behind while Officer Martin questioned and began to frisk [REDACTED]. Officer Anderson felt the outside of both of [REDACTED] sweatpants pockets from behind, which was a protective frisk of [REDACTED] outer clothing.

Officer Anderson said in his interview that he had reasonable suspicion to believe [REDACTED] was armed under the totality of the circumstances. Officer Anderson articulated (1) Officer Martin’s tone of voice, (2) a bulge in [REDACTED] pocket, and (3) [REDACTED] location led him to believe

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<sup>14</sup> S04-13-09 II(C)(1); *see also*, *Terry v. Ohio*, 392 U.S. 1 (1968). The terms “reasonable suspicion” and “reasonable articulable suspicion” may be used interchangeably.

<sup>15</sup> S04-13-09 II(A).

<sup>16</sup> *Id.*

<sup>17</sup> S04-13-09 II(C)(1); *Terry*.

<sup>18</sup> S04-13-09 II(C); *Terry*.

<sup>19</sup> *Id.* (B); *Terry*.

<sup>20</sup> *Id.* (C)(2).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

██████████ might be armed. Although this is not particularly persuasive,<sup>23</sup> Officer Anderson approached while Officer Martin was in process of conducting a protective pat down. It was reasonable for him to conclude there was reasonable suspicion to continue, and he ceased after identifying the object in ██████████ pockets as a cellphone.

COPA finds by clear and convincing evidence that Officer Anderson's protective pat down did not violate law or policy. Therefore, COPA recommends **Officer Miguel Anderson, Star #6547, be Exonerated as to Allegation 1.**

#### b. Professionalism Allegations

##### 1. Officer Anderson Swore at ██████████ and was Unprofessional.

CPD Department members must (1) “act with a high degree of ethics, professionalism, and respect for the public.”<sup>24</sup> Officers must (2) “treat all persons with courtesy and dignity” and (3) “act, speak, and conduct themselves in a professional manner and maintain a courteous attitude in all contacts with the public.”<sup>25</sup>

BWC footage shows Officer Anderson say that he was stopping ██████████ “because I’m the fucking police and I can.”<sup>26</sup> Officer Anderson confirmed that he said this to ██████████ during his statement with COPA. This conduct was clearly unprofessional, did not treat ██████████ with courtesy or dignity, and was discourteous. Therefore, COPA finds that **Allegation 2 against Officer Miguel Anderson, Star # 6547 is sustained.**

##### 2. The evidence is insufficient to determine that Sergeant Konagel attempted to coerce Officer Martin into arresting ██████████

Officers are strictly prohibited from “engaging in any form of retaliation against . . . members of the public”.<sup>27</sup> Under G08-05(F):

retaliation is defined as any conduct, action, or inaction of a damaging, intimidating, or threatening nature, or any interference, intimidation, coercion, or other adverse action taken against any individual designed to serve as retribution that is intended to punish, cause harm or emotional stress, or improperly influence the individual's actions.

Retaliation includes “direct or indirect actions, including arrests, issuance of citations, surveillance, and vehicle or street stops.”<sup>28</sup> CPD specifically prohibits retaliation for “engaging in protected lawful exercise of First Amendment rights”, including “*observing or filming police activity.*”<sup>29</sup>

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<sup>23</sup> (1) Officer Martin's tone was frustrated but not frantic; (2) BWC shows ██████████ wearing sweatpants with no apparent weapon; and (3) nothing about ██████████ location suggested that he was armed.

<sup>24</sup> G08-05 III(A)(1).

<sup>25</sup> *Id.*, (2), (3).

<sup>26</sup> Attachment #2 at 4:00.

<sup>27</sup> *Id.* (E)(1).

<sup>28</sup> *Id.* (G)(1).

<sup>29</sup> *Id.* (H)(1)(a) (emphasis added).

