



Log # 2022-5347

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On December 19, 2022, the Civilian Office of Police Accountability (COPA) received a complaint in the form of a handwritten letter from ██████████ (██████████ reporting alleged misconduct by members of the Chicago Police Department (CPD). ██████████ alleged that on July 13, 2022, Officer Daniel Holubik #7713, Detective (Det.) Christopher Lewis #20562,<sup>2</sup> and former-Officer Timothy Blake, Jr. #9574 (now resigned from CPD)<sup>3</sup> conducted a search of his vehicle without justification.<sup>4</sup> Upon review of the evidence, COPA served additional allegations that Officer Holubik failed to activate his body-worn camera (BWC) in a timely manner during this encounter. Following its investigation, COPA reached sustained findings regarding the allegations of Officer Holubik and Det. Lewis conducting an unjustified search of ██████████ vehicle. Additionally, COPA sustained the allegation that Officer Holubik failed to activate his BWC in a timely manner.

### II. SUMMARY OF EVIDENCE<sup>5</sup>

The video footage<sup>6</sup> from this arrest shows that on the morning of July 13, 2022, Officer Holubik and Officer Blake (collectively, “the officers”) were on patrol in their CPD vehicle as they travelled east on E. 75<sup>th</sup> Street.<sup>7</sup> Officer Holubik, who was in the driver’s position, completed a U-turn near E. 75<sup>th</sup> and S. Colfax Avenue, then drove west for a block and turned north at S. Kingston Avenue.<sup>8</sup> They continued north for less than a block and stopped behind a parked red

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<sup>1</sup> Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

<sup>2</sup> At the time of this incident, Det. Lewis still held the rank of Police Officer. His promotion to Detective was effective June 1, 2023.

<sup>3</sup> Officer Blake resigned from CPD effective June 21, 2023, and consequently is no longer subject to the authority of this administrative investigation. Additionally, ██████████ complaint included four other officers who responded to the scene, but no allegations were served to them because COPA determined that they were not involved in the vehicle search.

<sup>4</sup> One or more of these allegations fall within COPA’s jurisdiction pursuant to Chicago Municipal Code (M.C.C) § 2-78-120. Therefore, COPA determined it would be the primary investigative agency in this matter.

<sup>5</sup> The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including BWC footage, police reports, court documents, and officer interviews.

<sup>6</sup> Note: Officers Holubik and Blake both had late BWC activation at the beginning of this traffic stop. CPD BWC systems retain a two-minute-long video-only recording immediately prior to activation. While operating in this buffered mode, only video is captured, and the recording’s audio does not begin until after an officer presses the BWC’s activation button. Due to the late activations during this incident, no audio record exists to document whatever spoken communications were made at the very beginning of the stop.

<sup>7</sup> Att. 1 at 0:00 to 1:05; also Att. 2 at 0:00 to 1:07.

<sup>8</sup> Att. 1 at 1:05 to 1:26; also Att. 2 at 1:07 to 1:28.

Dodge Caravan.<sup>9</sup> As the officers exited their vehicle, two Black men, now known to be [REDACTED] and his passenger [REDACTED] ( [REDACTED] came into view as they departed from the Dodge Caravan.<sup>10</sup> [REDACTED] walked slowly from the driver-side of the Caravan toward the curb, and did not look at or acknowledge Officer Holubik in any way as he crossed in front of him.<sup>11</sup> Meanwhile, Officer Blake approached [REDACTED] who had left the Caravan's passenger-side door as he moved away toward the rear of the vehicle.<sup>12</sup> Officer Holubik immediately detained [REDACTED] in handcuffs, while Officer Holubik did the same with [REDACTED].<sup>13</sup> Both officers then activated their BWCs,<sup>14</sup> at which point the recording began to capture the sound of [REDACTED] protesting his detention.<sup>15</sup>

After the officers conducted protective pat-downs on [REDACTED] and [REDACTED] Officer Blake also searched inside [REDACTED] pockets, finding a white folded packet or bundle in his right pocket which he placed on the hood of the CPD vehicle.<sup>16</sup> [REDACTED] said he did not have anything on him as Officer Blake searched his left pocket.<sup>17</sup> Officer Blake said [REDACTED] was carrying cannabis and asked him if he was selling it, which [REDACTED] denied.<sup>18</sup> Following this, Officer Blake proceeded to unzip and search inside a bag<sup>19</sup> that [REDACTED] was carrying while [REDACTED] stated that [REDACTED] had been driving him to purchase a new car.<sup>20</sup> When [REDACTED] asked why he had been stopped, the officers explained that they had observed him driving without a seatbelt and making a turn without using a turn signal.<sup>21</sup> After further discussion, during which [REDACTED] repeatedly insisted that he had been wearing a seatbelt,<sup>22</sup> he told the officers that he had an outstanding warrant.<sup>23</sup> As other officers began arriving to the scene, Officer Holubik got into his CPD vehicle to run a name check on [REDACTED] and Officer Blake began emptying the contents of [REDACTED] bag onto the hood of the vehicle, showing that it contained many individually-sealed packets of what appeared to be a commercially-sold cannabis product.<sup>24</sup> Officer Blake proceeded to pull a large quantity of cash out of the bag, which [REDACTED] explained was \$950.00 that he had intended to use to buy a car that day.<sup>25</sup>

<sup>9</sup> Att. 1 at 1:26 to 1:36; also Att. 2 at 1:28 to 1:38.

<sup>10</sup> Att. 1 at 1:36 to 1:40; also Att. 2 at 1:38 to 1:42.

<sup>11</sup> Att. 1 at 1:40 to 1:42.

<sup>12</sup> Att. 2 at 1:42 to 1:44.

<sup>13</sup> Att. 1 at 1:42 to 1:55; also Att. 2 at 1:44 to 1:57.

<sup>14</sup> Att. 1 at 1:55 to 2:00; also Att. 2 at 1:57 to 2:02.

<sup>15</sup> Att. 1 at 2:00 to 2:04; also Att. 2 at 2:02 to 2:06.

<sup>16</sup> Att. 1 at 2:04 to 3:08; also Att. 2 at 2:06 to 3:10.

<sup>17</sup> Att. 1 at 3:08 to 3:12; also Att. 2 at 3:10 to 3:14.

<sup>18</sup> Att. 1 at 3:12 to 3:16; also Att. 2 at 3:14 to 3:18. (After [REDACTED] said he did not have anything, Officer Blake responded by asking "Just that weed that you're selling?")

<sup>19</sup> If Officer Blake had not already resigned from CPD, COPA would likely have served him with misconduct allegations for his detailed search of [REDACTED] person and for his participation in the search of [REDACTED] vehicle. However, because Officer Blake is no longer employed by CPD, COPA lacks the jurisdiction to continue its misconduct investigation against him.

<sup>20</sup> Att. 1 at 3:16 to 3:48; also Att. 2 at 3:18 to 3:50.

<sup>21</sup> Att. 1 at 2:04 to 4:05; also Att. 2 at 2:06 to 4:07.

<sup>22</sup> Att. 1 at 4:05 to 4:50; also Att. 2 at 4:07 to 4:52.

<sup>23</sup> Att. 1 at 4:50 to 5:26; also Att. 2 at 4:52 to 5:28.

<sup>24</sup> Att. 1 at 5:26 to 5:48; also Att. 2 at 5:28 to 5:50.

<sup>25</sup> Att. 1 at 5:48 to 6:03; also Att. 2 at 5:50 to 6:05.

At that point, Det. Lewis arrived at the scene, and slowly walked past the other officers and the detainees as he moved toward the open passenger door of ██████ Dodge Caravan.<sup>26</sup> After pausing for several seconds in front of the open door, he leaned over into the passenger-seat area and appeared to visually inspect the interior.<sup>27</sup> Although the angle of his BWC video does not show his hands, COPA observes that on the right edge of the recorded image the lid of the vehicle glovebox can be seen dropping down from the dash, and approximately four seconds later the lid can be heard audibly clicking closed again, indicating that a brief search had occurred.<sup>28</sup>

After Det. Lewis had moved away from the Dodge Caravan, Officer Blake approached it, opened the driver-side door, and leaned over into the driver-seat area.<sup>29</sup> He then stood up and moved around to the open passenger door, where he opened the glovebox, moved some papers around inside it, and closed the glovebox again.<sup>30</sup> Officer Blake appeared to search further around the front seats, while Officer Holubik exited from the CPD vehicle, opened the driver-side door of the Dodge Caravan, and told Officer Blake that ██████ did not, in fact, have any outstanding traffic warrants.<sup>31</sup> Officer Blake opened the passenger-side sliding door to access the rear compartment and told Officer Holubik to determine whether they might be able to arrest ██████ for the cannabis that he had been carrying.<sup>32</sup> Officer Blake continued searching through various objects in the rear seat and rear cargo area while Officer Holubik bent over the driver's footwell area and appeared to search underneath the dashboard with a flashlight.<sup>33</sup> While Officer Holubik continued searching near the driver's footwell, Officer Blake moved around to the driver-side sliding rear door, opened it, and resumed searching the rear of the Caravan.<sup>34</sup> Officer Holubik searched around the driver's seat as he asked Officer Blake to check into an old gun offender registration offense that he had found for ██████<sup>35</sup> and then commented about the unfruitful search they were conducting, saying, "Dude, I just can't believe there's nothing else in here."<sup>36</sup> Officer Blake returned to the CPD vehicle to check ██████ on the computer again, and, while Officer Holubik's BWC angle did not provide a view of his hands as he examined the Caravan's interior, from two audible clicking sounds and the appearance and disappearance of a shadow over the front passenger-side footwell carpet it could be inferred that he had opened and then closed the glovebox during his search.<sup>37</sup> Officer Holubik briefly searched the backseat area, then walked back to where ██████ was waiting, told him he needed the keys to the Caravan, and removed a car key from ██████ right trouser pocket without encountering any protest from him.<sup>38</sup>

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<sup>26</sup> Att. 5 at 2:12 to 2:28.

<sup>27</sup> Att. 5 at 2:28 to 2:47.

<sup>28</sup> Att. 5 at 2:47 to 2:51. (This brief search inside the glovebox was the sole reason that Det. Lewis was served an allegation.)

<sup>29</sup> Att. 2 at 7:14 to 7:31.

<sup>30</sup> Att. 2 at 7:31 to 7:57.

<sup>31</sup> Att. 1 at 7:55 to 8:20; also Att. 2 at 7:57 to 8:22.

<sup>32</sup> Att. 1 at 8:20 to 8:43; also Att. 2 at 8:22 to 8:45.

<sup>33</sup> Att. 1 at 8:43 to 9:04; also Att. 2 at 8:45 to 9:06.

<sup>34</sup> Att. 1 at 9:04 to 9:25; also Att. 2 at 9:06 to 9:27.

<sup>35</sup> Att. 1 at 9:25 to 9:38; also Att. 2 at 9:27 to 9:40.

<sup>36</sup> Att. 1 at 9:38 to 9:41; also Att. 2 at 9:40 to 9:43.

<sup>37</sup> Att. 1 at 9:41 to 9:51; also Att. 2 at 9:43 to 9:53.

<sup>38</sup> Att. 1 at 9:51 to 10:37.

Using the key, Officer Holubik opened the Caravan's trunk hatch and quickly searched various items including inside a zipped black shoulder bag, an unzipped black backpack, and a green plastic grocery bag.<sup>39</sup> He then walked back to the driver's seat area, opened the driver-side sliding rear door, and examined the items scattered around the backseat.<sup>40</sup> Officer Blake approached Officer Holubik and said he had determined that they had grounds to arrest [REDACTED].<sup>41</sup> Officer Holubik then walked back to where [REDACTED] was standing and searched his bag, taking out each of the individual cannabis packets as he told [REDACTED] he was going to count the number of grams he was carrying.<sup>42</sup> After finding that the quantity of cannabis was not sufficient to arrest [REDACTED] Officer Holubik walked back to [REDACTED] vehicle and opened the hood of the engine compartment, where he found a red and black oven mitt containing an unseen item tucked in along the side of the engine.<sup>43</sup> Officer Holubik called out to Officer Blake, who walked over to join him along with several other officers, and Officer Holubik informed them that he had found a handgun in the oven mitt.<sup>44</sup> As Officer Holubik showed the place where the oven mitt had been hidden, Officer Blake said, "Right there? Now the car's coming with us."<sup>45</sup> Following this, [REDACTED] was placed into a CPD vehicle, Officer Blake released [REDACTED] from his handcuffs, and both Officers Holubik and Blake deactivated their BWCs.<sup>46</sup>

During his interview with COPA, Officer Holubik explained that he and Officer Blake had initiated this traffic stop because they had observed [REDACTED] and [REDACTED] driving past them without wearing seatbelts, which he noted is a violation both City of Chicago and State of Illinois laws.<sup>47</sup> He said he and his partner had activated their emergency lights and made a U-turn, and upon doing so, had observed [REDACTED] making a quick turn off of 75<sup>th</sup> Street onto Kingston Avenue without using a turn signal.<sup>48</sup> The officers followed [REDACTED] Dodge Caravan, and observed that when the vehicle stopped and parked, [REDACTED] and [REDACTED] immediately exited from it.<sup>49</sup> Officer Holubik explained that seeing the Caravan's occupants get out and approach caused both officers to fear for their safety, as they were not aware of whether or not [REDACTED] and [REDACTED] were in possession of weapons.<sup>50</sup> Consequently, the officers detained [REDACTED] and [REDACTED] and [REDACTED] told Officer Holubik that he had exited the vehicle so quickly because he believed he had a warrant for his arrest.<sup>51</sup>

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<sup>39</sup> Att. 1 at 10:37 to 11:48.

<sup>40</sup> Att. 1 at 11:48 to 12:46.

<sup>41</sup> Att. 1 at 12:46 to 13:01; also Att. 2 at 12:48 to 13:03. (COPA observes that the officers were discussing an "S.I.R." offense [REDACTED] had committed, which COPA interprets to be a reference to [REDACTED] failure to renew his annual gun offender registration. Officer Blake also advised Officer Holubik that he had learned [REDACTED] driver's license was suspended, which provided another reason to place him under arrest.)

<sup>42</sup> Att. 1 at 13:01 to 14:33; also Att. 2 at 13:03 to 14:35.

<sup>43</sup> Att. 1 at 14:33 to 14:59.

<sup>44</sup> Att. 1 at 14:59 to 15:20; also Att. 2 at 15:01 to 15:22.

<sup>45</sup> Att. 1 at 15:20 to 15:24; also Att. 2 at 15:22 to 15:26.

<sup>46</sup> Att. 1 at 15:24 to 17:47; also Att. 2 at 15:26 to 17:48.

<sup>47</sup> Att. 21, pgs. 6 to 7.

<sup>48</sup> Att. 21, pg. 7, lns. 2 to 7.

<sup>49</sup> Att. 21, pg. 7, lns. 8 to 11.

<sup>50</sup> Att. 21, pg. 7, lns. 11 to 18.

<sup>51</sup> Att. 21, pg. 7, lns. 19-23.

Officer Holubik stated that he had smelled the scent of cannabis coming from the Dodge Caravan, and from ██████ and ██████ themselves.<sup>52</sup> He said he had requested support from other officers, and upon their arrival he ran a check on ██████ and ██████. He learned that ██████ had a suspended driver's license and had also failed to register annually as a gun offender; as a result, he conferred with Officer Blake and confirmed that they were placing ██████ under arrest for these two offenses.<sup>53</sup> He said he then conducted a narcotics search and an inventory search of ██████ Dodge Caravan.<sup>54</sup> After opening the hood of the vehicle, he found an oven mitt containing a handgun within the engine compartment.<sup>55</sup> He explained that it was a common practice to conceal contraband such as narcotics or firearms under the hood of a vehicle, and said this was the reason why he had extended his search into the engine compartment.<sup>56</sup> He added that he had received CPD training on searching for contraband around vehicles' engines, including a training session he had recently experienced during a roll-call.<sup>57</sup> When asked to give more details about when he had received this training, Officer Holubik could not remember the date but said there had been numerous times when he had participated in roll call training on the subject of officer safety alerts.<sup>58</sup> He said such training was usually conducted by a district intelligence officer or by other CPD members whose titles he was not aware of.<sup>59</sup>

When asked to explain his justification for conducting a search of the Dodge Caravan, Officer Holubik answered that he had smelled cannabis coming from the vehicle and from the persons of ██████ and ██████.<sup>60</sup> Furthermore, he said, ██████ had admitted to carrying cannabis on his person.<sup>61</sup> COPA asked Officer Holubik what crime ██████ and ██████ were suspected of, to which he answered that ██████ had been under arrest for having a suspended license and for failing to register as a gun offender.<sup>62</sup> COPA asked Officer Holubik again for the specific justification under which he had searched the Dodge Caravan under these circumstances; in response, he said the smell of cannabis "and then the inventory search."<sup>63</sup> He explained that the inventory search was necessary because the Dodge Caravan was being impounded, and when asked why the vehicle was being impounded, he said it was because ██████ was under arrest for his suspended license, his failure to register as a gun offender, and for illegally possessing the firearm found in his vehicle's engine compartment.<sup>64</sup> When asked if ██████ vehicle would still have been impounded if the firearm had not been found concealed within it, Officer Holubik answered yes, because he was under arrest for driving on a suspended license.<sup>65</sup> COPA asked if it might have been possible for the Caravan to have been picked up by ██████ relatives rather than having CPD impound it, and

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<sup>52</sup> Att. 21, pg. 8, lns. 1 to 3.

<sup>53</sup> Att. 21, pg. 8, lns. 10 to 17.

<sup>54</sup> Att. 21, pg. 8, lns. 18 to 19. (COPA notes that Officer Holubik said he conducted both a narcotics search and an inventory search, suggesting some confusion about the actual reason behind the search.)

<sup>55</sup> Att. 21, pg. 9, lns. 4 to 8.

<sup>56</sup> Att. 21, pg. 9, lns. 12 to 15.

<sup>57</sup> Att. 21, pg. 9, lns. 15 to 16.

<sup>58</sup> Att. 21, pgs. 9 to 10.

<sup>59</sup> Att. 21, pg. 10, lns. 8 to 14.

<sup>60</sup> Att. 21, pg. 10, lns. 15 to 19.

<sup>61</sup> Att. 21, pg. 10, lns. 19 to 21.

<sup>62</sup> Att. 21, pgs. 10 to 11.

<sup>63</sup> Att. 21, pg. 11, lns. 2 to 5.

<sup>64</sup> Att. 21, pg. 10 to 17.

<sup>65</sup> Att. 21, pgs. 11 to 12.

in response Officer Holubik acknowledged that, on a case-by-case basis, he could use his discretion to decide whether or not to impound a vehicle.<sup>66</sup>

After further questioning about CPD inventory search procedures, Officer Holubik admitted that he was not actually conducting and recording an inventory search of the Caravan at the scene of the arrest, as that task would be done later when the officers returned back to their station.<sup>67</sup> He said he was instead searching the “immediate area” for valuables.<sup>68</sup> When asked what he meant when he referred to the “immediate area,” he answered that he was searching for valuables between the Caravan’s front seats.<sup>69</sup> COPA asked him if his search of the bag in the rear cargo area of the Caravan would be considered outside of the immediate area he had described, to which he responded by stating that his act of searching inside the bag was part of a narcotics search, and was not related to an inventory search.<sup>70</sup> Confronted with the question of which type of search he was conducting when he first began entering the Dodge Caravan, Officer Holubik said he had been engaged in a narcotics search, which was based on the fact that he had smelled cannabis coming from the Caravan, from ██████████ and from ██████████.<sup>71</sup> He stated that he had been able to smell the strong scent emanating from the vehicle even before he approached it, and explained that he and his partner experienced this so frequently that there was no need for anyone to openly discuss it on the BWC recordings.<sup>72</sup>

Officer Holubik was shown a clip from his BWC video in which, while in the process of searching the Dodge Caravan, he had asked Officer Blake to check on whether or not they could charge ██████████ for his failure to register as a gun offender.<sup>73</sup> Officer Holubik stated that he had been concerned that the CPD Personal Data Terminal (PDT) in their vehicle might not have updated database files, and that he wanted to check with his partner to make sure this information was correct.<sup>74</sup> COPA asked him if at that time he had experienced any doubt about whether or not he and Officer Blake had sufficient justification to search the vehicle, to which he answered no, he had not doubted his justification at any time during his searches.<sup>75</sup>

Next, COPA showed Officer Holubik a BWC video clip in which, while continuing to search the Caravan, he had told Officer Blake, “Dude, I just can’t believe there’s nothing else in there.”<sup>76</sup> When asked why he had said this, he explained that, based on his experience, the way ██████████ and ██████████ had immediately exited the Caravan indicated that there could possibly be contraband concealed inside the vehicle.<sup>77</sup>

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<sup>66</sup> Att. 24, pg. 12, lns. 5 to 9.

<sup>67</sup> Att. 24, pg. 13, lns. 5 to 17.

<sup>68</sup> Att. 24, pg. 13, lns. 18 to 21.

<sup>69</sup> Att. 24, pgs. 13 to 14.

<sup>70</sup> Att. 24, pg. 14, lns. 5 to 10.

<sup>71</sup> Att. 24, pgs. 14 to 15.

<sup>72</sup> Att. 24, pg. 15, lns. 6 to 19.

<sup>73</sup> Att. 24, pg. 15, lns. 21 to 24; also see Att. 1 at 9:26 to 9:39.

<sup>74</sup> Att. 24, pg. 16, lns. 3 to 12.

<sup>75</sup> Att. 24, pg. 16, lns. 13 to 24.

<sup>76</sup> Att. 24, pg. 17, lns. 1 to 2; also see Att. 1 at 9:38 to 9:49.

<sup>77</sup> Att. 24, pg. 17, lns. 9 to 17.

COPA then showed a BWC clip in which Officer Holubik showed other officers the firearm he had found in the Caravan's engine compartment and a voice could be heard saying in response, "Now the car's coming with us."<sup>78</sup> Officer Holubik confirmed that his partner, Officer Blake, had said this in reaction to learning that a firearm had been found under the Caravan's hood.<sup>79</sup> COPA asked Officer Holubik if this meant that the Caravan was not going to be impounded prior to the discovery of the firearm, to which he responded by saying that Officer Blake might have been thinking that at the time, but the determination of whether or not to impound the vehicle was to be a mutual decision made by both partners.<sup>80</sup> He further explained that they had not yet made a decision on this matter at that time.<sup>81</sup>

With regard to his BWC training, Officer Holubik stated that he had been instructed to activate his camera when it is safe to do so.<sup>82</sup> COPA asked him if he had also been taught to activate his BWC at any time that he becomes engaged in a police action, to which he answered yes.<sup>83</sup> He acknowledged that he had not activated his BWC immediately at the beginning of this traffic stop,<sup>84</sup> but stated that in this case he had turned on the camera when it was safe for him to do so.<sup>85</sup> He said he did not believe he was in violation of CPD policy because at the very beginning of the stop [REDACTED] and [REDACTED] had immediately exited from the Caravan and approached himself and his partner, creating a situation which he perceived as potentially threatening.<sup>86</sup> When asked to either accept or deny the allegations that he had searched [REDACTED] Caravan without justification and had failed to activate his BWC in a timely manner, Officer Holubik denied any wrongdoing for both.<sup>87</sup>

Det. Lewis also participated in an interview with COPA and was given an opportunity to watch his BWC video to refresh his memory. However, despite this he stated that he did not possess a clear memory of this incident.<sup>88</sup> He said he had gone to this scene to assist Officer Holubik, had looked inside the Dodge Caravan, and suggested that he may have been looking for insurance or registration documents when he opened vehicle's glovebox.<sup>89</sup> One memory he was able to recall was that he had smelled the odor of cannabis coming from the Caravan.<sup>90</sup> With regard to his justification for searching inside the glovebox, Det. Lewis said he could not remember his reasoning.<sup>91</sup> When pressed to answer whether or not he considered himself to have had the right to search inside the glovebox under the circumstances of this incident, he stated that he was presently unable to appreciate the circumstances of that situation because he could not remember it.<sup>92</sup> Det. Lewis said that based on the training he had received there were several reasons why a

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<sup>78</sup> Att. 24, pg. 17, lns. 18 to 20; also see Att. 1 at 15:20 to 15:26.

<sup>79</sup> Att. 24, pgs. 17 to 18.

<sup>80</sup> Att. 24, pg. 18, lns. 10 to 15.

<sup>81</sup> Att. 24, pg. 18, lns. 16 to 21.

<sup>82</sup> Att. 24, pg. 19, lns. 13 to 15.

<sup>83</sup> Att. 24, pg. 19, lns. 16 to 19.

<sup>84</sup> Att. 24, pg. 19, lns. 20 to 22.

<sup>85</sup> Att. 24, pgs. 19 to 20.

<sup>86</sup> Att. 24, pg. 20, lns. 11-15.

<sup>87</sup> Att. 24, pgs. 20 to 21.

<sup>88</sup> Att. 24, pg. 7, lns. 3 to 7.

<sup>89</sup> Att. 24, pg. 7, lns. 7 to 11.

<sup>90</sup> Att. 24, pg. 7, lns. 11 to 12.

<sup>91</sup> Att. 24, pg. 8, lns. 1 to 9.

<sup>92</sup> Att. 24, pg. 8, lns. 10 to 14.

CPD member could initiate a vehicle search, including reasonable suspicion, probable cause, an inventory search, and a search incident to arrest.<sup>93</sup> When directly asked which of those reasons were applicable to the search he had conducted in this particular incident, Det. Lewis answered that he did not know.<sup>94</sup> When asked to respond to the allegation that he had searched ██████ Caravan without justification, he denied having done so.<sup>95</sup>

COPA attempted without success to interview ██████ during his incarceration at Cook County Jail, and upon his release continued making efforts to obtain his statement, but ██████ was unresponsive to all contact attempts.<sup>96</sup> ██████ was charged with four felony counts related to this incident but was found not guilty by a jury in September 2023.<sup>97</sup> Prior to the jury trial, Judge Stanley Sacks denied ██████ Pro Se Motion to Suppress Evidence.<sup>98</sup>

### III. ALLEGATIONS

#### Officer Daniel Holubik:

1. Searching ██████ vehicle without justification
  - *Sustained*, violation of Rules 1, 2, 3, and 6.
2. Failing to activate his Body-Worn Camera in a timely manner.
  - *Sustained*, violation of Rules 2, 3, 5, 6, and 10.

#### Det. Christopher Lewis:

1. Searching ██████ vehicle without justification.
  - *Sustained*, violation of Rules 1, 2, 3, and 6.

### IV. CREDIBILITY ASSESSMENT

The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory.

COPA has reason to question Officer Holubik's credibility. In particular, COPA has doubts about the veracity of certain of Officer Holubik's statements. For example, Officer Holubik repeatedly asserted that his search of the Caravan was justified by the fact that he smelled cannabis inside the vehicle, which could suggest that cannabis was being transported in an unsealed container. There is no other objectively verifiable evidence to support the claim that such a scent existed. In this case, the absence of any commentary on the BWC about a cannabis odor is notable; throughout this incident, neither Officer Holubik nor Officer Blake said anything about smelling cannabis to each other or to ██████ and ██████ Concerning the subject of inventory searches,

<sup>93</sup> Att. 24, pg. 8, lns. 15 to 19.

<sup>94</sup> Att. 24, pg. 8, lns. 20 to 21.

<sup>95</sup> Att. 24, pg. 11, lns. 14 to 21.

<sup>96</sup> CO-1003847 and CO-1379139.

<sup>97</sup> Att. 26, pg. 1.

<sup>98</sup> Att. 26, pgs. 3 and 4.



during Officer Holubik's interview he stated on more than one occasion his belief that he had conducted both a narcotics search and an inventory search on the Caravan. When he was asked for more details about his inventory search, he eventually acknowledged the fact that this type of search is conducted at a police station, not at the scene of an arrest. Instead, he admitted that he merely searched the vehicle's front seat area for valuables. Officer Holubik's shifting justifications create significant doubts about the accuracy of his statement.

## V. ANALYSIS<sup>99</sup>

### a. The vehicle searches conducted by Officer Holubik and Det. Lewis were not supported by probable cause.

COPA finds that Allegation 1 against Officer Holubik and Det. Lewis, that of searching ██████ vehicle without justification, are both **sustained**. The Fourth Amendment to the U.S. Constitution protects citizens from unreasonable searches.<sup>100</sup> Searches without a warrant are presumed to be unreasonable except under certain circumstances. Under the "automobile exception" to the search warrant requirement, "law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize."<sup>101</sup> When officers have such probable cause, the search may extend to "all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks."<sup>102</sup> Officers are not limited to searching the driver's possessions; "police officers with probable cause to search a car may [also] inspect passengers' belongings found in the car that are capable of concealing the object of the search."<sup>103</sup>

"Probable cause exists when based on known facts and circumstances, a reasonably prudent person would believe that contraband or evidence of a crime will be found in the place to be searched."<sup>104</sup> The standard is an objective one, viewed from the perspective of a reasonable officer, who is allowed to rely on their training and experience.<sup>105</sup>

Illinois legalized recreational use of marijuana in 2020.<sup>106</sup> Relevant to this analysis, Illinois residents over 21 years of age may possess 30 grams of cannabis flower, no more than 500 milligrams of THC contained in a cannabis infused product, and 5 grams of cannabis concentrate.<sup>107</sup> The Chicago Municipal Code and Illinois law prohibits possession of cannabis in a

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<sup>99</sup> For a definition of COPA's findings and standards of proof, *see* Appendix B.

<sup>100</sup> U.S. Const. amend. IV.

<sup>101</sup> *People v. James*, 163 Ill. 2d 302, 312 (111. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)).

<sup>102</sup> *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)).

<sup>103</sup> *Wyoming v. Houghton*, 526 U.S. 295, 307 (1999).

<sup>104</sup> *U.S. v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013).

<sup>105</sup> *U.S. v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013).

<sup>106</sup> Illinois.gov, Adult Use Cannabis Summary, available at [https://www2.illinois.gov/IISNews/20242-Summary of HB 1438 The Cannabis Regulation and Tax Act.pdf](https://www2.illinois.gov/IISNews/20242-Summary%20of%20HB%201438%20The%20Cannabis%20Regulation%20and%20Tax%20Act.pdf) (last accessed May 9, 2024).

<sup>107</sup> 410 ILCS 705/10-10; *see also* S04-32: Cannabis Enforcement (effective July 9, 2020 to present).

vehicle unless it is in a reasonably secured, sealed container that is odor-proof and child resistant.<sup>108</sup> No one may use cannabis in a vehicle.<sup>109</sup>

Illinois courts have held the smell of burnt cannabis, alone without any corroborating factors, is insufficient to for a reasonable officer to conclude that there is probable cause to search the vehicle.<sup>110</sup> In *People v. Stribling*, an officer initiated a traffic stop after observing traffic violations. When the driver rolled the window down, the officer smelled the odor of burnt cannabis emitting from the vehicle to which the driver explained that someone smoked in the vehicle “a long time ago”. The officer searched the vehicle based on these observations and admissions. The court found “there was no reason for the officer to think that the defendant was currently smoking cannabis in the car—there was no indication that there was smoke in the car, nor did the officer see any marijuana or drug paraphernalia, nor did the defendant’s demeanor show that he was hiding anything. Moreover, the smell of burnt cannabis may have lingered in the defendant’s car or on his clothing. Simply put, there was no evidence that would lead a reasonable officer to conclude that there was a substantial chance of criminal activity afoot.”

The Illinois Supreme Court stated in one case that the odor of cannabis, without any other corroboration, is sufficient to provide an officer with probable cause.<sup>111</sup> That case, however, was decided well before significant changes to cannabis law in Illinois. Subsequently, the Illinois Supreme Court held that, following the decriminalization of medical marijuana, the odor of raw cannabis could still lead to probable cause when other contributing factors were also present.<sup>112</sup> The additional factors supporting a probable cause determination included that the defendant delayed pulling over once signaled to stop, which in the officer’s experience, indicated there was contraband in the car.<sup>113</sup> In addition, the officer saw loose marijuana in the vehicle and a noticed a strong odor of cannabis, which taken together led the officer to reasonably believe the cannabis was not properly contained in the car.<sup>114</sup> Notably, this case was based on an incident that took place approximately three years before Illinois further decriminalized cannabis.

COPA finds the officers did not have probable cause to search [REDACTED] vehicle under the facts of this case. Officer Holubik stated he smelled cannabis on [REDACTED] person and from the car but failed to explain how that established probable cause of a crime. He did not explain whether the cannabis he smelled was raw or burnt. Officer Holubik did not claim to see smoke coming from the car or claim that either man appeared under the influence of cannabis. The cannabis in [REDACTED] possession was contained in packaging apparently in compliance with Illinois law (more likely than not odor proof). Furthermore, COPA has no objective evidence to support Officer Holubik’s claim that he smelled cannabis as the officers made no contemporaneous statements

<sup>108</sup> M.C.C. § 7-24-099; 410 ILCS 705/10-10.

<sup>109</sup> M.C.C. § 7-24-099; 410 ILCS 705/10-10.

<sup>110</sup> *People v. Stribling*, 2022 IL App (3d) 210098 (Sept. 19, 2022); see also *People v. Redmond*, 2022 IL App (3d) 210524 (Nov. 15, 2022) (holding smell of cannabis alone does not provide probable cause).

<sup>111</sup> *People v. Stout*, 477 N.E.2d 498, 502-03 (1985).

<sup>112</sup> *People v. Hill*, 162 N.E. 3d 260, 268 (Ill. 2020).

<sup>113</sup> *People v. Hill*, 162 N.E. 3d 260, 268 (Ill. 2020).

<sup>114</sup> *Id.* It appears no court in the Illinois 1<sup>st</sup> judicial district has addressed this issue.

about smelling cannabis during the incident. Given COPA's concerns with Officer Holubik's credibility, COPA necessarily discounts the claim that he smelled cannabis.<sup>115</sup>

The officers claimed [REDACTED] and [REDACTED] exited the car quickly when the officers' vehicle approached. This could be a factor indicating the men were engaged in a crime. But the officers immediately began to handcuff and search the men once they exited their police vehicle. The officers found no weapons and the only cannabis they found was legally possessed. Any suspicion they had would therefore have been dispelled by the time they searched the car. The officers did find a large amount of cash on [REDACTED]. But there is nothing to suggest [REDACTED] wasn't in fact going to use the cash to purchase a car, and the officers never claimed otherwise. For all these reasons, COPA finds it more likely than not that the officers did not have probable cause to search [REDACTED] vehicle.

COPA also takes issue with the sheer range of Officer Holubik's search, which encompassed the front seat area, rear seat area, rear cargo area, the zipped shoulder bag in the rear cargo area, the glovebox, the underside of the dashboard, and, most notably, the engine compartment. One of the conditions that must be met in order for a warrantless search to be justified is that the search may only be conducted in those areas which could reasonably contain evidence of the crime being investigated. Although there can be no doubt that in the past police officers have found various types of contraband concealed in vehicle engine bays (such as the firearm that was actually found beside the engine in [REDACTED] Caravan), in this case Officer Holubik claimed that he had probable cause for his search based on having smelled cannabis in the vehicle. This means that in order for his search to have been justified, he must have been specifically looking for a quantity of cannabis that was both large enough to be smelled from a distance and unsealed in such a way that its scent escaped into the air. Furthermore, his search must have been limited to only those areas that could contain such an item. Putting aside the question of possible space limitations in the compartment, the fact remains that a large, unsealed package of cannabis (or a combination of many smaller packages) would be a highly unusual form of contraband to store beside a running internal combustion engine on a warm day in July; to do so would incur a significant risk of damage from the heat and fumes.

Perhaps most importantly, there was no exigency in this situation to justify conducting this search right away, and as [REDACTED] was already under arrest for his suspended license the officers would have had the opportunity to either obtain a search warrant or to conduct an inventory search later.

With regard to Det. Lewis's very brief search of the Caravan's glovebox, COPA notes that this search occurred immediately after Det. Lewis arrived at the scene and lasted only a few seconds. He had not had an opportunity to speak to other officers at the scene at that point, and, even if probable cause for a search existed in this case, he could not have known enough about the situation to be able to decide whether he had a justification to make a warrantless search. When asked why he had opened the glovebox, he answered that he could not remember, but believed he may have been looking for insurance or registration documents.

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<sup>115</sup> As noted above, Det. Lewis could not recall his reason for searching the glovebox.

COPA finds that Allegation 1 against both Officer Holubik and Det. Lewis is **sustained** in both cases in violation of Rules 1, 2, 3, and 6 by a preponderance of the evidence.

**b. Concerning Officer Holubik’s late BWC activation**

To increase transparency and improve the quality and reliability of investigations, CPD policy requires law-enforcement-related activities to be electronically recorded.<sup>116</sup> Law-enforcement-related activities include, but are not limited to, calls for service, investigatory stops, traffic stops, foot and vehicle pursuits, arrests, use of force incidents, emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene, high risk situations, and any other instances when enforcing the law.<sup>117</sup> The decision to record is mandatory, not discretionary.<sup>118</sup> CPD members are required to activate their BWCs at the beginning of an incident and record the entire incident.<sup>119</sup> If circumstances prevent the activation of a BWC at the beginning of an incident, the member will activate their camera as soon as practical.<sup>120</sup> CPD members are not permitted to deactivate their BWCs unless: a) the entire incident has been recorded and the member is no longer engaged in a law enforcement activity, b) a victim of a crime requests its deactivation, c) a witness or community member wishing to report a crime requests its deactivation, or d) the member is interacting with a confidential informant.<sup>121</sup>

Here, the video evidence demonstrates that after Officer Holubik arrived at the scene and exited the squad car, he did not activate his BWC until after he and Officer Blake had approached and handcuffed both ██████ and ██████. A total of 21 seconds elapsed during this law enforcement activity with no sound being recorded. As it stands, this investigation has been impeded by the fact that there is no audio evidence showing whether or not the officers remarked about smelling the odor of cannabis during the first moments of this stop. Due to these considerations, COPA finds that Allegation 2 against Officer Holubik, that he failed to activate his BWC in a timely manner, is **sustained** as a violation of Rules 2, 3, 5, 6, and 10 by a preponderance of evidence.

**VI. DISCIPLINARY RECOMMENDATION**

**a. Officer Daniel Holubik**

**i. Complimentary and Disciplinary History<sup>122</sup>**

Officer Holubik’s complimentary history is comprised of 152 awards, the highlights of which include one Unit Meritorious Performance Award, one Honorable Mention Ribbon Award, and two Department Commendations. His disciplinary history includes a SPAR for a June 2023 court appearance violation, resulting in a reprimand.

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<sup>116</sup> Att. 25, S03-14 II(A), Body Worn Cameras (effective April 30, 2018 to December 29, 2023).

<sup>117</sup> Att. 25, S03-14 III(2)(a-r).

<sup>118</sup> Att. 25, S03-14 III(A)(1).

<sup>119</sup> Att. 25, S03-14 III(A)(2).

<sup>120</sup> Att. 25, S03-14 III(A)(2).

<sup>121</sup> Att. 25, S03-14(III)(B)(1)(a-d).

<sup>122</sup> Att. 27.

**ii. Recommended Discipline**

COPA has found that Officer Holubik violated Rules 1, 2, 3, 5, 6, and 10 when he searched [REDACTED] vehicle without justification and failed to timely activate his BWC. Here, Officer Holubik extensively searched [REDACTED] vehicle without probable cause. He also failed to timely activate his BWC, which denied COPA potentially useful evidence that would have likely shed light on the early moments of this incident. In light of his complimentary history, and in consideration of his minor disciplinary history, COPA recommends a penalty of a **5-day suspension** and **retraining** on CPD’s Vehicle Search Policy and Body-Worn Camera Policy.

**b. Det. Christopher Lewis**

**i. Complimentary and Disciplinary History<sup>123</sup>**

Det. Lewis’ complimentary history is comprised of 57 awards, the highlights of which include one Unit Meritorious Performance Award, one Superintendent’s Award of Tactical Excellence, and one Life Saving Award. He has no disciplinary history.

**ii. Recommended Discipline**

COPA has found that Det. Lewis violated Rules 1, 2, 3, and 6 when he searched [REDACTED] vehicle without justification. COPA notes that Det. Lewis’ involvement in this incident was relatively minor, as his search was limited to the glovebox and lasted only a few seconds. Considering his complimentary history and lack of disciplinary history, COPA recommends a penalty of a **1-day suspension** and **retraining** on CPD’s Vehicle Search Policy.

Approved:

[REDACTED]

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*Steffany Hreno*  
*Director of Investigations*

May 14, 2024

\_\_\_\_\_  
Date

<sup>123</sup> Att. 28.

Appendix ACase Details

Date/Time/Location of Incident:	July 13, 2022 / 11:30 a.m. / 7423 S. Kingston Ave., Chicago, IL 60649
Date/Time of COPA Notification:	December 19, 2022 / 12:32 pm
Involved Officer #1:	Officer Daniel Holubik / Star #7713 / Employee ID # [REDACTED] / Date of Appointment: August 16, 2017 / Unit of Assignment: 004 / Male / White
Involved Officer #2:	Det. Christopher Lewis / Star #20562 / Employee ID # [REDACTED] / Date of Appointment: October 31, 2016 / Unit of Assignment: 630 / Male / Black
Involved Individual #1:	[REDACTED] / Male / Black

Applicable Rules

- Rule 1:** Violation of any law or ordinance
- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.

Applicable Policies and Laws

- S03-14: Body Worn Cameras (effective April 30, 2018 to December 29, 2023).

## Appendix B

### **Definition of COPA's Findings and Standards of Proof**

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 a proposition is proved.<sup>124</sup> For example, 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. 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.”<sup>125</sup>

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<sup>124</sup> 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 is found to be more probably true than not).

<sup>125</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> ed. 2000)).

**Appendix C****Transparency and Publication Categories**

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation