

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	July 29, 2019
Time of Incident:	1:13 PM
Location of Incident:	7512 S. Evans Ave., Chicago, IL
Date of COPA Notification:	July 31, 2019
Time of COPA Notification:	11:48 AM

This complaint arose from a traffic stop at the above date, time, and location. [REDACTED] was stopped by Officers Davis Gonzalez and Jorge Cuellar after they observed Mr. [REDACTED] fail to stop for a stop sign and operating his vehicle while not wearing a seatbelt. Shortly after the officers approached Mr. [REDACTED] vehicle, he informed them that his license was revoked and that he was in possession of marijuana. The officers searched Mr. [REDACTED] vehicle and located the marijuana that Mr. [REDACTED] admitted was in his possession. The officers also ran Mr. [REDACTED] name through the Law Enforcement Agencies Data System (LEADS) and confirmed that his license was revoked due to a prior conviction for driving while under the influence of alcohol (DUI).

The officers placed Mr. [REDACTED] under arrest and transported him and his vehicle to the 6<sup>th</sup> District police station. The officers seized cash that was on Mr. [REDACTED] person and in his vehicle and charged him with five offenses:

Offense Caption	Statute	Offense Class/Type
DRIVING RVK/SUSP DUI/SSS 2ND	625 ILCS 5.0/6-303-A	Class 4 - Type F
DRIVING ON REVOKED LICENSE	625 ILCS 5.0/6-303-A	Class A - Type M
CANNABIS – MFG/DEL – 2.5-10 GRMS	720 ILCS 550.0/5-B	Class A - Type M
IVC – NOT WEARING SEAT BELT/DRIVER	625 ILCS 5.0/12-603.1	Class P
OPERATE UNINSURED MTR VEHICLE	625 ILCS 5.0/3-707-A	Class P

Mr. [REDACTED] disputed that there was a valid basis for the first charge listed above and alleged that Officers Gonzalez and Cuellar charged him with a DUI offense because he was unable to provide them with information to assist them in other investigations. Mr. [REDACTED] also alleged that Officers Gonzalez and Cuellar failed to fully inventory the cash that they seized from him, specifically that approximately \$100 in his wallet was not inventoried and returned to him upon his release.

COPA’s investigation revealed that the statute cited by the officers for the disputed charge concerns second or subsequent instances of driving on a revoked or suspended license where the cause of the revocation or suspension is a DUI. Intoxication is not an element of the offense created in the cited statute. Because Mr. [REDACTED] allegation appears to be based on a

misunderstanding of the charge based on the caption rather than a reading of the statute, COPA finds this allegation against Officers Gonzalez and Cuellar is **Exonerated**.

COPA’s investigation further revealed that the money Mr. [REDACTED] believed was missing from his wallet appeared to be listed in the property inventory report prepared by Officers Gonzalez and Cuellar. In his statement, Mr. [REDACTED] provided approximate totals of cash that was on his person and in his car at the time of his arrest, which were in line with the amount listed on the inventory report and returned to him after his release. Because the amount of cash claimed by Mr. [REDACTED] appears to be consistent with the property inventory report, COPA finds this allegation against Officers Gonzalez and Cuellar is **Unfounded**.

**II. INVOLVED PARTIES**

Involved Officer #1:	Officer David Gonzalez, Star #12291, Employee [REDACTED], Date of Appointment: April 26, 2016, Police Officer, Unit of Assignment: 006, DOB: [REDACTED] 1990, Male, Hispanic
Involved Officer #2:	Officer Jorge Cuellar, Star #16889, Employee [REDACTED] Date of Appointment: October 26, 2015, Police Officer, Unit of Assignment: 006, DOB: [REDACTED] 1986, Male, Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1988, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer David Gonzalez	It is alleged by [REDACTED] that on or about July 29, 2019, at approximately 1:13 PM at or near 7512 S. Evans Avenue, Chicago, IL that Officer David Gonzalez Star #12291 committed misconduct through the following acts or omissions, by:  1. charging Mr. [REDACTED] with an offense without a factual basis. 2. failing to fully inventory cash in Mr. [REDACTED] possession after arresting him.	Exonerated  Unfounded
Officer Jorge Cuellar	It is alleged by [REDACTED] that on or about July 29, 2019, at approximately 1:13 PM at or near 7512 S. Evans Avenue, Chicago, IL that Officer Jorge Cuellar Star #16889 committed	

<p>misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li>1. charging Mr. [REDACTED] with an offense without a factual basis.</li> <li>2. failing to fully inventory cash in Mr. [REDACTED] possession after arresting him.</li> </ol>	<p>Exonerated</p> <p>Unfounded</p>
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**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
3. Rule 4: Any conduct or action taken to use the official position for personal gain or influence.
4. Rule 6: Disobedience of a direct order, whether oral or written.
5. Rule 40: Failure to inventory and process recovered property in conformance with Department orders.

General Orders

1. G07-01 Processing Property Under Department Control (Eff. April 14, 2015)

Special Orders

1. S06-01 Processing Persons under Department Control (Eff. January 29, 2015)
2. S07-01-02 Inventorying Money (Eff. April 14, 2015)

**V. INVESTIGATION<sup>1</sup>**

**a. Interviews<sup>2</sup>**

**COPA investigators interviewed [REDACTED] on August 1, 2019.<sup>3</sup>** Mr. [REDACTED] stated he was stopped at a stop sign on Evans Avenue at 75<sup>th</sup> Street headed south. He was waiting for cross traffic to clear on 75<sup>th</sup> Street, which had the right of way, and he pulled partially into the intersection due to a parked car that was obstructing his view of traffic. He saw an unmarked police car pass through the intersection and noticed the officers in the car looking at him. Once the car was clear of the intersection, he began to drive through the intersection continuing south

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

<sup>2</sup> Because all of the allegations in Mr. [REDACTED] complaint could be resolved based on Mr. [REDACTED] statement, the available BWC recordings, and the reports completed by the accused officers, COPA did not interview the accused officers.

<sup>3</sup> Attachment 1.

on Evans Avenue. The unmarked police car completed a U-turn as he began to drive, turned south onto Evans Avenue, and pulled him over.

One of the officers (now known to be Officer David Gonzalez) approached Mr. [REDACTED] and told him that he was being stopped for failing to stop at a stop sign and for not wearing his seatbelt. Mr. [REDACTED] acknowledged in his statement that he was not wearing his seatbelt, but he believed the officer was not aware of this until after he was stopped. Officer Gonzalez asked Mr. [REDACTED] to exit the car, and he complied. Officer Gonzalez handcuffed Mr. [REDACTED] and asked him if he had anything on him. Mr. [REDACTED] told the officers he had marijuana under the driver's seat. Mr. [REDACTED] also told Officer Gonzalez that his license was revoked.

Officer Gonzalez began to search Mr. [REDACTED] car. Mr. [REDACTED] saw him searching in the front driver and passenger seat area, the rear seating area, and in the trunk. Officer Gonzalez identified a cannister under the front passenger seat containing cash tips that Mr. [REDACTED] earned through his employment as a cashier at a juice bar. Mr. [REDACTED] normally kept the cannister at home, but on that day he had the cannister in his car because he had bought his girlfriend an anniversary gift. The cannister contained approximately \$660.<sup>4</sup> Officer Gonzalez asked Mr. [REDACTED] if he sold drugs, which he denied. The officers collected Mr. [REDACTED] information and performed a name check. The officers told Mr. [REDACTED] that they identified a DUI on his record and told him they were going to place him under arrest.

A second set of officers reported to the scene in a marked patrol car and transported Mr. [REDACTED] to the 6th District. Mr. [REDACTED] car was driven to the district by the second officer in the unmarked police car (now known to be Officer Jorge Cuellar). Mr. [REDACTED] was placed in an interview room, and Officers Gonzalez and Cuellar began questioning him. They asked him to identify "weed houses" where he had purchased marijuana and to identify contacts saved in his phone as "weed man." Mr. [REDACTED] told the officers that he purchased his marijuana from a CTA stop along the Red Line and that he was not aware of any weed houses. Mr. [REDACTED] explained that the contacts in his phone were meant to conceal the identities of his girlfriends from each other, and the contacts were not engaged in the sale of marijuana.

Mr. [REDACTED] stated that he was ultimately given several charges including a DUI. Mr. [REDACTED] acknowledged that he was driving on a revoked license, was in possession of marijuana, was driving without insurance, and was driving without wearing a seatbelt. Mr. [REDACTED] disputed that there was any basis to charge him with a DUI and alleged the officers charged him with that offense due to his failure to provide the officers with information that could assist them in a narcotics investigation. Mr. [REDACTED] also complained during his statement that \$100 was missing from his wallet after he was released from custody.

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<sup>4</sup> This amount was not directly stated by Mr. [REDACTED]. He explained that the cannister held approximately \$1,000 before he spent approximately \$340 on the anniversary gift for his girlfriend.

**b. Digital Evidence**

COPA obtained and reviewed body worn camera (BWC) video recordings from Officers David Gonzalez<sup>5</sup> and Jorge Cuellar.<sup>6</sup> Both officers' BWC video recordings begin with them riding in a patrol car. Officer Gonzalez is driving,<sup>7</sup> and Officer Cuellar is sitting in the front passenger seat.<sup>8</sup> Officer Gonzalez makes a U-turn followed by a right turn.<sup>9</sup> Then, he exits the patrol car and activates his BWC to event mode.<sup>10</sup>

Officer Gonzalez approaches a sedan stopped in front of the patrol car on the driver's side. As he gets close, he tells the driver (now known to be ██████████) that he is being stopped for not wearing his seatbelt and for failing to stop at a stop sign.<sup>11</sup> Mr. ██████████ denies that he failed to stop for the stop sign but acknowledges that he was not wearing his seatbelt.<sup>12</sup> Mr. ██████████ tells Officer Gonzalez that he was just released from jail and that his license is revoked.<sup>13</sup> Officer Gonzalez asks Mr. ██████████ to step out of his car, and Mr. ██████████ complies.<sup>14</sup> Officer Cuellar begins reaching into Mr. ██████████ pockets and pulling out items and setting them on the roof of the car.<sup>15</sup> Officer Cuellar asks Mr. ██████████ if he has any marijuana on him, and Mr. ██████████ says he does, in the car.<sup>16</sup> Officer Gonzalez tells Mr. ██████████ that he is not under arrest and is only being detained while Officer Cuellar handcuffs Mr. ██████████ and leads him to the rear of Mr. ██████████ car.<sup>17</sup>

Officer Gonzalez begins looking in Mr. ██████████ wallet for a form of identification.<sup>18</sup> Officer Gonzalez asks Mr. ██████████ where his marijuana is in the car.<sup>19</sup> Mr. ██████████ tells him that it is under the driver's seat, and Officer Gonzalez retrieves the marijuana and places it on the roof of the car.<sup>20</sup> Officer Gonzalez continues to search Mr. ██████████ car in the center console, under the driver's seat, in a backpack on the front passenger seat, the rear seating area, and the front passenger seat area.<sup>21</sup>

Officer Gonzalez identifies a glass container with loose cash and asks Mr. ██████████ if he was taking it to the bank.<sup>22</sup> Mr. ██████████ says the money is from his tips earned working at a restaurant and explains that he was taking it to buy his girlfriend an Apple Watch.<sup>23</sup> Officer Cuellar says to Mr. ██████████ that he is saving a lot of money, and Mr. ██████████ tells him that there is only approximately

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<sup>5</sup> Attachment 2.

<sup>6</sup> Attachment 3.

<sup>7</sup> Attachment 2 at 0:01.

<sup>8</sup> Attachment 3 at 0:01.

<sup>9</sup> Attachment 2 at 1:35.

<sup>10</sup> *Id.* at 1:58.

<sup>11</sup> *Id.* at 2:05.

<sup>12</sup> *Id.* at 2:10.

<sup>13</sup> *Id.* at 2:15.

<sup>14</sup> *Id.* at 2:37.

<sup>15</sup> Attachment 3 at 2:51.

<sup>16</sup> *Id.* at 2:53.

<sup>17</sup> Attachment 2 at 3:06.

<sup>18</sup> *Id.* at 3:33.

<sup>19</sup> *Id.* at 4:22.

<sup>20</sup> *Id.* at 4:26.

<sup>21</sup> *Id.* at 4:42 – 8:40.

<sup>22</sup> *Id.* at 7:05.

<sup>23</sup> Attachment 3 at 7:14.

\$300 in the container. Mr. ██████ says it looks like more than that because the container is full of one-dollar and five-dollar bills.<sup>24</sup>

Officer Gonzalez finishes searching Mr. ██████ car and returns to the patrol car to enter Mr. ██████ information in the portable data terminal (PDT).<sup>25</sup> Officer Cuellar asks Mr. ██████ if he ever had a DUI, and Mr. ██████ says that he had a DUI when he was a minor, which is the basis for his license being revoked. A short time later, it begins raining, and Officer Cuellar leads Mr. ██████ to the patrol car and places him in the back seat.<sup>26</sup> Officer Gonzalez finishes entering Mr. ██████ information in the PDT and reviewing the resulting records, and he requests a patrol car with a cage report to the scene to transport Mr. ██████<sup>27</sup> Officer Gonzalez gathers Mr. ██████ possessions that were removed from his car and placed on the roof.<sup>28</sup> Officer Gonzalez returns to the patrol car and tells Mr. ██████ that he is being arrested because his license is revoked.<sup>29</sup> Both Officers Gonzalez and Cuellar enter their patrol car and de-activate their BWCs.<sup>30</sup>

**COPA obtained and reviewed a second BWC video recording from Officer Cuellar,<sup>31</sup> a BWC video recording from Officer Erleen Banks,<sup>32</sup> and an in-car camera video recording from Officer Banks' and Officer Korey Giles' patrol car.<sup>33</sup>** These recordings show Officer Cuellar transporting Mr. ██████ car to the 6<sup>th</sup> District and Officers Banks and Giles transporting Mr. ██████ to the 6<sup>th</sup> District. They recorded no details that are relevant to Mr. ██████ complaint.

### c. Documentary Evidence

**COPA obtained and reviewed the CPD Arrest Report generated for the arrest of ██████ ██████ on July 29, 2019.<sup>34</sup>** The report lists Mr. ██████ charges as driving on a revoked license, a second or subsequent incident of driving on a revoked license, possession of between 2.5 and 10 grams of cannabis with intent to deliver, failure to wear a seatbelt, and operating an uninsured motor vehicle. The report indicates that 4 grams of suspected cannabis were recovered during the arrest. Mr. ██████ 2007 Ford Fusion was impounded because of the arrest.

The report narrative indicates that the attesting officer, Officer Gonzalez, stopped Mr. ██████ after observing him operating a vehicle while failing to wear a seatbelt. Mr. ██████ failed to provide a driver's license or insurance and told the officers that his license was revoked. Officer Gonzalez ran a name check of Mr. ██████ via LEADS and confirmed the status of Mr. ██████ license. Officer Gonzalez then placed Mr. ██████ under arrest. A custodial search of Mr. ██████ vehicle yielded a Ziploc baggie with a substance the officer suspected was cannabis and cash in

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<sup>24</sup> *Id.* at 7:53.

<sup>25</sup> Attachment 2 at 8:48.

<sup>26</sup> Attachment 3 at 11:08.

<sup>27</sup> Attachment 2 at 12:34.

<sup>28</sup> *Id.* at 12:54.

<sup>29</sup> *Id.* at 14:15.

<sup>30</sup> Attachment 2 at 14:48 and Attachment 3 at 15:16.

<sup>31</sup> Attachment 4.

<sup>32</sup> Attachment 5.

<sup>33</sup> Attachment 6.

<sup>34</sup> Attachment 8.

multiple denominations that were known to Officer Gonzalez to be used in narcotic sales. Officer Gonzalez requested a narcotics money sniff from a K-9 unit, which yielded a positive result.

**COPA obtained and reviewed two inventory reports generated as a result of Mr. [REDACTED] arrest.**<sup>35</sup> One inventory report documents that the cash totaling \$664 was recovered from Mr. [REDACTED] vehicle and was being held for investigation.<sup>36</sup> The other inventory report documents that seized cash was converted to a Chase bank account and turned over to Mr. [REDACTED]. The report also documents that a counterfeit \$50 bill was recovered from Mr. [REDACTED].<sup>37</sup>

**COPA obtained and reviewed the Register of Actions for People v. [REDACTED] Case No. [REDACTED].**<sup>38</sup> The Register shows that all five charges filed against Mr. [REDACTED] were disposed of on September 30, 2019, via an entry of *nolle prosequi*.

## 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 did not comply with CPD policy.<sup>39</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct violated CPD 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.<sup>40</sup> 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>41</sup>

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<sup>35</sup> Attachment 12 and Attachment 13.

<sup>36</sup> Attachment 12.

<sup>37</sup> Attachment 13.

<sup>38</sup> Attachment 25.

<sup>39</sup> See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.").

<sup>40</sup> See, e.g., *People v. Coan*, 2016 IL App (2d) 151036.

<sup>41</sup> *Id.* ¶ 28.

## VII. ANALYSIS

### a. Officers Gonzalez and Cuellar properly inventoried Mr. ██████ Cash

Mr. ██████ statement to COPA investigators regarding the amounts of cash he had on his person at the time of his arrest conflicts with the statements Mr. ██████ made on Officers Gonzalez' and Cuellar's BWC video recordings. In his statement to COPA, Mr. ██████ said that he had cash totaling approximately \$660 in a cannister in his car and another \$100 in his wallet.<sup>42</sup> During the traffic stop, Mr. ██████ told Officer Cuellar that the cannister held approximately \$300 and that he had not yet bought his girlfriend's anniversary present.<sup>43</sup>

The larger amounts cited by Mr. ██████ in his statement appear to be corroborated by, and are consistent with, the inventory reports generated after his arrest. A total of \$664 in US currency and a counterfeit \$50 bill are listed on the inventory report.<sup>44</sup> Factoring in the counterfeit bill, the total amount of authentic and counterfeit currency inventoried by the officers is within \$50 of the approximate amounts cited by Mr. ██████. It is reasonable to believe that this difference is a rounding error or uncertainty on Mr. ██████ part resulting from number of small bills that were in his cannister. Based on Mr. ██████ description of the cannister's contents and how he described accumulating the money over time, it is extremely unlikely that the cannister contained exactly \$1000 before Mr. ██████ used some of the money to purchase a watch for his girlfriend, and highly probable that he was approximating the amount. The prospect that Mr. ██████ was uncertain of the total amount of currency contained in the cannister is supported by the inconsistent statements that he made during the stop.

Mr. ██████ also cited the fact that money was missing from his wallet when the wallet was returned to him as evidence that the officers did not fully account for his money. However, CPD policy requires officers to cause sums of money greater than \$500 seized from a prisoner arrested in a narcotics investigation to be deposited in a bank account.<sup>45</sup> The officers here followed that procedure, and Mr. ██████ money was returned to him in the form of a bank card after his criminal charges were dismissed. Because the money was deposited in the bank and returned in the form of a bank card, there is no significance to the money originally being located in Mr. ██████ wallet or in his cannister, so long as the total amount was accounted for. Due to the inconsistency in the amounts cited by Mr. ██████ and the apparent agreement between the CPD inventory report and the amounts cited by Mr. ██████ in his statement, **COPA finds that the allegations that Officers Gonzalez and Cuellar failed to inventory Mr. ██████ cash in full are Unfounded.**

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<sup>42</sup> Attachment 1 at 24:19.

<sup>43</sup> Attachment 3 at 7:11.

<sup>44</sup> Attachment 13.

<sup>45</sup> See Special Order S07-01-02, Inventorying Money, §V.B.

**b. Officers Gonzalez and Cuellar Charged Mr. [REDACTED] with Crimes that Were Supported by the Circumstances of His Arrest**

Mr. [REDACTED] alleged that he was charged with DUI when he was not intoxicated and that Officers Gonzalez and Cuellar had undertaken no steps to determine if he was intoxicated.<sup>46</sup> Mr. [REDACTED] acknowledged the basis for four of the five charges listed on his arrest report,<sup>47</sup> and the charge that is the source of his complaint is a violation of 625 ILCS 5.0/6-303-A, which is captioned as “DRIVING RVK/SUSP DUI/SSS 2ND”.<sup>48</sup> The charge is listed on Mr. [REDACTED] arrest report as a class 4 felony.<sup>49</sup> Based on a reading of the cited statute, the charge appears to be in reference to 625 ILCS 5.0/6-303-A-3, which sets out the penalty for second or subsequent instances of driving on a revoked or suspended license as a class 4 felony.

Mr. [REDACTED] allegation appears to be based on a misunderstanding of the charge against him due to the language contained in the caption. Officers Gonzalez and Cuellar issued two separate charges arising from Mr. [REDACTED] driving while his license was revoked, which Mr. [REDACTED] acknowledged. The statute cited by the officers references a DUI offense as the basis for a driver’s license being revoked or suspended, but intoxication at the time of arrest is not an element of the offense. Based on the language of the statute cited in this charge and Mr. [REDACTED] acknowledgement that he had previously been arrested for driving on a revoked license, **COPA finds that the allegations that Officers Gonzalez and Cuellar charged Mr. [REDACTED] with an offence without a factual basis are Exonerated.**

**VIII. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer David Gonzalez	It is alleged by [REDACTED] that on or about July 29, 2019, at approximately 1:13 PM at or near 7512 S. Evans Avenue, Chicago, IL that Officer David Gonzalez Star #12291 committed misconduct through the following acts or omissions, by:  1. charging Mr. [REDACTED] with an offense without a factual basis. 2. failing to fully inventory cash in Mr. [REDACTED] possession after arresting him.	Exonerated  Unfounded
Officer Jorge Cuellar	It is alleged by [REDACTED] that on or about July 29, 2019, at approximately 1:13 PM at or near 7512 S. Evans Avenue, Chicago, IL that Officer	

<sup>46</sup> Attachment 1 at 7:38 and at 9:16.

<sup>47</sup> *Id.* at 9:07.

<sup>48</sup> Attachment 8.

<sup>49</sup> *Id.*

	<p>Jorge Cuellar Star #16889 committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"><li>1. charging Mr. [REDACTED] with an offense without a factual basis.</li><li>2. failing to fully inventory cash in Mr. [REDACTED] possession after arresting him.</li></ol>	<p>Exonerated</p> <p>Unfounded</p>
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Approved:



5/25/2022

Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

Date