

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	February 9, 2020
Time of Incident:	9:05 PM
Location of Incident:	Falcon Fuel Gas Station– 7900 S. Lafayette
Date of COPA Notification:	February 18, 2020
Time of COPA Notification:	4:20 PM

On February 9, 2020, the complainant, [REDACTED] was stopped by Officers Edward Garcia (“Officer Garcia”), Efrain Carreno (“Officer Carreno”), and Michael Higgins (“Officer Higgins”) as he was leaving a Falcon Fuel Gas Station. [REDACTED] alleged he was stopped, handcuffed, arrested, and searched multiple times without justification, including a search of his genitals. [REDACTED] also alleged that officers engaged in an unnecessary verbal altercation with him. COPA finds that all of the allegations are exonerated or not sustained.

**II. INVOLVED PARTIES**

Involved Officer #1:	Edward Garcia, Star #13694, Employee ID [REDACTED], Date of Appointment: October 25, 2004, Police Officer, Unit 716 (Community Safety Team), Date of Birth: [REDACTED] 1969, Male, Hispanic
Involved Officer #2:	Efrain Carreno, Star #17367, Employee ID [REDACTED], Date of Appointment: November 29, 2004, Police Officer, Unit 716, Date of Birth: [REDACTED], 1979, Male, Hispanic
Involved Officer #3:	Michael Higgins, Star #3766, Employee ID [REDACTED], Date of Appointment September 1, 2010, Police Officer, 16 <sup>th</sup> District, Date of Birth: [REDACTED] 1978, Male, White
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED] 1981, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officers Garcia & Carreno	It is alleged that on February 9, 2020, at approximately 9:05 PM, at or near the Falcon Fuel Gas station with an address of 7900 S. Lafayette, the accused committed misconduct through the following acts and/or omissions:	

	<ol style="list-style-type: none"> <li>1. Detaining [REDACTED] without justification.</li> <li>2. Handcuffing [REDACTED] without justification.</li> <li>3. Searching [REDACTED] at the time of his cuffing, without justification.</li> <li>4. Searching [REDACTED] a second time without justification.</li> <li>5. Engaging in an unnecessary verbal altercation with [REDACTED]</li> <li>6. Arresting [REDACTED] without justification.</li> <li>7. Failing to intervene during Officer Michael Higgins' (Star #3766) search of [REDACTED] genital area.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p>
<p>Officer Higgins</p>	<p>It is alleged that on February 9, 2020, at approximately 9:05 PM, at or near the Falcon Fuel Gas station with an address of 7900 S. Lafayette, Officer Higgins committed misconduct through the following acts and/or omissions:</p> <ol style="list-style-type: none"> <li>1. Detaining [REDACTED] without justification.</li> <li>2. Handcuffing [REDACTED] without justification.</li> <li>3. Searching [REDACTED] at the time of his cuffing, without justification.</li> <li>4. Searching [REDACTED] a second time without justification.</li> <li>5. Engaging in an unnecessary verbal altercation with [REDACTED]</li> <li>6. Arresting [REDACTED] without justification.</li> <li>7. Searching [REDACTED] a third time without justification.</li> <li>8. Unbuckling [REDACTED] pants.</li> <li>9. Searching inside [REDACTED] underpants.</li> <li>10. Manipulating [REDACTED] genitals.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Not Sustained</p>

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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1. **Rule 3:** Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
  2. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
  3. **Rule 8:** Prohibits disrespect to or maltreatment of any person, while on or off duty.
  4. **Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
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##### General Orders

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1. **G02-01:** Human Rights and Human Resources (effective October 5, 2017 to present).
  2. **G06-01-02:** Restraining Arrestees (effective December 8, 2017 to present).
  3. **G06-01-03:** Conducting Strip Searches (effective December 8, 2017 to present).
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##### Federal Laws

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1. **Fourth Amendment to the United States Constitution:** Guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.

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

##### a. Interviews

██████████ (██████████)<sup>2</sup>

COPA interviewed ██████████ on February 19, 2020. On the date and time of the incident, ██████████ made a purchase at the Falcon Fuel gas station and began walking to the CTA Red Line station on 79<sup>th</sup> Street. An unmarked CPD car approached him, but ██████████ kept walking. An officer exited the vehicle, grabbed ██████████ coat, and asked for his ID. The officer informed ██████████ he was being investigated for trespassing. ██████████ was handcuffed and searched, then put in the squad car and driven back to the gas station. The officers went inside the gas station to watch the surveillance video, then searched ██████████ a second time. At that point, the officers pulled out of the gas station and asked ██████████ where he wanted them to drop him off. ██████████ told them he was going to the train, but the officers pulled over near 80<sup>th</sup> and Lafayette Ave. and removed ██████████ from the vehicle. The officers were belligerent, cursed at ██████████ and told

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

<sup>2</sup> Atts. 25 & 35

him to “shut the fuck up.”<sup>3</sup> Officer Higgins unbuckled [REDACTED] belt, unzipped his pants, reached inside his underwear, and moved [REDACTED] penis to the side, finding three or four bags of cannabis near [REDACTED] testicles.

The officers then drove [REDACTED] back to the gas station, where the clerk signed a trespassing complaint against him. [REDACTED] was arrested and transported to the police station. Once there, the officers instructed [REDACTED] to remove everything but his underpants, roll up the bottoms of the underwear, and squat three times. [REDACTED] later returned to the gas station and spoke with the clerk, who related that the gas station owner and CPD collude to sign trespassing complaints, regardless of merit. [REDACTED] asserted he had a medical marijuana card and his cannabis was still in dispensary packaging.

#### *Officer Michael Higgins (“Officer Higgins”)*<sup>4</sup>

COPA interviewed Officer Higgins on May 17, 2021. On February 9, 2020, Officer Higgins was in an unmarked vehicle with Officers Carreno and Garcia. The officers were on routine patrol, stopped at a red light, when Officer Higgins noticed [REDACTED] outside the Falcon Fuel gas station. [REDACTED] looked in the officers’ direction, then immediately turned and entered the gas station. Officer Higgins, who could see [REDACTED] through a glass door, stated that [REDACTED] walked inside, moved both of his hands into the front of his waistband, then exited the store without making any purchases. The officers approached [REDACTED] because Officer Higgins was suspicious he had “concealed some sort of contraband in his waistband.”<sup>5</sup> One of the officers immediately performed a pat down on [REDACTED] and Officer Higgins noticed that [REDACTED] emitted a strong odor of cannabis. [REDACTED] however, denied he possessed any cannabis and became hostile towards the officers.

[REDACTED] was detained and driven back to the gas station for further investigation. Officer Carreno went inside and spoke to the gas station clerk, who reported that [REDACTED] regularly sells drugs in the parking lot and refuses to leave. The clerk agreed to sign complaints for trespassing. At that point, the officers arrested [REDACTED] and began driving him to the 5<sup>th</sup> District. As they left the gas station, [REDACTED] began to fidget and move around in the back seat, and the odor of cannabis inside the vehicle became stronger. The officers stopped the vehicle about a block away from the gas station, where they conducted a more thorough search of [REDACTED] including inside his pockets. Officer Higgins asserted no cannabis was found until they arrived at the station. Once there, Officer Higgins had [REDACTED] remove his clothing and accessories, lower his pants to his knees, and run his thumbs around the waistband of his underwear. The search revealed multiple clear, knotted plastic bags of cannabis in the waistband of [REDACTED] underwear. Officer Higgins denied he ever reached inside [REDACTED] pants or touched his genitals.

#### *Officer Efrain Carreno (“Officer Carreno”)*<sup>6</sup>

COPA interviewed Officer Carreno on April 6, 2021. On February 9, 2020, Officer Carreno was in an unmarked SUV with Officers Garcia and Higgins. The vehicle did not have in-car camera

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<sup>3</sup> Att. 35: Page 7, line 23

<sup>4</sup> Atts. 1 & 34

<sup>5</sup> Att. 34: Page 9, line 24

<sup>6</sup> Atts. 8 & 33

(“ICC”) and Officer Carreno was not equipped with a body worn camera (“BWC”). Officer Higgins informed Officer Carreno that he saw ██████ look at them, then immediately turn and enter the gas station. Officer Higgins related he was concerned ██████ might be armed. The officers pulled into the gas station, at which point ██████ exited the store and began walking away. Officer Carreno did not recall ██████ carrying any purchases from the store. The officers approached ██████ for a field interview, but he “was pretty combative”<sup>7</sup> and omitted a strong odor of unburnt cannabis. The officers handcuffed ██████ patted him down, and brought him back to the gas station for an investigation. Officer Carreno spoke with the attendant, who related that ██████ “hangs around there all the time,”<sup>8</sup> selling drugs and refusing to leave. The officers did not have a paper complaint with them, so Officer Carreno obtained the attendant’s permission to sign on his behalf.

As they were leaving the gas station, Officer Carreno noticed that ██████ kept fidgeting and moving around in the back seat. Officer Carreno took ██████ out of the vehicle and performed another pat down to check for a weapon, but he did not reach inside ██████ underwear. Additionally, Officer Carreno did not recall Officer Higgins unbuckling ██████ pants or searching inside his underwear during the stop. The officers then drove ██████ to the 5<sup>th</sup> District station, where a custodial search was performed. Although Officer Carreno did not specifically recall the custodial search, he noted that ██████ would have been asked to “shake his underwear.”<sup>9</sup> Officer Carreno asserted that ██████ cannabis was found when they were at the station, and it was not in dispensary packaging but Ziplock bags packaged for street sale.

### *Officer Edward Garcia (“Officer Garcia”)<sup>10</sup>*

COPA interviewed Officer Garcia on April 6, 2021. Officer Garcia did not recall ██████ or his arrest. Officer Garcia stated he was generally familiar with the Falcon Fuel, but he had no recollection of employees there signing complaints for him. Officer Garcia denied he has ever seen Officer Higgins reach into someone’s underpants or manipulate an arrestee’s genitals. Officer Garcia described that, during a custodial search, he would have the arrestee remove their outer garments and accessories, then “have them use their thumbs around the waistband and go around in circles,”<sup>11</sup> so that anything secreted in their waistbands would come loose.

#### **b. Digital Evidence**

There is no ICC or BWC video from this incident, as the officers’ vehicle was not equipped with ICC and the officers were not assigned BWCs at the time of the incident.<sup>12</sup> Additionally, the security camera video from the gas station was recorded over after a seven-day retention period.<sup>13</sup> There is a Police Observation Device (“POD”) on the corner of 79<sup>th</sup> Street and Lafayette Avenue, but the video does not capture ██████ allegations.<sup>14</sup> However, the POD footage does show an

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<sup>7</sup> Att. 33: Page 12, line 5

<sup>8</sup> Att. 33: Page 16, line 3

<sup>9</sup> Att. 33: Page 22, line 15

<sup>10</sup> Atts. 3 & 32

<sup>11</sup> Atts. 32: Page 12, lines 19 – 20

<sup>12</sup> All three accused officers were assigned BWCs in August 2020. CMS Notes CO-0050577 & CO-0134248

<sup>13</sup> CMS Note CO-0041711

<sup>14</sup> Att. 17

individual standing outside the convenience store entrance from approximately 8:32 PM until 8:52 PM. The individual enters and exits the store multiple times, and engages with several people. The footage is not clear enough to determine whether the individual is [REDACTED]. The POD video then goes out of focus and captures nothing additional of relevance.

### c. Documentary Evidence

#### *Department Reports for RD #JD146166*<sup>15</sup>

According to Department reports, Officers Higgins observed [REDACTED] loitering outside the Falcon Fuel gas station. [REDACTED] looked in the officers' direction, then immediately turned around and went inside the store. When [REDACTED] exited the store, the officers tried to speak with him, but [REDACTED] was combative, refused to answer questions, and smelled strongly of cannabis. The officers detained [REDACTED] and brought him back to the gas station for further investigation. Officer Carreno spoke with the gas station attendant, who signed complaints for trespassing "after indicating that [REDACTED] hangs out in the gas station on different occasion and sells drugs and has been previously given notice not to loiter on the gas station premises."<sup>16</sup> [REDACTED] was transported to the 5<sup>th</sup> District station, where the officers conducted a custodial search and recovered five clear plastic Ziploc bags of suspect cannabis from [REDACTED] waistband.

#### *Cook County Criminal Courts*<sup>17</sup>

On February 10, 2020, [REDACTED] was charged with one misdemeanor count of criminal trespass to land. On July 22, 2020, a judgement of nolle prosequi was entered.

## 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.

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<sup>15</sup> Atts. 18, 19, 23 & 28

<sup>16</sup> Att. 23, page 2.

<sup>17</sup> Att. 20

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy.<sup>18</sup> If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, 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>19</sup>

## VII. ANALYSIS AND CONCLUSIONS

Allegations 1 - 3 against all three officers, that they detained, handcuffed, and searched ██████████ without justification, are exonerated. ██████████ alleged he made a purchase at the gas station and was walking away when officers stopped him for no reason, searched him, and handcuffed him. While Officer Garcia had no recollection of the incident, Officers Carreno and Higgins recalled that Officer Higgins saw ██████████ loitering outside the gas station, then dart inside the store as soon as he noticed the officers. Officer Higgins’ suspicions were heightened when he observed ██████████ reach into the front of his waistband with both hands, then exit the store without making a purchase. By ██████████ own admission, he had cannabis in his underpants, and Officer Higgins’ observations were consistent with the location of that cannabis. Additionally, Officer Higgins was able to articulate why ██████████ actions led him to suspect that ██████████ had concealed some type of contraband in his waistband. While Officer Carreno did not see ██████████ actions, he confirmed that Officer Higgins related the information to him at the time of the incident.<sup>20</sup> Further, both officers provided consistent descriptions of ██████████ combative demeanor and strong smell of cannabis when they attempted to conduct a field interview.

COPA also notes that ██████████ account is not entirely credible. While ██████████ asserted his cannabis was in still in dispensary packaging,<sup>21</sup> Officers Higgins and Carreno denied this, describing the packaging as clear Ziplock bags packaged for street sale. The officers’ description is consistent with CPD’s inventory records, as well as the arrest and case reports. Further, if ██████████ legally possessed the cannabis, it is illogical that he would hide it in his underpants. For all these reasons, COPA finds the officers had sufficient justification to detain, pat down, and handcuff ██████████ and **allegations 1 – 3 are exonerated.**

Allegations 4 and 6 against all three officers, that ██████████ was searched a second time without justification and arrested without justification, are also exonerated. Once the officers spoke with the gas station attendant and determined he would sign trespassing complaints, Department

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<sup>18</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 has found to be more probably true than not).

<sup>19</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

<sup>20</sup> As noted above, Officer Garcia did not recall ██████████ for this incident, even after reviewing ██████████ arrest report and booking photo.

<sup>21</sup> Illinois law requires all products containing cannabis to be sold “in a sealed, odor-proof, and child-resistant cannabis container...” 401 ILCS 705/55-21(c).

policy required the officers to search [REDACTED] before transporting him to the station.<sup>22</sup> Therefore, COPA finds **allegations 4 and 6** are also **exonerated**.

Allegation 5 against the three officers, that they engaged in an unnecessary verbal altercation with [REDACTED] is not sustained. Officers Garcia, Carreno, and Higgins were not assigned BWCs until August 2020, and they were not operating a vehicle equipped with ICC. Because there is no independent evidence to confirm or refute the allegation that the officers directed profanities at [REDACTED] **allegation 5 is not sustained** for all three accused.

Allegation 7 against Officers Garcia and Carreno, that they failed to intervene during Officer Higgins’ search of [REDACTED] genital area, is not sustained. Similarly, Allegations 7 – 10 against Officer Higgins, that he searched [REDACTED] a third time without justification, unbuckled [REDACTED] pants, searched inside [REDACTED] underpants, and manipulated [REDACTED] genitals, are all not sustained. As with Allegation 5, there is no independent evidence to confirm or refute [REDACTED] allegations and therefore COPA lacks clear and convincing evidence to exonerate or unfound these allegations. Accordingly, COPA finds **allegation 7** against all three officers and **allegations 8-10** against Officer Higgins are **not sustained**.

Approved:

[REDACTED]

6/23/2022

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

\_\_\_\_\_  
Date

<sup>22</sup> General Order G06-01-02 (II), Restraining Arrestees (effective December 8, 2017 to present) (“A person taken into Department custody will be searched prior to transport and restrained in such a manner as to prevent escape and to provide for the safety of the public, the person in custody, and the officers involved.”).