

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	August 1, 2019
Time of Incident:	2:50 AM
Location of Incident:	5357 S. Peoria St., Chicago, IL 60609
Date of COPA Notification:	August 1, 2019
Time of COPA Notification:	3:19 PM

On August 1, 2019, [REDACTED] was sitting in a parked red minivan with his friend, [REDACTED] when Sergeant Jason Motyka and Officers Thomas Mitera and Brian Lindstrom (collectively “the Members”) approached the minivan. The Members requested [REDACTED] and [REDACTED] identifications while informing [REDACTED] about the increased reports of illegal activity occurring on the roadway and that a member had observed [REDACTED] and [REDACTED] sitting in the vehicle for a long period of time. Additionally, the Members informed [REDACTED] that he was parked more than 12 inches from the curb. After several requests, [REDACTED] provided his identification. The Members issued [REDACTED] a citation and informed [REDACTED] and [REDACTED] they were free to leave. COPA’s investigation determined that the allegations made by [REDACTED] are unfounded or exonerated, but a procedural allegation against Sgt. Motyka is sustained.

**II. INVOLVED PARTIES**

Involved Sergeant #1:	Sergeant Jason Motyka, Star #865, Employee ID # [REDACTED], DOA: March 26, 2001, Unit: 650, Male, White.
Involved Officer #1:	Officer Thomas Mitera, Star #3134, Employee ID # [REDACTED], DOA: March 15, 2013, Unit: 716, Male, White.
Involved Officer #2:	Officer Brian Lindstrom, Star #10592, Employee ID # [REDACTED], DOA: November 15, 1999, Unit: 009, Male, White.
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED], 1981, Male, Black
Involved Individual #2:	[REDACTED] Date of Birth: [REDACTED], 1973, Male, Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Sergeant Motyka, and Officers	It is alleged by the complainant, [REDACTED] that on or about August 1, 2019, at approximately	

<p>Lindstrom and Mitera</p>	<p>2:50 p.m., at or near 5357 S Peoria St. in Chicago, the accused committed misconduct through the followings acts or omissions:</p> <ol style="list-style-type: none"> <li>1. Stalking and/or profiling ██████████ without justification.</li> <li>2. Asking for ID without justification</li> <li>3. Threatening to write tickets.</li> <li>4. Giving tickets to ██████████ without justification.</li> </ol>	<p>Not Sustained.  Exonerated.  Unfounded.  Exonerated.</p>
<p>Sergeant Motyka</p>	<p>It is alleged by COPA that on or about August 1, 2019, at approximately 2:50 p.m., at or near 5357 S Peoria St. in Chicago, Sergeant Jason S. Motyka, Star #865, committed misconduct through the followings acts or omissions:</p> <ol style="list-style-type: none"> <li>5. Failing to activate his Body Worn Camera in violation of S03-14.</li> </ol>	<p>Sustained / 5-day Suspension.</p>
<p>Officer Mitera</p>	<p>It is alleged by COPA that on or about August 1, 2019, at approximately 2:50 p.m., at or near 5357 S Peoria St. in Chicago, Officer Thomas M. Mitera, Star #3134, committed misconduct through the followings acts or omissions:</p> <ol style="list-style-type: none"> <li>5. Failing to follow Special Order S03-14 by not activating his body worn camera to record his interaction with ██████████</li> </ol>	<p>Unfounded.</p>

**IV. APPLICABLE RULES AND LAWS**

Rules

1. **Rule 2:** Prohibits 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:** Prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
3. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.

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**Special Orders**

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1. **S03-14: Body Worn Cameras.**<sup>1</sup>
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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.
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**State Laws**

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1. **625 ILCS 5/11-1304(b):** Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within 12 inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.<sup>2</sup>
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**V. INVESTIGATION**<sup>3</sup>**a. Interviews**

COPA interviewed ██████████ on January 29, 2020. On August 1, 2019, ██████████ was sitting in his car with ██████████ when he observed at least one Department vehicle in the area monitoring the movements on the block. After approximately 30 minutes of sitting in the parked minivan, ██████████ heard a knock on the window and saw several Department vehicles parked near the minivan and the Members at his windows. ██████████ rolled the window down and Officer Mitera asked him for his identification. After arguing with Officer Mitera, ██████████ provided his identification. As the interaction proceeded, Sgt. Motyka alleged that ██████████ was parked 12 inches away from the curb.<sup>5</sup> Shortly thereafter, Officer Mitera returned to the minivan and issued ██████████ a citation.

COPA interviewed **Officer Brian Lindstrom**<sup>6</sup> on January 9, 2021. Officer Lindstrom did not have an independent recollection of this incident. Officer Lindstrom recalled that there were general reports of selling and consuming illegal substances and drinking in vehicles on the block.<sup>7</sup> Officer Lindstrom denied recognizing ██████████ or ██████████ from prior interactions or that this interaction was retaliation for a past interaction. While Officer Lindstrom could not recall the specific reason the members approached the minivan, he postulated that it was likely due to the

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<sup>1</sup> Att. 23

<sup>2</sup> Att. 24

<sup>3</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>4</sup> Atts. 18 and 19

<sup>5</sup> ██████████ estimated that he parked 10 to 12 inches from the curb. Att. 19, pg. 28.

<sup>6</sup> Atts. 6, 7 and 21

<sup>7</sup> Despite the general reports, Officer Lindstrom could not recall if there was a specific complaint related to ██████████ Att. 21, pg. 9.

increased reports of narcotic sales and alcohol consumption, combined with the period of time the minivan was parked and occupied.

COPA interviewed **Officer Thomas Mitera**<sup>8</sup> on May 24, 2021. On August 1, 2019, Officer Mitera was partnered with Officer Lindstrom when they approached ██████ in his minivan for a narcotics investigation. Officer Mitera explained there had been an increase in complaints from community members about narcotics use and sales, and open public drinking.<sup>9</sup> Officer Mitera recalled that the occupants were in the minivan with the engine running and moving around for a longer than usual period of time.<sup>10</sup>

COPA interviewed **Sergeant Jason Motyka**<sup>11</sup> on January 26, 2021. Sgt. Motyka had no independent recollection of this incident and was unable to provide any details as to why the members approached the minivan. Additionally, Sgt. Motyka admitted that he did not activate his Body Worn Camera (BWC), despite being equipped with one. Sgt. Motyka did explain that it was possible there was a functional error with the BWC and that it did not activate; however, he could not specifically recall if there was a malfunction. Finally, Sgt. Motyka explained that he did not have any recollection of prior interactions between Department members and ██████ or ██████

#### b. Digital Evidence

**BWC**<sup>12</sup> footage depicts a red minivan parked in front of 5359 S. Peoria St., facing south. A black Department SUV is parked directly in front of the minivan, facing the vehicle. Officers Lindstrom and Mitera approach the minivan and speak to ██████ the driver, and ██████ the front seat passenger. Officer Lindstrom requests and obtains identification from ██████. Simultaneously, Officer Mitera requests identification from ██████ provides his identification, while asserting that Officer Mitera had no reason to request his identification. Officer Mitera explains to ██████ that the officers stopped him because of increased reports of narcotics sales and public drinking occurring in the area, combined with the length of time he had been sitting in the parked minivan.

After obtaining identification from ██████ and ██████ Officer Lindstrom completes name checks on the males, and he writes a citation to ██████ for parking more than 12 inches from the curb.<sup>13</sup> The officers return ██████ and ██████ identifications, provide the citation to ██████ and inform the men they are free to leave.<sup>14</sup>

## VI. LEGAL STANDARD

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<sup>8</sup> Atts. 16 & 20

<sup>9</sup> Officer Mitera explained he was unaware of any specific complaint related to ██████ Att. 20, pg. 8.

<sup>10</sup> Officer Mitera explained that Sgt. Motyka was the member who reported the minivan had been parked and occupied for a longer than usual period. While Officer Mitera could not provide an estimated period of time, he did explain that it was longer than it would normally take an occupant to park, gather belongings, and exit. Att. 20, pg. 12.

<sup>11</sup> Atts. 5 and 22.

<sup>12</sup> Atts. 4, 15 and 25.

<sup>13</sup> See Att. 14.

<sup>14</sup> At no point during the interaction do any members speak to ██████ or ██████ in a way that indicates they were aware of prior interactions with the Department.

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 occurred and violated Department policy.<sup>15</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>16</sup>

## VII. ANALYSIS

COPA finds that Allegation #1 against the Members is Not Sustained. There is a lack of evidence to support the allegation that the Members decided to approach [REDACTED] or [REDACTED] based on their race or past interactions with the Department. The evidence does show that the Members’ decision to approach [REDACTED] and [REDACTED] was, in part, based on reasonable suspicion that there was a possibly a crime occurring. This is evidenced by the Members’ contemporaneous statements to [REDACTED] captured on BWC, and their subsequent interviews with COPA. In both, the Members detail the 30 minutes the minivan was parked and occupied, and the increased reports of narcotics sales, use, and public drinking in the area. However, COPA also finds there to be a lack of objective evidence, either direct or circumstantial, that clear and convincingly establishes that profiling was not a factor in the Member’s decision to approach [REDACTED] or [REDACTED]. Therefore, this allegation is not sustained.

COPA finds that Allegation #2 against the Members is **exonerated**. Department members are permitted to engage with citizens during consensual encounters, and they may request identification from any citizen. While the citizen may not be obligated to comply with a request

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<sup>15</sup> *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>16</sup> *People v. Coan*, 2016 IL App (2d) 151036 (2016).

for identification, the mere fact that a member requests identification is not misconduct. Because members are permitted to request identification from any citizen, the Members' request for [REDACTED] and [REDACTED] identifications was reasonable and proper.

COPA finds that Allegation #3 against the Members is **unfounded**. After [REDACTED] refused to provide the requested identification, the Members informed [REDACTED] he was violating state parking laws and was therefore required to provide his identification.<sup>17</sup> As [REDACTED] continued to insist that he was not required to provide identification, the Members informed him of several additional traffic infractions for which he *could* receive citations. While [REDACTED] may have perceived this portion of the conversation as a threat, the Members never stated they would issue citations for the violations. Instead, the Members appeared to be informing [REDACTED] of his multiple traffic violations and the *potential* for citations to be issued. The mere fact that [REDACTED] objected to the Members informing him of the violations he *could* receive a citation for, does not mean the Members engaged in misconduct.

COPA finds Allegation #4 against the Members is **exonerated**. Illinois and City of Chicago laws require vehicles parked on the roadway to be parked no more than 12 inches from the curb.<sup>18</sup> Here, by [REDACTED] own admission, he was parked between 10 and 12 inches from the curb. Additionally, BWC video shows the minivan was parked so far from the curb that the entire cement storm gutter was fully exposed.<sup>19</sup> Finally, each of the Members present during the incident made contemporaneous remarks that [REDACTED] was parked at least 12 inches from the curb.<sup>20</sup> Based on this information, it was reasonable for the Members to estimate that [REDACTED] was parked more than 12 inches from the curb. Therefore, their decision to issue [REDACTED] a citation was reasonable and proper.

COPA finds that Allegation #5 against Sgt. Motyka is **sustained**, and that Allegation #5 against Officer Mitera is **unfounded**. Department Members are required to activate BWC "at the beginning of" or "as soon as practical" for "all law-enforcement-related activities."<sup>21</sup> This requirement is mandatory, not discretionary.

Here, it is undisputed that Sgt. Motyka was equipped with a BWC but failed to activate it during this incident. Sgt. Motyka's failure violated Department policy and Rules 2, 3 and 6.

Here, it is undisputed that Officer Mitera was equipped with a BWC, and that he did in fact activate his BWC prior to the start of this interaction. Therefore, Officer Mitera complied with Department policy.

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<sup>17</sup> [REDACTED] was specifically told that he was parked more than 12 inches from the curb.

<sup>18</sup> 625 ILCS 5/11-1304 (a), *also see* Section 10-5-4 of the Chicago Municipal Code.

<sup>19</sup> COPA notes that the typical storm gutter in Chicago is 12 inches in width. *See* Att. 26.

<sup>20</sup> *See* Att. 15 at 3:32 & 7:00 minutes.

<sup>21</sup> Law-enforcement-related activities include but are not limited to: "calls for service; investigatory stops; traffic stops; traffic control; foot and vehicle pursuits; arrest; use of force incidents; seizure of evidence; interrogations; searches, including searches of people, items, vehicle, buildings, and places; statements made by individuals in the course of an investigation; requests for consent to search; emergency driving situations; emergency vehicle responses where fleeing suspects or vehicle may be captured on video leaving the crime scene; high-risk situations; any encounter with the police that becomes adversarial after the initial contact; arrestee transports; any other instance when enforcing the law." S03-14 III(A)(2)(a-r), Body Worn Cameras (effective April 30, 2018 to present).

**VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. Sergeant Jason Motyka**

**i. Complimentary and Disciplinary History<sup>22</sup>**

Sgt. Motyka has received 243 various awards. Sgt. Motyka has no disciplinary history for the last five years.

**ii. Recommended Penalty**

It is undisputed that Sgt. Motyka failed to activate his BWC during this interaction. While Sgt. Motyka’s failure violated Department policy, the lack of footage from his BWC had a limited impact on COPA’s investigation. However, COPA notes that the lack of video prevented Sgt. Motyka from reviewing this incident from his perspective, which likely contributed to his inability to recall specific details. Additionally, Sgt. Motyka is a supervisory member of the Department who should be keenly aware of the needed to adhere to all Department policies. It is for these reasons, combined with Sgt. Motyka’s lack of disciplinary history, that COPA recommends Sgt. Motyka receive a **5-day suspension**.

Approved:



10/25/2021

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date

<sup>22</sup> Att. 29

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	Six
<b>Investigator:</b>	Kelsey Fitzpatrick
<b>Supervising Investigator:</b>	Steffany Hreno / Garrett Schaaf
<b>Deputy Chief Administrator:</b>	Matthew Haynam