

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 19, 2019
Time of Incident:	6:10 pm
Location of Incident:	5151 N. Milwaukee Ave., Chicago, IL 60630
Date of COPA Notification:	September 10, 2019
Time of COPA Notification:	7:00 pm

On August 19, 2019, **Police Officer Sergio Corona** received information concerning the theft of a cell phone at a 7-Eleven convenience store located at 6000 W. Higgins Ave., Chicago, IL. Officer Corona spoke with the **victim**, [REDACTED] and saw a videotape of the alleged incident. Through further investigation, Officer Corona identified **complainant** [REDACTED] as the alleged perpetrator. [REDACTED] arrived at the 16<sup>th</sup> District whereupon Officer Corona, and **Detective Daniel Smith** arrested him and recovered the cell phone. Det. Smith, observing [REDACTED] had an empty gun holster, learned that he had an unsecured firearm in his vehicle. Det. Smith subsequently recovered a Glock .40 caliber semi-automatic firearm in the driver’s door panel of [REDACTED] vehicle. The firearm was placed in safekeeping at the 16<sup>th</sup> District, to be returned to [REDACTED] at a later date.

On September 10, 2019, [REDACTED] complained to COPA alleging false arrest, searching his vehicle without justification, and seizing his handgun without justification. After investigation, COPA finds the allegations to be **Exonerated**.

II. INVOLVED PARTIES

Involved Officer #1:	Corona, Sergio M., Star# 3331, Employee ID# [REDACTED], Date of Appointment: 04/30/2001, Police Officer, UOA: Unit 111, DOB: [REDACTED] 1978, Male, Hispanic
Involved Officer #2:	Smith, Daniel J., Star# 20066, Employee ID# [REDACTED], Date of Appointment: 08/04/1997, Detective, UOA: Unit 630, DOB: [REDACTED] 1972, Male, White
Involved Individual #1:	[REDACTED]/1989, Male, White

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Corona	<p>It is alleged that on or around August 19, 2019, at approximately 6:10 pm, at or near 5151 N. Milwaukee, Chicago, IL, Officer Corona:</p> <ol style="list-style-type: none"> <li>1. Arrested [REDACTED] without justification.</li> <li>2. Searched the vehicle of [REDACTED] without justification.</li> <li>3. Seized a Glock .40 caliber handgun of [REDACTED] without justification.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>
Detective Smith	<p>It is alleged that on or around August 19, 2019, at approximately 6:10 pm, at or near 5151 N. Milwaukee, Chicago, IL, Detective Smith:</p> <ol style="list-style-type: none"> <li>1. Arrested [REDACTED] without justification.</li> <li>2. Searched the vehicle of [REDACTED] without justification.</li> <li>3. Seized a Glock .40 caliber handgun of [REDACTED] without justification.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>

**IV. APPLICABLE RULES AND LAWS**

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Rules
1. <b>Rule 1:</b> Violation of any law or ordinance.

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**Federal Laws**

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**1. 4<sup>th</sup> Amendment, U.S. Constitution****V. INVESTIGATION****a. Interviews**

On September 10, 2019, the **complainant** [REDACTED] gave COPA an audio and video-recorded interview.<sup>1</sup> [REDACTED] who had his own construction company, related that on August 19, 2019, at approximately 9:00 am, he was at the 7-Eleven convenience store located at 6000 W. Higgins Ave. with his worker, [REDACTED].<sup>2</sup> While in line, [REDACTED] placed his cell phones – he was unclear as to whether he had two or three cell phones with him – on the counter along with items to be purchased.<sup>3</sup> After completing his purchase, he grabbed his stuff along with another cell phone that he thought was his.<sup>4</sup>

At one point in the interview, [REDACTED] stated that he realized the phone did not belong to him when he first got into his vehicle; at another, he said it was on the way to his first job site; at another, he said it was after one of his jobs.<sup>5</sup> According to [REDACTED] he planned to drop the phone at the Chicago Police Department's (CPD) 16<sup>th</sup> District after completing work. At approximately 6:00 p.m., while heading to the 16<sup>th</sup> District, he received a phone call from his roommate, later identified as [REDACTED] informing him that CPD officers were at their residence asking about a phone. [REDACTED] believed he spoke with an Officer Ortiz,<sup>6</sup> who asked, "Where's the fucking phone?"<sup>7</sup> [REDACTED] told the officer that he was dropping the cell phone at the 16<sup>th</sup> District. While heading to the District, [REDACTED] received multiple calls from people inquiring about the cell phone. He believed the person he spoke to was either the alderman or the superintendent of the alderman's office. He told that person that he was dropping the cell phone at the 16<sup>th</sup> District.

Upon arriving at the 16<sup>th</sup> District, [REDACTED] parked his van and, before entering the police station, removed his Glock handgun from its holster and "stuck [it] in the door panel, the side door panel, [on] the driver's side"<sup>8</sup> of his van. His worker [REDACTED] was either still in the car or outside the

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<sup>1</sup> [REDACTED] identifies [REDACTED] in an August 21, 2019, Email. Att. 17.

<sup>2</sup> Att. 11

<sup>3</sup> Att. 33, p. 11

<sup>4</sup> Att. 33, pgs. 11, 12, 55-57,

<sup>5</sup> Att. 33, pgs. 9, 14, 59

<sup>6</sup> In his deposition, [REDACTED] explained that he believed Officer Ortiz was the same person as Officer Corona. Att. 49 pg. 130

<sup>7</sup> Att. 9 at 11:48

<sup>8</sup> Att. p. 46, ln 17-18.

car smoking a cigarette.<sup>9</sup> According to ██████ he left the clip in the gun but took the round out of the chamber.<sup>10</sup>

When ██████ went inside the police station the officers were all busy. He went back outside to the front and called the number that had called him before, letting the person know he was at the District and wanted to give him the cellphone. An unidentified officer approached ██████ and offered assistance. ██████ told the officer he wanted to return a cell phone. The officer took the cell phone and told him to take a seat. While waiting, approximately four to five males walked into the District, one that ██████ recognized from the 7-Eleven. Shortly thereafter, an officer walked up to ██████ told him to turn around, and arrested him. ██████ was taken into a back room and stripped down. While there, he spoke with a sergeant and a detective. They noticed the holster on his belt and asked him where the gun was. ██████ told them he left it in the driver's door panel of his locked van. ██████ later found out that officers went outside and recovered his Glock handgun.

██████ further recounted that he asked for a lawyer and a phone call and complained that the handcuffs were too tight. He also learned he was being charged with the theft of the cell phone.

On July 16, 2021, **Police Officer Sergio Corona** gave COPA an audio-recorded interview.<sup>11</sup> Officer Corona, a field training officer, related that on August 19, 2019, he received information concerning the theft of a cell phone at the 7-Eleven located at 6000 W. Higgins Ave. Officer Corona spoke with the victim, ██████ and viewed video from the surveillance cameras at the 7-Eleven. On the video, he saw ██████ place his phone on the counter and walk out of the 7-Eleven. ██████ then walked up to the counter with his own cell phone in his hand. ██████ observed ██████ cell phone on the counter, retrieved it, and placed it in his belongings. From viewing the 7-Eleven video, Officer Corona believed there was no confusion that ██████ did not misplace his own phone because his own phone was in his hand.

Officer Corona received additional information that ██████ wore a shirt that listed the name and address of a construction company. He went to the address associated with the construction company and spoke to an unknown male about the cell phone. The unknown male explained that he was a fireman and that it was ██████ his basement tenant, who may have used the address for his construction company. Officer Corona could not recall if he spoke to ██████ on the phone at that time.

The cell phone was returned to the officer at the District. Officer Corona "was open not to arresting [██████] but the victim was adamant, and he wanted him arrested and signed

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<sup>9</sup> Att. 34 pgs. 24, 36-38.

<sup>10</sup> Att.33, p. 48

<sup>11</sup> Att. 24

complaints.”<sup>12</sup> Officer Corona did not recall ██████ asking for an attorney or a phone call, nor whether he searched ██████ vehicle or recovered ██████ firearm.

On July 16, 2021, **Detective Daniel Smith** gave COPA an audio-recorded interview.<sup>13</sup> On August 19, 2019, Det. Smith was assigned to the Robbery, Burglary and Theft office, Area North, 16<sup>th</sup> District. Det. Smith viewed the video from the 7-Eleven. He saw that ██████ mistakenly left his cell phone on the counter and left the store, and then ██████ approached the counter and, without hesitation, picked up ██████ cell phone, placed it in his pocket, and left the store. Det. Smith also learned about Officer Corona’s visit to ██████ residence.

Later that day, Det. Smith was notified that ██████ was in the lobby of the 16<sup>th</sup> District. He met ██████ in the lobby, recovered ██████ cell phone, and immediately placed ██████ under arrest. A custodial search of ██████ revealed an empty gun holster on his belt. Det. Smith asked ██████ if he had a firearm and ██████ responded that he did. Det. Smith asked for the gun’s location, and ██████ told Det. Smith that it was in the driver’s door panel of his vehicle. Det. Smith then went to ██████ vehicle, opened the driver’s door and, in the panel, found the loaded .40 caliber Glock. Det. Smith believed he had a duty to recover the weapon, given that ██████ friend, ██████ would unlawfully be in possession of the firearm in ██████ vehicle, and it was unsafe to leave the weapon unattended in the car. Det. Smith inventoried it as personal property of ██████ thus giving him the opportunity to retrieve the firearm later at the District. Det. Smith did not search the interior of the vehicle.

#### b. Digital Evidence

Surveillance video<sup>14</sup> from the 7-Eleven store, dated August 19, 2019, and time-stamped 10:21 am, shows ██████ placing his cell phone on the store’s counter,<sup>15</sup> making a purchase, and leaving the store with his cell phone still on the counter.<sup>16</sup> Afterward, ██████ and ██████ in orange t-shirts, can be seen walking towards the counter.<sup>17</sup> When ██████ arrived at the counter, with a donut in his left hand and what looked like a cell phone and keys in his right, immediately placed the items in his right hand down on the counter, and swiftly picked up ██████ phone, putting it in his right rear pocket. After approximately a minute and 35 seconds, ██████ had completed his purchase, gathered his items from the counter, and left the store with ██████<sup>18</sup>

The body-worn camera (BWC)<sup>19</sup> of Officers Corona and Ing showed them arriving at a home and talking to a white male, later identified as ██████ whom they initially believed

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<sup>12</sup> Att. 24 at 17:04

<sup>13</sup> Att. 14

<sup>14</sup> Att. 36

<sup>15</sup> Att. 36 at 10:22:50

<sup>16</sup> Att. 36 at 10:23:46

<sup>17</sup> Att. 36 at 10:24:58

<sup>18</sup> Att. 36 10:26:35

<sup>19</sup> Att. 13 and 44

was [REDACTED]. The officers informed [REDACTED] that he fit the description of a person at a 7-Eleven that took a person's phone. [REDACTED] denied that he was the suspect and explained that he worked for the Chicago Fire Department. After further discussion, [REDACTED] told the officers that [REDACTED] lived in the basement of that location. The officers told [REDACTED] to contact [REDACTED] and tell him to return the cell phone to the 16<sup>th</sup> District.

A digital cellphone image provided by [REDACTED] after his COPA interview shows a message posted on Facebook by **Police Officer Peter Palka (Star# 9413, Business Liaison Officer, 16<sup>th</sup> District)** saying, "Need help anyone know what company this is???" The image shows two individuals wearing orange shirts at the counter at 7-Eleven.<sup>20</sup>

### c. Physical Evidence

**Det. Smith recovered** a black 2-inch barrel Glock .40 caliber semi-automatic firearm; 1-firearm holster, 1-magazine holster, 2-magazines containing unknown ammo, 1-gun clip, and 1-live round.<sup>21</sup>

### d. Documentary Evidence

The **Office of Emergency Management and Communications (OEMC) Event Query**<sup>22</sup> shows that on August 19, 2019, at 12:50 pm, [REDACTED] reported the theft of his iPhone, the estimated value of \$1000, from the 7-Eleven convenience store at 6000 W. Higgins, Chicago, IL.

The **CPD Arrest Report**<sup>23</sup> stated that on August 19, 2019, [REDACTED] was observed on video surveillance at the 7-Eleven convenience store, 6000 S. Higgins Ave., Chicago, IL, taking [REDACTED] cell phone from the counter without consent; that Officer Corona and Det. Smith contacted [REDACTED] who informed the officers he did take the cell phone and would turn himself in to the 16<sup>th</sup> District; that [REDACTED] arrived at the District and was arrested and charged with theft from a building by Officer Corona and Det. Smith, who recovered [REDACTED] cellphone; that the officers observed an empty holster on [REDACTED] person and [REDACTED] told Det. Smith that he had left his firearm inside his vehicle outside the police station; that Det. Smith recovered a Glock .40 caliber semi-automatic firearm from [REDACTED] vehicle driver's door panel; and that the firearm was inventoried for safe keeping and that [REDACTED] possessed a valid FOID and concealed carry license.

The **CPD Inventory Report** itemized [REDACTED] personal property, including the firearm. The report classified the action as, "Pick-up Pursuant to Notice of Inventory Return Policy."<sup>24</sup>

The **CPD Case Supplementary Report**, dated September 6, 2019, reflected that the victim, [REDACTED] informed Det. Smith that while he was checking out at the 7-Eleven, he

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<sup>20</sup> Att. 23

<sup>21</sup> Att. 8

<sup>22</sup> Att. 30

<sup>23</sup> Att. 11

<sup>24</sup> Att. 8, pg. 3.

mistakenly left his Apple iPhone on the counter, and discovered that someone had taken it without his permission. Det. Smith and Det. Bilos #21010 proceeded to the 7-Eleven and viewed the store surveillance video. They observed [REDACTED] approaching the counter and take [REDACTED] phone. [REDACTED] informed Det. Smith that Officer Corona was also aware of the incident.

[REDACTED] arrived at the 16th District and handed Det. Smith, the victim's phone. [REDACTED] spontaneously stated to Det. Smith that "I was going to return it; I didn't trust the 7-11 clerk." [REDACTED] was placed in custody, read his Miranda rights, and processed. [REDACTED] made a positive identification of the phone that [REDACTED] turned over. The phone was inventoried and turned over to [REDACTED]

On September 10, 2019, after his COPA interview, [REDACTED] sent three e-mails to COPA. In the first email, [REDACTED] described in more detail about his time in the detention cell including that he was repeatedly told to shut up, that a recycling bin was used to prop a door open, and that he was escorted to the bathroom when he asked to use it. He further indicated that Officer "Ortiz" told him to "Shut up," it's "just a misdemeanor," "no one will be in court," and "I believe you, and I wasn't going to arrest you. But you pissed off a guy with power and my bosses have bosses!"<sup>25</sup>

The second email<sup>26</sup> was a forwarded message from August 21, 2019, from [REDACTED] to himself. In it, he described that he had been released from the Cook County Jail that evening. He then recapped the events regarding the cell phone. According to [REDACTED] he quickly picked up [REDACTED] phone and placed it in his pocket. As he left the 7-Eleven, he told [REDACTED] that they must stop by the police station and return the phone. At approximately 6:00 pm, [REDACTED] roommate contacted him to say that CPD had stopped by his home looking for him. [REDACTED] asked to speak to the officers. He told Officer "Ortiz" that he had the phone and was going to return it to the 16<sup>th</sup> District. [REDACTED] then received more phone calls from his roommate and spoke to "the Alderman" about returning the phone. Upon arrival at the 16<sup>th</sup> District, [REDACTED] informed the desk sergeant and went outside in front of the District. Officers came outside, and he informed them he was returning a cell phone he found at the 7-Eleven. The officers brought him back inside the station, handcuffed him, and searched him. Having a CCL license, he informed the officers that his firearm was in his van on the street across from the District and locked away. He was never read his rights or allowed a phone call or to talk with an attorney.

The third e-mail<sup>27</sup> mentions the Facebook post by Officer Peter Palka of the screenshot from the 7-Eleven video discussed above.<sup>28</sup>

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<sup>25</sup> Att. 19

<sup>26</sup> Att. 17

<sup>27</sup> Att. 18

<sup>28</sup> Att. 23

**e. Related Legal Proceedings**

On September 9, 2019, **the criminal charge** of Theft Lost/Mislaid/Property/\$500 against ██████ for the theft of the cellphone was stricken off leave.<sup>29</sup>

On November 20, 2020, ██████ filed a **civil lawsuit**<sup>30</sup> against Police Officers Solomon Ing, Peter Palka, Joseph Ferrara, Sergio Corona and “Ortiz”; Detectives Daniel Smith and Bilos; 45<sup>th</sup> Ward superintendent ██████ and 45<sup>th</sup> Ward Alderman James Gardiner. ██████ alleged false arrest, unlawful seizure, violations of equal protection and due process, malicious prosecution, and conspiracy to commit malicious prosecution.

On December 22, 2022, ██████ now living in Florida, was deposed pursuant to the lawsuit. ██████ related that when he walked into the 7-Eleven, he and ██████ made eye contact.<sup>31</sup> He had two cell phones with him.<sup>32</sup> He and ██████ got coffee and other items.<sup>33</sup> When he went to the counter to pay, he put the things in his hands down. He had no specific memory of picking up ██████ phone.<sup>34</sup> He realized he had the cell phone on his way to his first job.<sup>35</sup>

When confronted with the video showing he placed his things down and then immediately picked up ██████ cell phone, ██████ indicated that “muscle memory” made him pick it up.<sup>36</sup> 78-79. When he got into his car, he threw it on the dashboard and noticed it was not his on the way to his first job because he could not access it with his face scan or password.<sup>37</sup> ██████ denied that he then threw the phone at ██████ and said, “look I got a new phone.”<sup>38</sup> Instead, ██████ claimed he told ██████ they had to go to the police station to return it when they finished their job, but then got a second emergency job on the way to the police station.<sup>39</sup> ██████ never heard the phone ring nor saw any text messages on the screen.<sup>40</sup> After the second job, on the way to the police station, ██████ called him and had him speak to Officer “Ortiz” about bringing the phone to the 16<sup>th</sup> District. Then, either Alderman Jim Gardiner or the superintendent of the 45<sup>th</sup> Ward called him about the phone asking him, “where the fuck is the phone,” and demanded he return it.<sup>41</sup>

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<sup>29</sup> Att. 45

<sup>30</sup> Att. 5

<sup>31</sup> Att. 49, pgs. 56-57.

<sup>32</sup> Att. 49, pgs. 58, 170

<sup>33</sup> Att. 49, pg. 58.

<sup>34</sup> Att. 49, pg. 63.

<sup>35</sup> Att. 49, pg. 63.

<sup>36</sup> Att. 49, pgs. 78-79.

<sup>37</sup> Att. 49, pgs. 82-83.

<sup>38</sup> Att. 49, pg. 88.

<sup>39</sup> Att. 49, pgs. 87-94, 174.

<sup>40</sup> Att. 49, pgs. 94-96, 176

<sup>41</sup> Att. 49, pgs. 104, 214.

After [REDACTED] parked at the 16<sup>th</sup> District, he took his gun out of his holster and put it in the door panel. [REDACTED] had gone for a smoke.<sup>42</sup> [REDACTED] did not know if he took the bullet out of the chamber or removed the magazine.<sup>43</sup> The van was either locked or unlocked; the keys were either with [REDACTED] or in the car; and the door could be unlocked by sliding a finger in the keyhole and popping the lock.<sup>44</sup> When he was waiting at the police station before he was arrested, [REDACTED] walked in with a line of five to seven police officers including Corona, Palka, Ing, and Det. Smith.<sup>45</sup> No one gave him a lawyer when he asked, read him his Miranda rights, or interviewed him about his involvement with the cell phone.<sup>46</sup>

[REDACTED] claimed he never got his gun back even though he signed an inventory sheet<sup>47</sup> indicating he had retrieved it.<sup>48</sup> He later claimed someone may have forged his signature.<sup>49</sup>

At the time of the incident [REDACTED] took Adderall three times per day for “focus and distraction.”<sup>50</sup> Without them he would have memory issues, forget things, and not be able to cope, socialize or function.<sup>51</sup> [REDACTED] suffered from mental health issues after this event.<sup>52</sup>

[REDACTED] was deposed on December 7, 2002. He stated that after he and [REDACTED] exited the 7-Eleven and returned to the van, [REDACTED] threw a phone in his lap and said that he “got a new phone.”<sup>53</sup> The phone kept ringing and ringing so [REDACTED] powered it off.<sup>54</sup> [REDACTED] never told [REDACTED] that he intended to return the phone. After a detective called [REDACTED] said he would return the phone to a police station.<sup>55</sup> When they arrived at the police station, [REDACTED] may have told [REDACTED] to leave his gun in the van. [REDACTED] had the keys.<sup>56</sup> The police came out and asked him where the gun was. [REDACTED] told them and the police retrieved it.<sup>57</sup> At one point when [REDACTED] went inside the station to check on [REDACTED] he saw Alderman Gardiner, who looked upset, talking to the detectives that arrested [REDACTED].<sup>58</sup>

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<sup>42</sup> Att. 49, pgs. 109-10.

<sup>43</sup> Att. 49, pgs. 190-91.

<sup>44</sup> Att. 49, pgs. 110-12, 189.

<sup>45</sup> Att. 49, pgs. 120, 179

<sup>46</sup> Att. 49, pgs. 134, 183.

<sup>47</sup> Att. 50

<sup>48</sup> Att. 49, pgs. 40-44, 227

<sup>49</sup> Att. 49, pgs. 242-44.

<sup>50</sup> Att. 49, pg. 46.

<sup>51</sup> Att. 49, pg. 48

<sup>52</sup> Att. 49, pg. 192

<sup>53</sup> Att. 46, pgs. 12, 87

<sup>54</sup> Att. 46, pg. 12.

<sup>55</sup> Att. 46, pg. 14.

<sup>56</sup> Att. 46, pg. 15.

<sup>57</sup> Att. 46, pg. 17.

<sup>58</sup> Att. 46, pgs. 28, 60-62.

██████ did not treat ██████ well when they worked together and during the short time they lived together.<sup>59</sup> On September 22, 2019, ██████ filed a police report against ██████ when he heard that ██████ had threatened to “beat [his] ass.”<sup>60</sup>

████████████████████ was deposed on December 16, 2022. He stated that on August 19, 2019, at 4:00 pm, police officers came to his house and accused him of being at the 7-Eleven and taking something that belonged to “an important person.”<sup>61</sup> ██████ realized they were talking about ██████. When they left, he called ██████. The police officers were still in their car, so ██████ walked over and handed them his phone to speak to ██████.<sup>62</sup> After the officers left, ██████ saw ██████ drive up and down his block in a white City of Chicago pickup truck, and then park two houses down from him.<sup>63</sup> Fifteen minutes later, Alderman Gardiner, whom ██████ knew from them both being firemen, knocked on his door. Alderman Gardiner acknowledged that ██████ was a fireman and asked to speak to ██████. ██████ called ██████ on his phone and handed the phone to Alderman Gardiner. Alderman Gardiner was very upset when he ended the call and asked ██████ how he could let “a piece of shit” live with him.<sup>64</sup> Alderman Gardiner then turned to ██████ still seated in his truck outside and said, “have him locked up.”<sup>65</sup>

**Officer Sergio Corona** was deposed March 8, 2023, and stated that he received information about the stolen phone at about 2:00 pm on August 19, 2019. He believed the 7-Eleven video provided “clear cut” probable cause to arrest ██████.<sup>66</sup> He also felt that the amount of time that ██████ kept the phone without notifying anyone – the victim, the 7-Eleven, the police – was unreasonable and also contributed to his determination of probable cause.<sup>67</sup> Even so, Officer Corona did not intend to arrest ██████.<sup>68</sup> In fact, Officer Corona tried to convince ██████ not to sign complaints, but ██████ was adamant.<sup>69</sup>

With regards to ██████ gun, Officer Corona saw the holster and was “alarmed,” so went to the van to retrieve the gun for safekeeping.<sup>70</sup> Detective Smith recovered it.<sup>71</sup> Officer Corona felt responsible for making sure the van was secured as it was parked on a very busy public way.<sup>72</sup> He

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<sup>59</sup> Att. 46, pg. 19.

<sup>60</sup> Att. 46, pgs. 21, 34-35.

<sup>61</sup> Att. 47, pgs. 9-10.

<sup>62</sup> Att. 47, pg. 10.

<sup>63</sup> Att. 47, pg. 13.

<sup>64</sup> Att. 47, pg. 19.

<sup>65</sup> Att. 47, pg. 19.

<sup>66</sup> Att. 48, pgs. 37-41.

<sup>67</sup> Att. 48, pgs. 42, 73.

<sup>68</sup> Att. 48, pgs. 87, 97.

<sup>69</sup> Att. 48, pgs. 79-84, 87.

<sup>70</sup> Att.8, pgs. 95-96.

<sup>71</sup> Att. 48, pg. 160.

<sup>72</sup> Att. 48, pg. 96, 161.

did a quick search of the general area where the gun was located to look for possibly another gun, and secured the van.<sup>73</sup>

In **Alderman James Gardiner's** answer to ██████████ interrogatories, he admitted that he went to ██████████ house and spoke to ██████████ about ██████████ returning ██████████ cell phone, but denied he spoke to ██████████ at any time that day or ever.<sup>74</sup> He admitted that he spoke to Officers Corona and Palka after ██████████ was arrested about the events of the day.<sup>75</sup>

██████████ answered to ██████████ interrogatories admitting he had spoken to ██████████ about ██████████ returning his cellphone on August 19, 2019, on the phone, but did not go to ██████████ house, although he might have been in the area to perform official duties.<sup>76</sup> He denied he ever spoke to ██████████ on that date or ever.<sup>77</sup>

## 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 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 complied with Department policy. *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). 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. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). 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." *Id.* at ¶ 28.

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<sup>73</sup> Att. 48, pgs. 96, 161.

<sup>74</sup> Att. 51, pgs. 6, 7

<sup>75</sup> Att. 51, pg. 6

<sup>76</sup> Att. 51, pg. 15.

<sup>77</sup> Att. 51, pg. 16.

## VII. ANALYSIS

### 1. Arrested [REDACTED] without justification.

An officer must have probable cause to arrest a subject. *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)). “Probable cause to arrest exists when the totality of the facts and circumstances known to a police officer would lead a person of reasonable caution to believe that the person apprehended has committed a crime, and its existence depends on the totality of the circumstances at the time of the arrest.” *People v. D.W.* (In re *D.W.*), 341 Ill. App. 3d 517, 526 (1st Dist. 2003).

The totality of the facts and circumstances known to the police here include [REDACTED] act of taking [REDACTED] cell phone from the counter at 7 Eleven and leaving the store without consent as documented on the 7-11 video; his act of not informing anyone that he had the cell phone for an unreasonable amount of time, and his act of not returning the cellphone to the police until after he was contacted by the police to do so. These known facts created probable cause for Officer Corona and Det. Smith to arrest [REDACTED] notwithstanding [REDACTED] explanation that he took the phone by mistake and always intended to return it. Indeed, [REDACTED] statement to COPA lacks credibility where it contained multiple internal contradictions, contradictions between it and other statements he made, and contradictions between it and other witnesses’ statements. Regardless, the objective known facts at the time of the arrest establish probable cause.

As such, based on clear and convincing evidence, COPA **Exonerates** Officer Corona and Det. Smith of the allegation of arresting of [REDACTED] without justification.

### 2. Searched the vehicle of [REDACTED] and Seized his firearm without justification.

A person with a valid concealed carry license (“CCL”) can keep or carry a loaded or unloaded concealed firearm on or about his person within a vehicle.<sup>78</sup> Concealed firearm” means a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle.<sup>79</sup> If a police officer initiates an investigative stop, including a traffic stop, upon a CCL licensee, the licensee shall disclose to the officer, upon the officer’s request, that he or she is in possession of a concealed firearm or present the license, and shall identify the location of the concealed firearm and permit the officer to safely secure the firearm for the duration of the investigative stop.<sup>80</sup>

Here, Officer Corona and Detective Smith noticed [REDACTED] empty gun holster while they were processing him. It is undisputed that [REDACTED] had a valid CCL, but much like an investigatory stop, they were entitled to ask him about the location of his firearm and to secure for the duration of their contact with him. [REDACTED] told them where it was inside his vehicle, and thus, pursuant to statute, they had the right to secure the firearm. Thus any “search” of [REDACTED] vehicle to secure

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<sup>78</sup> 430 ILCS 66/5, 66/10

<sup>79</sup> 430 ILCS 66/5

<sup>80</sup> 430 ILCS 66/10

the firearm was justified pursuant to statute. As was its temporary seizure. Regardless, probable cause existed to support the search.

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.” *People v. James*, 163 Ill. 2d 302, 312 (Ill. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). Probable cause “is not a high bar.” *Kaley v. United States*, 571 U. S. 320, 338 (2014). “Probable cause deals with probabilities, not certainties,” it is a “flexible, commonsense standard that ‘does not demand any showing that such belief be correct or more likely true than false,’” and it “does not require an officer to rule out any innocent explanations for suspicious facts.” *People v. Hill*, 2020 IL 124595, ps. 23, 28-34, quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983). “Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same -- and so are law enforcement officers.” *United States v. Cortez*, 449 U.S. 411, 418 (1981). Thus, “the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.” *Id.* “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.’” *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)).

In pertinent part, a person commits an unlawful use of weapons where he carries or possesses a firearm in any vehicle, except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person’s permission, except if he is transporting the firearm and it is either (1) broken down or non-functioning; (2) not immediately accessible; (3) unloaded and enclosed in a case by a CCL licensee; or (4) carried or possessed by a CCL licensee in accordance with the Firearm Concealed Carry Act.<sup>81</sup> The purpose of the statute is to limit the possession of loaded and readily accessible firearms in vehicles. There is a clear public safety purpose in preventing individuals from carrying or possessing loaded and accessible firearms in a vehicle to deter criminal activity and keep the public safe.<sup>82</sup>

Here, the firearm was not “on or about” ██████████ person in his vehicle as was allowed under the Concealed Carry Act. Instead, ██████████ indicated it was in an unenclosed side panel within his vehicle in an area with lots of pedestrians, and was accessible to, at the very least, ██████████<sup>83</sup> Thus, although he was not “transporting” the weapon *per se*, the totality of the circumstances, provided probable cause to the officers search ██████████ vehicle based on the offense of unlawful use of weapons.

In fact, for these same safety reasons, exigent circumstances allowed for the retrieval of the firearm. See, *United States v. Webb*, 83 F.3d 913, 917 (7<sup>th</sup> Cir. 1996)(“[the officer] was justified in retrieving the gun from the trunk into which it had been thrown by the defendant ... because the keys were still in the trunk's lock, it was reasonable for [the officer] to believe that the

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<sup>81</sup> 720 ILCS 5/24-1(a)(4)

<sup>82</sup> *People v. Balark*, 2019 IL App (1st) 171626, P54.

<sup>83</sup> Att. 49, pg. 188; Att. 33, pg. 20.

gun posed a safety risk to the public. Left unattended, the gun easily could have been retrieved by anyone passing the car”).

As such, any search of [REDACTED] vehicle was justified. Therefore, based upon clear and convincing evidence, COPA **Exonerates** Officer Corona and Det. Smith of the allegations of searching the vehicle of [REDACTED] and seizing his firearm without justification.

**CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer Corona	<p>It is alleged that on or around August 13, 2019, at approximately 6:10 p.m., at or near 5151 N. Milwaukee, Chicago, IL, Officer Corona:</p> <ol style="list-style-type: none"> <li data-bbox="464 919 1133 991">1. Arrested [REDACTED] without justification.</li> <li data-bbox="464 1060 1133 1131">2. Searched the vehicle of [REDACTED] without justification.</li> <li data-bbox="464 1201 1133 1272">3. Seized a Glock .40 caliber handgun of [REDACTED] without justification.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>
Detective Smith	<p>It is alleged that on or around August 13, 2019, at approximately 6:10 p.m., at or near 5151 N. Milwaukee, Chicago, IL, Detective Smith:</p> <ol style="list-style-type: none"> <li data-bbox="464 1507 1133 1579">1. Arrested [REDACTED] without justification.</li> <li data-bbox="464 1648 1133 1719">2. Searched the vehicle of [REDACTED] without justification.</li> <li data-bbox="464 1789 1133 1860">3. Seized a Glock .40 caliber handgun of [REDACTED] without justification.</li> </ol>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>

Approved:



4/25/2023

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Matthew Haynam  
*Deputy Chief Administrator*

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Date