

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	April 11, 2020
Time of Incident:	6:49 pm
Location of Incident:	4300 W. Maypole Ave, Chicago, IL
Date of COPA Notification:	April 24, 2020,
Time of COPA Notification:	2:56 pm

On April 11, 2020, Officers Cunningham, Rosa, and Morado were patrolling a block known for violence, narcotics, and gun recoveries, when they observed ██████████ coming from the back of 4300 W. Maypole Ave., a boarded-up, vacant building specifically known for gun and narcotics recoveries. ██████████ walked through a vacant lot toward an unknown male Black while holding his waistband with a bulge in his pocket and the right side of his pants pockets sagging as if weighted down. Believing ██████████ was armed, Officers Cunningham, Rosa, and Morado stopped him to conduct a field interview, handcuffed him, and patted him down. Upon discovering a large cell phone in ██████████ pocket, they unhandcuffed ██████████ and let him go. ██████████ refused their offer of an Investigatory Stop Receipt (ISR) after the street stop ended. The named officers were not wearing a masks or face coverings during their interaction with ██████████ and

██████████ called COPA on April 24, 2020, and registered this complaint because he believed that he was racially profiled by the officers as they accused him of having a gun because his pants were sagging on the right side. ██████████ explained that his pants were sagging because of his cellular phone being heavy.

II. INVOLVED PARTIES

Involved Officer #1:	Joseph Cunningham, Star #21238, Emp. # ██████████ Date of Appointment: February 18, 2014, Detective, Unit 011/313, M, W
Involved Officer #2:	Arthur D. Rosa, Star #8350, Emp. # ██████████ Date of Appointment: October 17, 2011, PO, Unit 011, M, H
Involved Officer #3:	Francisco J. Morado, Star #3900, Emp. # ██████████ Date of Appointment: November 25, 2013, PO, Unit 011/189, M, H
Involved Individual #1:	██████████ M, B

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Joseph Cunningham	1. Stopped and detained [REDACTED] without justification. 2. Handcuffed [REDACTED] without justification. 3. Searched [REDACTED] without justification. 4. Racially profiled [REDACTED] 5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09. 6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] in violation of Special-Order S 04-09.	Exonerated Exonerated Unfounded Unfounded Not Sustained Not Sustained
Officer Arthur D. Rosa	1. Stopped and detained [REDACTED] without justification. 2. Handcuffed [REDACTED] without justification. 3. Searched [REDACTED] without justification. 4. Racially profiled [REDACTED] 5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09. 6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] in violation of Special-Order S 04-09.	Exonerated Exonerated Unfounded Unfounded Not Sustained Not Sustained
Officer Francisco J. Morado	1. Stopped and detained [REDACTED] without justification. 2. Handcuffed [REDACTED] without justification. 3. Searched [REDACTED] without justification.	Exonerated Exonerated Unfounded

4. Racially profiled [REDACTED]	Unfounded
5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09.	Not Sustained
6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] [REDACTED] in violation of Special-Order S 04-09.	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral.

Special Order

1. S04-13-09 – Investigatory Stop System – effective July 10, 2017, to present.
2. S04-09 – Department Response to the Coronavirus Disease 2019 (COVID-19) – Effective April 8, 2020 to 30 April 2020.

V. INVESTIGATION¹

a. Interviews

In a **statement to COPA**² on April 24, 2020, [REDACTED] stated that he was standing outside on Maypole talking to a friend, when three officers stopped and detained him. The officers handcuffed him, patted him down, and questioned him about his reason for being in the area. They told him his right side looked like it had a gun in it because it was sagging,³ and also told him that he should not be standing so close to another person because of Coronavirus.⁴ [REDACTED] related that only his jacket looked saggy because of his cell phone, but not his pants.⁵ [REDACTED] was released after his cell phone was discovered, but the officers refused to provide him with an ISR receipt for the stop, and they were not wearing a face covering or a mask. [REDACTED] believed the officers racially profiled him, although no racial slurs or comments were directed to him, because “Caucasians walk around” knowing they have Coronavirus trying to give it to African Americans and “kill them all.”⁶

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

² Att. 13 (Audio) and 43 (Transcribed).

³ Att. 43, pg. 25.

⁴ Att. 43, pg. 30.

⁵ Att. 43, pg. 26.

⁶ Att. 43, pg. 30.

In a **statement to COPA**⁷ on August 24, 2021, **PO Arthur Rosa** stated he was working for Area North Gang Enforcement with Officers Morado and Cunningham, and they were not assigned body worn cameras. Officer Rosa related that they were patrolling an area known for violence, drugs, and narcotics recoveries when he observed ██████ emerging in the dark from a gangway of a boarded-up, vacant property known as a “problem property”⁸ for narcotics and gun sales, with a bulge in his pants pocket weighing down his pants, which made Officer Rosa believe that ██████ was armed.⁹ ██████ approached another unknown black male loitering in the vacant lot next to the property, whom Officer Rosa believed might become a victim of gun violence.¹⁰ Further, Officer Rosa explained that at that time, they were expected to vigorously enforce the new Coronavirus orders, requiring officers to disperse people who were not standing more than six feet apart.¹¹

Officer Rosa and his partners stopped to conduct a field interview of ██████ believing they had reasonable suspicion based on the above reasons, at which time ██████ became loud, aggressive, and uncooperative: flailing his arms, swearing, accusing them of racial profiling, and looking like he “wanted to fight.”¹² Officer Rosa stated that for officer safety, one of them handcuffed ██████ and then Officer Rosa patted him down. The officers learned that the bulge in ██████ pants pocket was a large, heavy cell phone. The officers explained the reason for the stop,¹³ and ██████ was released and offered an investigatory stop receipt, which ██████ refused.¹⁴

Officer Rosa further stated that he did not believe he had a mask on during his interaction with ██████ since the Department did not have any available masks for their members due to the mask shortage at that time.¹⁵ He was not even sure the Special Order requiring masks or face coverings was in effect at the time.¹⁶

In a **statement to COPA**¹⁷ on August 24, 2021, **Officer Joseph Cunningham** stated he did not have an independent recollection of the incident, his actions or that of his partners, or of having an interaction with ██████. Officer Cunningham based his answers on the Investigatory Stop Report and his experience from working in the area. Officer Cunningham explained that he knew the area of Garfield Park very well since he has worked there for over six years, and it was one of the most violent areas in the world.¹⁸ He said the area is “poor, majority Black, and very violent,”¹⁹ known for selling narcotics, gangs, gun sales, and shootings. According to Officer Cunningham and the ISR, he along with Officers Rosa and Morado were patrolling the area when they observed ██████ exiting a vacant lot near Maypole with a suspicious bulge in

⁷ Att. 35.

⁸ Att. 46, pgs. 23, 43.

⁹ Att. 46, pgs. 10, 22.

¹⁰ Att. 46, pgs. 10, 15, 48.

¹¹ Att. 46, pgs. 7, 49.

¹² Att. 46, pgs. 24-25, 37, 51.

¹³ Att. 46, pgs. 16, 24, 35, 41.

¹⁴ Att. 46, pgs. 15, 29-31, 54.

¹⁵ Att. 46. Pgs. 33-34, 38-39.

¹⁶ Att. 46, pg. 54.

¹⁷ Att. 31.

¹⁸ Att. 44, pg. 14.

¹⁹ Att. 44, pg. 14.

██████████ right-side pants pocket. This led them to believe that ██████████ could be armed. They approached and stopped ██████████ for a field interview and patted him down but did not search his pockets. Officer Cunningham could not recall if he or his partners handcuffed ██████████ but according to the report ██████████ was yelling aggressively and being loud.

Officer Cunningham related that he and his partners had justification to stop, detain, handcuff, and pat down ██████████ for the reasons given on the ISR, and that they were not racial profiling ██████████ noting that they did not stop the other black male ██████████ had approached.²⁰ Officer Cunningham also stated that ██████████ either refused an investigative stop receipt or was so loud and belligerent, he did not hear when he was offered one.²¹ Officer Cunningham further related that ██████████ was violating the Covid-19 stay at home order in loitering in front of a vacant property. Regarding the mask allegation, Officer Cunningham explained that there was a national shortage of masks at that time, the Department had limited supplies, and he did not recall if he wore one or not.²²

In a **statement to COPA**²³ on September 16, 2021, **PO Francisco Morado** provided a similar account as Officer Cunningham that he did not have an independent recollection of the incident and based his answers from reading the Investigatory Stop Report, although he believed he may have been the driver and, therefore, would have had less interaction with ██████████ than his partners.²⁴ Officer Morado denied that either he or his partners on this incident racially profiled ██████████ explaining that they “don’t do that,” they “are professional.”²⁵ Officer Morado provided similar reasons as the other two officers in denying the allegations against him.

b. Documentary Evidence

██████████ **Investigatory Stop Report**²⁶ details that the officers observed an unknown male black loitering on the corner and then immediately observed ██████████ emerge from a vacant lot next to a building bordered up with plywood with his right jacket pocket having a bulge and weighted downward. ██████████ walked over to the Black male and began loitering. Knowing that the address was known for selling narcotics, for gun recoveries, ██████████ suspicious bulge and not complying with the Covid-19 stay at home order, the officers exited the squad car and detained ██████████ was handcuffed and patted down, which revealed a large cell phone as the bulge. ██████████ began to claim that the officers had no justification to stop him and that they were racist. The officers explained the reasonable suspicion for the stop, but ██████████ refused to acknowledge it, and refused a receipt for the stop.

c. Physical Evidence

²⁰ Att. 44, pg. 24.

²¹ Att. 44, pgs. 24-28.

²² Att. 44, pgs. 32-33.

²³ Att. 41.

²⁴ Att. 45, pgs. 9, 18.

²⁵ At. 45, pg. 16.

²⁶ Att. 8.

The **PODs**²⁷ in the area were obtained but they did not capture the stop. The Pods briefly captured when the officers arrived on the scene.

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; or
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence; or
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. *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 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. *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.

VII. ANALYSIS

COPA finds that allegation #1 – that Officers Cunningham, Morado and Rosa stopped and detained [REDACTED] without justification – is **Exonerated**. "An Investigatory Stop is the temporary detention and questioning of a person in the vicinity where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a criminal offense. The suspect may be detained only for the length of time necessary to confirm or dispel the suspicion of criminal activity. The temporary detention and questioning of a person for the purpose of enforcement of the Gang and Narcotics-Related Loitering Ordinances is an Investigatory Stop."²⁸

Here, the officers observed [REDACTED] exiting a vacant property known for narcotics and gun sales, in an area known for gangs, shootings and other violence. [REDACTED] had a bulge in his right-

²⁷ Att. 7 and 9.

²⁸ Att. 21; S04-13-09 II (A) Investigatory Stop System (Effective 10 July 2017 – to present).

side pants pocket leading experienced officers to believe that ██████ may have been armed. In addition, ██████ was in violation of the covid-19 stay at home order and was loitering within six feet of another male in the vacant lot next to this property. COPA finds that these facts support Reasonable Articulate Suspicion to briefly stop and detain ██████. Indeed, ██████ was detained only briefly until the officers completed their preliminary investigation which revealed the bulge was a large cellphone. Therefore, COPA finds by a clear and convincing evidence that the officers' investigatory stop of ██████ was justified. As such, allegation #1 is **Exonerated**.

COPA finds allegations #2 against Officers Cunningham, Morado and Rosa – that they handcuffed ██████ without justification – is **Exonerated**; and allegations #3 – that the officers searched ██████ without justification – to be **Unfounded**.

A police officer may perform a protective pat-down search where, after making a lawful stop, the officer has a reasonable articulable suspicion that he or another is in danger of attack because the defendant is armed and dangerous.²⁹ CPD defines a protective pat down as: “A limited search during an investigatory stop in which a sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area.”³⁰ CPD defines reasonable articulable suspicion as “an objective legal standard that is less than probable cause, but more than a hunch or general suspicion. Reasonable Articulate Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member’s training and experience.”³¹ Therefore, “[f]or a protective pat down, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area.”³² Further, if an officer who, during the pat down, “touches an object the sworn member reasonably believes is a weapon” he may to reach into that area of clothing and retrieve the object.³³

Additionally, officers may use handcuffs during an investigatory stop to protect law enforcement officers, the public, or the suspect from the undue risk of harm.³⁴

Here, the officers explained that because ██████ was loud and uncooperative, they handcuffed him and patted him down for officer safety in case he was armed as they suspected. ██████ claimed that he was searched. Officer Cunningham indicated that ██████ was not searched, as did the ISR. Both ██████ and the officers indicated that ██████ was quickly released once it was learned that the bulge in his pocket was a cellular phone. As such, COPA finds by clear and convincing evidence that the officers' use of handcuffs was justified; and that there is not a preponderance of the evidence to establish that he was searched. Thus, allegations #2 are **Exonerated**, and allegation #3 are not sustained.

²⁹ People v. Sorenson, 196 Ill. 2d 425, 432 (2001).

³⁰ Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

³¹ Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

³² Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

³³ Att. 26, S04-13-09(II)(B)

³⁴ People v. Fields, 2014 IL App (1st) 130209, P27.

COPA finds allegation #4 against Officers Cunningham, Morado, and Rosa – that they racially profiled ██████ – is **Unfounded**. There is no evidence, facts, or witnesses to indicate that ██████ was racially profiled in an area that is considered to be a majority Black community. As stated above, the stop was justified by Reasonable Articulate Suspicion. There were no verbal racial comments made toward ██████ that would lead him or anyone else believe that the officers were racially profiling him. The officers quickly conducted their preliminary investigation and released ██████ upon learning that he did not have a weapon. Further, it should be noted that the officers did not stop the other Black male with whom ██████ was loitering. ██████ was the one emerged from the boarded-up, vacant home known drugs and gun sales with the suspicious bulge in his pocket. As such, COPA finds by clear and convincing evidence, that ██████ was not racially profiled in this instance, and Allegation #4 against the officers is **Unfounded**.

COPA finds allegation #5 against Officers Cunningham, Morado, and Rosa – that they failed to provide ██████ with an ISR receipt, in violation of Special Order 04-13-09 – is **Not Sustained**.

Upon the completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number³⁵

Here, ██████ indicated that he was not offered an ISR receipt even after he requested one. However, the officers stated that they offered the ISR receipt to ██████ who was loud, belligerent, and aggressive toward them after ██████ was released from the handcuffs. The officers documented in the ISR report that they were unable to provide ██████ an ISR receipt due to his behavior and demeanor. Further, the officers related that ██████ walked away and may have not heard them when an ISR receipt was offered as he was upset and accusing them of racially profiling him. Thus, there is not a preponderance of the evidence to establish that ██████ was not offered a ISR receipt and allegation #5 against the officers is **Not Sustained**.

COPA finds allegation #6 against Officers Cunningham, Morado, and Rosa – that they failed to wear a surgical mask or face covering during their involvement with ██████ in violation of Special-Order 04-09 – is **Not Sustained**.

CPD Special Order S04-09 – Department Response to the Coronavirus Disease 2019 (COVID-19), which became effective 3 days before this event, states that Department members will wear a surgical mask, or similar face covering, *at all times* while on duty for a period of fourteen days after their last exposure to an individual with COVID-19.³⁶ Department Daily Bulletins and other Administrative messages,³⁷ also released around the same time as this event, instructed that the City of Chicago requires all Department members, sworn or civilians, to wear surgical mask or cloth face coverings in any area where maintaining six feet or social distancing is difficult or not

³⁵ Att. 26, S04-13-09(II)(C) Investigatory Stop System (Effective July 10, 2017 to present).

³⁶ Att.47, 4, D (c), and 6.

³⁷ Atts. 48, 49

possible. Face coverings must be worn in any common spaces or high traffic areas. Further face coverings may not be removed while interacting with members of the public.³⁸

However, when asked about their compliance with these directives, the officers discussed the shortage of masks and face coverings the Nation and Department were dealing with at the time. Therefore, there is not a preponderance of the evidence that the officers could have complied with the directives during this event and so COPA finds that allegation #6 against the officers is **Not Sustained**.

VIII. CONCLUSION

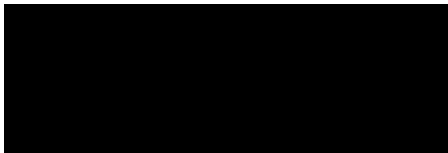
Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer Joseph Cunningham	1. Stopped and detained [REDACTED] without justification.	Exonerated
	2. Handcuffed [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] without justification.	Unfounded
	4. Racially profiled [REDACTED]	Unfounded
	5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09; and	Not Sustained
	6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] in violation of Special-Order S 04-09.	Not Sustained
Officer Arthur D. Rosa	1. Stopped and detained [REDACTED] without justification.	Exonerated
	2. Handcuffed [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] without justification.	Unfounded
	4. Racially profiled [REDACTED]	Unfounded
	5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09; and	Not Sustained
	6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] in violation of Special-Order S 04-09.	Not Sustained

³⁸ Att. 49.

Officer Francisco J. Morado	1. Stopped and detained [REDACTED] without justification.	Exonerated
	2. Handcuffed [REDACTED] without justification.	Exonerated
	3. Searched [REDACTED] without justification.	Unfounded
	4. Racially profiled [REDACTED]	Unfounded
	5. Failed to provide [REDACTED] with an ISR receipt, in violation of Special Order 04-13-09; and	Not Sustained
	6. Failed to wear a surgical mask or face covering during your involvement with [REDACTED] in violation of Special-Order S 04-09.	Not Sustained

Approved:



5/25/2023

 Matthew Haynam
 Deputy Chief Administrator – Chief Investigator

 Date