



Log # 2023-0000496

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On February 3, 2023, the Civilian Office of Police Accountability (COPA) received a website complaint from [REDACTED] reporting alleged misconduct by a member of the Chicago Police Department (CPD). [REDACTED] alleged that on January 20, 2023, Officer Victor R. Lopez and Nikolas M. Capello, did not allow himself and a friend to leave an alley, in which they were sitting in a running vehicle, without writing a ticket and that the officer's tone of voice was unprofessional. Upon review of the evidence, COPA served an additional allegation that Officer Lopez was Inattentive to Duty when he issued a traffic citation to [REDACTED]. Following its investigation, COPA sustained the allegations against Officer Lopez in this matter.

### II. SUMMARY OF EVIDENCE<sup>2</sup>

[REDACTED] related that on January 20, 2023, at approximately 12:10 a.m. he was riding in a vehicle with his friend [REDACTED] was dropping [REDACTED] off in the alley behind [REDACTED] residence and parked the vehicle momentarily.<sup>3</sup> [REDACTED] related that the vehicle was running, and they were sitting for approximately five minutes. As they were saying good-bye to each other a CPD vehicle pulled up in front of them. Officer Lopez approached the vehicle's driver side and Officer Capello went to the passenger side.<sup>4</sup>

Officer Lopez told [REDACTED] who was seated in the driver's seat, that he was illegally parked in the alley and that he had to move his vehicle. [REDACTED] told Officer Lopez that his friend was dropping him off. Officer Lopez told [REDACTED] to leave several times; [REDACTED] did immediately move the vehicle. Both officers told [REDACTED] and [REDACTED] that they needed to move the vehicle because they were in violation of a parking in an alley ordinance. Officer Lopez asked for [REDACTED] driver's license, which he provided. Officer Lopez then asked for proof of insurance. [REDACTED] who was the owner of the vehicle and seated in the passenger seat, found the proof of insurance on his cell phone.<sup>5</sup> Officer Lopez went to his vehicle and returned a short time later with a traffic citation for parking in an alley.<sup>6</sup>

---

<sup>1</sup> Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

<sup>2</sup> The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including police reports, BWC and officer and civilian interviews.

<sup>3</sup> Att. 6.

<sup>4</sup> Att. 5.

<sup>5</sup> Att. 4 at 3:12

<sup>6</sup> Att. 2.

### III. ALLEGATIONS

#### A. Officer Victor R. Lopez:

It is alleged by ██████████ that on or about January 20, 2023, at approximately 12:10 a.m., at or near 4335 North Ashland Avenue, Chicago, IL 60613 that PO Victor R. Lopez committed misconduct through the following acts or omissions, by

(1) Detaining ██████████ without justification;

- Sustained, Violation of Rules 1, 2, 3 and 5

(2) Being inattentive to duty by improperly issuing to ██████████ a traffic citation for parking in an alley.

- Sustained, Violation of Rules 1, 2, 3 and 5

### IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any evidence that caused COPA to question the credibility of any of the individuals (sworn or unsworn) who provided statements.

### V. ANALYSIS<sup>7</sup>

Both officers' BWC footage depicts that the vehicle in which ██████████ and ██████████ were rising was stopped in an alley when the officers approached them. In his statement to COPA, ██████████ related that he was being dropped off. Neither ██████████ nor ██████████ were unloading materials from the vehicle. Officer Lopez provided ██████████ the opportunity to move the vehicle. ██████████ disputed the violation with Officer Lopez and Lopez then issued a ██████████ with a citation.

When a traffic stop is based upon a mistake of law, it is unconstitutional.<sup>8</sup>

In this case, the citation was issued for a violation of the following provision of the municipal code of Chicago:

9-64-130 Parking in alleys.

(a) It shall be unlawful to park any vehicle in any alley for a period of time longer than is necessary for the expeditious loading, unloading, pick-up or delivery of materials from such vehicle.

---

<sup>7</sup> For a definition of COPA's findings and standards of proof, see Appendix B.

<sup>8</sup> *People v. Mott*, 389 Ill.App.3d at 543, 906 N.E.2d at 164. See also *People v. Haywood*, 407 Ill.App.3d 540 (2011).

- (b) It shall be unlawful to park a vehicle in an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic or to block the entrance to any abutting property.

The municipal code also provides the following definitions:

9-4-010 Definitions.

"Alley" means a public way intended to give access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

"Parking (to park)" means the standing of an unoccupied vehicle otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.<sup>9</sup>

Although it will be for the court to determine whether or not a violation occurred (using the “beyond a reasonable doubt” standard) and COPA has no desire to usurp the court’s function in that regard, a combination of Rule 1 and the applicable legal test as articulated by the Supreme Court’s interpretation of the Constitution obliges COPA to opine whether, on a balance of probabilities, there was any reasonable articulable suspicion of a violation of law so as to render the stop and detention lawful. Although 9-64-130 appears potentially applicable, given that the definition of “parking” in the municipal code exclusively refers to an *unoccupied* vehicle, COPA concludes that in the circumstances there could be no lawful stop of under this provision, as the vehicle was occupied at all relevant times.

Similarly, state law prohibits “stop[ing], stand[ing] or park[ing] a vehicle...on the roadway side of any vehicle stopped or parked at the edge or curb of a street.”<sup>10</sup>

The Illinois Vehicle Code contains the following definitions:

625 ILCS 5/1-102

Alley. A public way within a block, generally giving access to the rear of lots or buildings and not used for general traffic circulation.

625 ILCS 5/1-126

Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property.

---

<sup>9</sup> The definition under state law is much broader: 625 ILCS 5/1-156 “Park or Parking. Means the standing of a vehicle, whether occupied or not, otherwise than when temporarily and actually engaged in loading or unloading merchandise or passengers.”

<sup>10</sup> 625 ILCS 5/11-1303 (a)1.

625 ILCS 5/1-179

Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

The definition of the parking offence under state law refers to a "roadway" ("ordinarily used for vehicular travel"). "Alley" ("not used for general traffic circulation") appears to be a separately defined and distinct item outside the scope of the defined offense. Similar to COPA's analysis of the Chicago municipal code, above, COPA concludes that in the circumstances there could be no lawful stop under this provision of state law.

**VI. DISCIPLINARY RECOMMENDATIONS**

It appears that Officer Lopez proceeded in good faith throughout; it simply turns out he was mistaken regarding the applicable law. As a general matter, although the applicable legal test requires a retrospective analysis of the applicable law that may be challenging to apply correctly field conditions, it is however the officer's duty to do so and the nature of the misconduct alleged by the complainant and sustained by COPA's investigation (a denial of Constitutionally-protected rights) is significant.

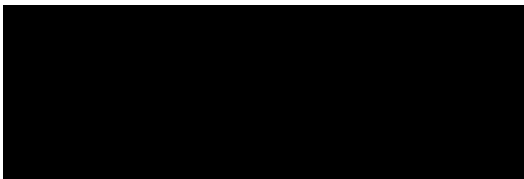
**A. Officer Victor R. Lopez**

**1. Complimentary and Disciplinary History**

The officer has received 107 awards, to include three life saving awards and four problem solving awards. The officer's five-year sustained history report as received from CPD has no entries. His SPAR history report similarly lists no entries.

**2. Recommended Discipline**

Given COPA's findings of misconduct, the complimentary and disciplinary history of the officer, as well as the applicable aggravating and mitigating factors (in this case: victim is a member of the public), COPA recommends that Officer Lopez receive a reprimand.



\_\_\_\_\_  
*Matthew Haynam*  
*Deputy Chief Administrator*

6/21/2024

\_\_\_\_\_  
Date

Appendix ACase Details

Date/Time/Location of Incident:	January 20, 2023, at 12:10 a.m., at or near 4335 North Ashland Avenue (alley), Chicago, IL 60613
Date/Time of COPA Notification:	February 3, 2023, at 4:27 p.m.
Involved Officer #1:	Officer Victor R. Lopez, Star #16182, Employee ID# [REDACTED] Date of Appointment: February 23, 2015, Unit of Assignment: 019, Male, Hispanic
Involved Officer #2	Officer Nickolas M. Capello, Star #9030, Employee ID# [REDACTED] Date of Appointment: June 16, 2017, Unit of Assignment: 019, Male, API
Involved Individual #1	[REDACTED] Male, Middle Eastern

Applicable Rules

- Rule 1:** Violation of any law or ordinance.
- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.

Applicable Policies and Laws

- US Constitution, Amendment IV
- 725 ILCS 5/108-1.01, Search during temporary questioning
- 725 ILCS 5/107-14, Temporary questioning without arrest
- 625 ILCS 5/11-203, Obedience to police officers
- 625 ILCS 5/11-1303 (a)1, Stopping, standing or parking prohibited in specified places.
- Chicago Municipal Code, sec. 9-40-030, Obedience to police, traffic control aide and fire department orders
- Chicago Municipal Code, sec. 9-64-130 Parking in alleys

- G03-02, De-Escalation, Response to Resistance, and Use of Force (current: June 28, 2023, in force as of the date of the incident: April 15, 2021)
- SO4-13-9, Investigatory Stop System (July 10, 2017)

## **Appendix B**

### **Definition of COPA’s Findings and Standards of Proof**

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 a proposition is proved.<sup>11</sup> For example, 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. 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>12</sup>

---

<sup>11</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 is found to be more probably true than not).

<sup>12</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> ed. 2000)).

**Appendix C****Transparency and Publication Categories**

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation