

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 14, 2018
Time of Incident:	10:30 AM
Location of Incident:	[REDACTED]
Date of COPA Notification:	September 14, 2018
Time of COPA Notification:	11:15 AM

On September 14, 2018, at approximately 10:30 a.m., Chicago Police Officers from Unit [REDACTED] Gang Enforcement Area [REDACTED] executed a search warrant at the location of [REDACTED] for [REDACTED] (“[REDACTED]”). The Civilian Office of Police Accountability (COPA) alleges Officer [REDACTED] # [REDACTED] (“[REDACTED]”) improperly searched the garage. COPA conducted a thorough investigation of the allegation and recommends it be Exonerated.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED], Star # [REDACTED], Employee ID# [REDACTED], DOA: [REDACTED] 2000, Rank: Police Officer, Unit of Assignment: [REDACTED] Gang Enforcement Area [REDACTED], DOB: [REDACTED] 74, Male, White.
Involved Individual #1:	[REDACTED], DOB: [REDACTED] 64, Female, Black.

III. ALLEGATIONS

Officer	Allegation	Finding/Recommendation
Officer [REDACTED]	1. It is alleged by COPA Investigator [REDACTED] that on September 14, 2018, at approximately 1030 hrs., you improperly searched the garage at the location of [REDACTED]	Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Federal Laws

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. INVESTIGATION ¹

a. Interviews

COPA conducted [REDACTED], (" [REDACTED]"), audio statement on September 18, 2018.² [REDACTED] stated that on September 14, 2018, she heard banging on her residence door while she was showering. [REDACTED] stated that when she exited the shower she saw approximately 12 police officers in her home and she began to scream. [REDACTED] stated that the officers made her sit in the living room and they showed her a search warrant. [REDACTED] stated that she told the officers that [REDACTED] did not live in her home. [REDACTED] stated that the officers told her that if she did not tell them information about [REDACTED], they would continue to search her home. [REDACTED] stated that she only knows [REDACTED] from the neighborhood. [REDACTED] stated that two years ago she used to have a candy store and he used to be a customer. [REDACTED] stated that [REDACTED] was once arrested in her yard and she went to court for him as a witness. [REDACTED] further stated that [REDACTED] does not live on her block but is always in front of her home. [REDACTED] stated that the officers asked her to call [REDACTED] to the home.

[REDACTED] stated that the officers searched her home and her garage. [REDACTED] stated that at one point the Sergeant informed her that the officers found a gun, heroin, and cocaine. [REDACTED] stated that she was never shown the items the officers claimed to have found. [REDACTED] stated one officer took down her children's names and called the Department of Children and Family Services ("DCFS"). [REDACTED] stated the officers tore her garage to pieces. [REDACTED] stated the garage is detached from her home. [REDACTED] stated the garage is usually locked but there are times when the door has been left open. [REDACTED] stated that she and her husband use their garage to store their car and other personal items. [REDACTED] stated that only she, her husband, and landlord have access to the garage. [REDACTED] stated the whole event took about one hour.

COPA conducted witness Officer [REDACTED]'s # [REDACTED] ("Officer [REDACTED]"), audio statement on April 22, 2019.³ Officer [REDACTED] stated that on September 14, 2018, at approximately 10:30 a.m.

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 Attachment 9

³ Attachment 29

he was the affiant and breaching officer on the search warrant executed at [REDACTED]. Officer [REDACTED] stated that the event was not captured on body worn camera because his unit does not have cameras. Officer [REDACTED] stated that the search warrant was obtained through information provided by an informant. Officer [REDACTED] stated that the informant related that narcotics were being sold at [REDACTED]. Officer [REDACTED] stated that the target of the warrant was [REDACTED].

Officer [REDACTED] stated that he believed that [REDACTED] would be present at the location based on information provided by the informant. Officer [REDACTED] stated the scope of the search warrant covered the residence at [REDACTED]. Officer [REDACTED] stated that the search warrant did not extend to the detached garage. Officer [REDACTED] stated that he did not include the garage in the search warrant because the informant stated narcotics were sold out of the residence and did not provide information about narcotics in the garage. Officer [REDACTED] stated that prior to executing the search warrant, he conducted a planning session which Officer [REDACTED] attended. Officer [REDACTED] stated that Officer [REDACTED] was made aware of the purpose and scope of the search warrant. Officer [REDACTED] stated that neither [REDACTED]'s criminal history nor hazards were discussed at the planning session. Officer [REDACTED] stated that Officers [REDACTED] # [REDACTED] ("Officer [REDACTED]") and [REDACTED]'s # [REDACTED] ("Officer [REDACTED]") assignment was to stay near the alley of [REDACTED]. Officer [REDACTED] stated that prior to executing the warrant at the residence, Officers [REDACTED] and [REDACTED] observed several individuals notifying the neighborhood of police presence.

Officer [REDACTED] stated that he and Officer [REDACTED] were made aware by Officers [REDACTED] and [REDACTED] that while traveling from Huron to Ohio in the east alley of [REDACTED], they observed someone that fit the description of [REDACTED] emerge from the backyard and walk southbound. Officer [REDACTED] stated that once arriving at [REDACTED], he knocked and announced and once there was no answer, a pry bar was used to open the front security gate. Officer [REDACTED] stated that once at the front door, he knocked and announced again, and after no answer, he breached the front door. Officer [REDACTED] stated that once in the residence, he observed an older female and a child in the rear bathroom. Officer [REDACTED] stated that Officers [REDACTED] and [REDACTED] stayed near the alley of the home. Officer [REDACTED] stated that Officer [REDACTED] originally entered the home with him and at some point, went outside. Officer [REDACTED] stated that once the residence was secure, he went into the yard area where he was made aware by Officer [REDACTED] that he saw the garage door ajar and entered for officer safety to make sure no one else was inside. Officer [REDACTED] stated that Officer [REDACTED] did not tell him that he saw [REDACTED] inside of the garage. Officer [REDACTED] stated that he did not recall Officer [REDACTED] relating how far open the garage door was. Officer [REDACTED] did not recall any other officer going into the garage. Officer [REDACTED] stated that Officer [REDACTED] found a handgun and crack-cocaine in plain view in a drawer, heroin in a jacket pocket, and ammunition in between the ceiling and the wall. Officer [REDACTED] stated that other than Officer [REDACTED] informing him of the items he found and where he found them, he did not speak to Officer [REDACTED] on another occasion about the incident. Officer [REDACTED] stated that he authored the Original [REDACTED] Incident Report RD # [REDACTED] and it was written based on what he saw and was told on scene.

COPA conducted accused Officer [REDACTED]'s # [REDACTED] ("Officer [REDACTED]"), audio statement on May 1, 2019.⁴ Officer [REDACTED] stated that on September 14, 2018, he was on duty serving as an entry officer executing a search warrant at the location of [REDACTED]. Officer [REDACTED] stated that prior to executing the search warrant, he attended a planning session

⁴ Attachment 38

provided by Officer [REDACTED]. Officer [REDACTED] stated that during the planning session, a picture of [REDACTED] was presented as well as the route to be taken. Officer [REDACTED] stated that he did not recall the criminal history of the target or potential hazards being discussed at the planning session. Officer [REDACTED] stated that he was made aware that the scope of the search warrant covered the residence of [REDACTED]. Officer [REDACTED] stated that while he did not specifically recall the method, entry was made into the residence. Officer [REDACTED] stated that upon entering the residence, Officers [REDACTED] and [REDACTED], made him aware through police car radio that they observed a male black matching the description of [REDACTED] exiting the yard area of [REDACTED].

Officer [REDACTED] stated that once inside of the residence, a female black and three children were detained. Officer [REDACTED] stated that once the residents were detained he continued through the residence and exited through the rear door. Officer [REDACTED] stated that once in the yard, he observed the garage side door fully open. Officer [REDACTED] stated that he then entered the garage for officer safety to make sure [REDACTED] was not inside. Officer [REDACTED] stated that he did not recall whether there were any other officers in the area that saw him go into the garage. Officer [REDACTED] stated that once inside, he concluded that there were no occupants but saw an open dresser drawer. Officer [REDACTED] stated that inside of the drawer he observed in plain view a handgun and crack-cocaine. Officer [REDACTED] stated that he made the gun safe and notified inventory Officer [REDACTED] # [REDACTED]. Officer [REDACTED] stated he then observed a plastic bag hanging out of a jacket that was hanging from the dresser drawer. Officer [REDACTED] stated that in his experience as a narcotics officer, that kind of plastic bag is used to package narcotics. Officer [REDACTED] stated that when he removed the plastic bag he recovered heroin. Officer [REDACTED] stated that as he was illuminating the garage with his flashlight, he observed a box of ammunition between the ceiling and the frame of the garage. Officer [REDACTED] stated that he did not believe he searched anywhere else within the garage. Officer [REDACTED] stated that the items were eventually recovered by Officer [REDACTED]. Officer [REDACTED] stated that he spoke to Officers [REDACTED] and [REDACTED] on scene about his actions and discoveries in the garage. Officer [REDACTED] stated that Officers [REDACTED] and [REDACTED] remained in the alley of the residence while he was inside of the garage. Officer [REDACTED] stated that he now assumes that the male black who exited the yard, as described by Officers [REDACTED] and [REDACTED], entered the garage and placed the items inside. Officer [REDACTED] further stated that upon seeing the garage door wide open, he assumed the male black was inside.

b. Documentary Evidence

Search Warrant [REDACTED] indicates that there is sufficient probable cause to search [REDACTED] and the premises at [REDACTED] and seize heroin, any paraphernalia, any money, any records detailing illegal drug transactions and any documents or evidence showing proof of residency which have been used in the commission of, or which constitute evidence of the offense of possession of a controlled substance under Illinois law 720 ILCS 570/402(C).

Complaint for Search Warrant [REDACTED] indicates that on September 13, 2018, Officer [REDACTED] had a conversation with a [REDACTED] who related to Officer [REDACTED] of the heroin sales at [REDACTED]. [REDACTED]⁵ related that [REDACTED] had gone to [REDACTED] for the purpose of buying [REDACTED] from [REDACTED]. [REDACTED] has been buying heroin daily for the past 2 weeks from [REDACTED].

⁵ Attachment 34

at [REDACTED]. [REDACTED] related that on September 13, 2018, [REDACTED] walked up the front of the residence and knocked on the front window. [REDACTED] waited a few seconds and [REDACTED] answered the door letting [REDACTED] into the residence. [REDACTED] sat on a couch in the living room. [REDACTED] related that two older females were in the residence. [REDACTED] related that [REDACTED] asked [REDACTED] how much heroin [REDACTED] wanted to purchase, once said conversation was done, [REDACTED] walked into the bedroom adjacent to the living room area and returned with a clear bag containing heroin. After purchasing the heroin, [REDACTED] consumed it. On September 13, 2018, Officer [REDACTED] went with [REDACTED] to confirm the residence at [REDACTED]. [REDACTED] was the location where [REDACTED] met [REDACTED] to buy heroin. Officer [REDACTED] also searched [REDACTED]'s name and found that he was on electronic monitoring. Based on a finding of probable cause by a judge, Officer [REDACTED] was issued a search warrant to search for [REDACTED] at the location of [REDACTED]. and seize heroin, paraphernalia, money, any records detaining illegal drug transaction, and any documents or evidence showing proof of residency.

The **Original Case Incident Report RD # [REDACTED]** indicates that upon arrival to the search warrant location of [REDACTED] several young black males were yelling to notify the neighborhood of police presence.⁶ Officer [REDACTED] # [REDACTED] observed a male matching the description of [REDACTED] walk with haste from [REDACTED] down the alley. Officers stayed in the rear of [REDACTED] for officer safety while breaching officers entered the front door. Inside the residence, entry officers met with [REDACTED] and presented her with the search warrant. Officer [REDACTED] observed the garage door ajar, and for officer safety went inside. Officer [REDACTED] observed in plain view in an open drawer a black semi-automatic handgun, Smith and Wesson. In the same drawer, Officer [REDACTED] found a blue zip lock bag containing 27 blue and yellow tinted zip lock bags, each containing a white rock like substance, suspect crack-cocaine. Officer [REDACTED] also observed a jacket hanging over said drawer and within said jacket pocket was a clear knotted bag containing 12 individual zip lock bags, each containing a tan power, suspect brown/tar heroin. Officer [REDACTED] in between the ceiling and the wall recovered a clear plastic container containing 2 live 38 rounds and 1 live 45 cal. round. The recovered handgun was found to have been stolen during a theft incident on March 28, 2017.

The **Arrest Report RD # [REDACTED]** indicates [REDACTED] was arrested on September 26, 2018 based on the items found at [REDACTED] on September 14, 2018.⁷ The arresting officer observed [REDACTED] near the location of [REDACTED] and placed him into custody. On October 25, 2018, the case against [REDACTED] was dismissed after a finding of no probable cause.⁸

The **Chicago Police Department Search Warrant Photographs** depict the inside of the residence at [REDACTED]. There are photograph of the handgun, suspect narcotics, and ammunition found in the garage.⁹

Photographs provided by [REDACTED] depict the inside of her residence and the garage.¹⁰

⁶ Attachment 10

⁷ Attachment 14

⁸ Attachment 43

⁹ Attachment 13

¹⁰ Attachment 4

VI. ANALYSIS

a. Legal Standard

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

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

b. Officer Nowak Properly Searched the Detached Garage.

It is alleged that Officer [REDACTED] improperly searched the garage at the location of [REDACTED] [REDACTED]. After analyzing the evidence, COPA determined by clear and convincing evidence that Officer [REDACTED] searched the garage, but his actions were lawful and proper.

The Fourth Amendment to the United States Constitution provides the people are to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures without a search warrant.¹¹ A judge may issue a search warrant upon the written complaint of any person, under oath, which states facts sufficient to show probable cause and with particularity describes the place, person or both to be searched and also particularly describes the things to be seized.¹² A search warrant is sufficiently specific if it enables the police officer executing the

¹¹ U.S Const. amend. IV.

¹² 725 ILCS 5/108-3

warrant, with reasonable effort, to identify the place to be searched.¹³ The warrant must only identify the place intended to be searched to the exclusion of all others.¹⁴ For search warrants targeting a home, the point of “particularly describing the place to be searched,” U.S. Const. Amend. 4, is to limit the search to a “single living unit (the residence of one person or family).”¹⁵

In this case, Officer [REDACTED], the affiant of the search warrant, presented the information relayed to him by an informant to a judge who found probable cause for the search warrant. The scope of the search warrant covered the residence at [REDACTED]. Officer [REDACTED] stated that he did not include the detached garage in the search warrant because based on the information provided by the informant, there was no reason to believe that narcotics were in the garage. Prior to the execution of the search warrant, Officer [REDACTED] was made aware of the scope and target of the search warrant. Once arriving at the location, Officer [REDACTED] was made aware by Officers [REDACTED] and [REDACTED] that a male matching [REDACTED]'s description was observed exiting the lawn of the residence. Officer [REDACTED], after assisting in make the residence safe, proceeded to the rear of the residence where he observed the garage side door wide open. Believing that [REDACTED] was inside of the garage, based on the information previously provided by Officers [REDACTED] and [REDACTED], Officer [REDACTED] continued inside. Once inside of the garage, Officer [REDACTED], in plain view, saw a dresser drawer open and inside of the drawer observed a handgun and cocaine. Officer [REDACTED] also recovered heroin and ammunition.

COPA finds that the search warrant authorized a search of the detached garage. Although Officer [REDACTED] specifically stated the he only intended the search warrant to cover the single-family residence located at [REDACTED] and specifically explained the scope of the search warrant to the other officers executing the warrant, Officer [REDACTED]'s subjective understanding of the warrant is not controlling. The inquiry under the Fourth Amendment is objective reasonableness.

The search warranted authorized a search of “the premises: [REDACTED]. A Single-Family Residence, Chicago, Illinois, Cook County 60624. Under Illinois law, generally a warrant that authorizes a search of “premises” at a specific address allows the search of detached garages. *See People v. Valle*, 2015 IL App (2d) 131319 ¶ 24. In the instant case, the detached was clearly part of the curtilage¹⁶ of the residence located at [REDACTED]. Therefore, the search warrant authorized Officer [REDACTED] to search the garage and Officer [REDACTED]'s actions were objectively reasonable based on the language of the search warrant.¹⁷

Alternatively, even assuming *arguendo* the search warrant did not cover the detached garage, Officer [REDACTED]'s actions were justified by exigent circumstances and the plain view

¹³ *People v. Edwards*, 342 N.E.2d 800,802 (1st Dist. 1976).

¹⁴ *People v. Watson*, 186 N.E.2d 326, 327 (1962).

¹⁵ *United States v. Hinton*, 219 F.2d 324, 326 (7th Cir. 1955).

¹⁶ Curtilage is “the land immediately surrounding and associated with the home, has been considered part of the home itself for Fourth Amendment purposes.” *Valle*, 205 IL App (2d) ¶ 14. The detached garage is located in close proximity to the single-family residence located at [REDACTED] and is directly and intimately connected with the residence. *Id.* at 19.

¹⁷ It appears that Officer [REDACTED] may have also believed the search warrant did not encompass the detached garage based on Officer [REDACTED]'s explanation of the scope of the warrant. However, Officer [REDACTED]'s subjective understanding of the scope of the search warrant is not controlling.

doctrine as warrantless entry may be legal when there is compelling need for official action and no time to secure a warrant (*i.e.* exigent circumstances). “The cornerstone of an exigency analysis is whether the police officers acted reasonably.” *People v. Wimbley*, 314 Ill. App. 3d 18, 24 (1st 2000).

In the instant case, Officer [REDACTED] credibly stated he entered the detached garage he observed the door to the garage ajar after other officers had observed a male black matching the description of [REDACTED] exiting the yard area of [REDACTED]. The need to ensure officer safety under circumstances that were tense and uncertain justified Officer [REDACTED]’s entry into the garage to perform a protective sweep.

Because Officer [REDACTED] was lawfully inside the detached garage he could lawfully seize any item that he had probable cause to believe was contraband under the plain view doctrine.¹⁸ Officer [REDACTED] credibly stated that items he seized were plainly visible and readily apparent as contraband based on his training and experience as a narcotics officer.¹⁹

For the aforementioned reasons, COPA determined that Officer [REDACTED] lawfully searched the garage. Therefore, the finding is Exonerated.

VII. CONCLUSION

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

Officer	Allegation	Finding/Recommendation
Officer [REDACTED]	1. It is alleged by COPA Investigator [REDACTED] that on September 14, 2018, at approximately 1030 hrs., you improperly searched the garage at the location of [REDACTED]	Exonerated

[REDACTED]

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date 6-19-19

¹⁸ “The requirements of the plain view doctrine are: (1) the officer is lawfully in a position from which he can view the object; (2) the officer has a lawful right of access to the object; and (3) the incriminating character of the object is immediately apparent. *People v. Humphrey*, 361 Ill. App. 3d 947, 950 (2d Dist. 2005).

¹⁹ There is no evidence Officer [REDACTED] otherwise searched other areas of the garage.

Appendix A

Assigned Investigative Staff

Squad#:	[REDACTED]
Investigator:	[REDACTED]
Supervising Investigator:	[REDACTED]
Deputy Chief Administrator:	[REDACTED]

