

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 9, 2014
Time of Incident:	Approximately 8:45 pm
Location of Incident:	██████████
Date of COPA Notification:	December 11, 2017
Time of COPA Notification:	12:43 pm

This investigation stems from the execution of a search warrant at ██████████. A lawsuit brought by the Complainant settled for \$225,000, after the Court granted the Complainant’s Motion for Summary Judgment finding that Complainant’s arrest “was unlawful as a matter of law.”¹ COPA exercised its discretion to open a new investigation of alleged police misconduct pursuant to Chapter 2-78 of the Municipal Code of Chicago.² While two lawsuits were filed, COPA is only investigating the allegations made by the Complainant because he was deposed, therefore satisfying the requirement that allegations of misconduct be based on a sworn affidavit.

The Complainant alleged multiple causes of action in his lawsuit and COPA focuses on one allegation, that the Complainant was arrested without justification. The allegation is brought against Sgt. ██████████ because he ordered the Complainant’s arrest. The allegation of unlawful arrest against Sgt. ██████████ is sustained.

II. INVOLVED PARTIES

Involved Officer #1:	██████████ Star # ████████ / Employee # ████████ Date of Appointment: ██████████ 1991 Sergeant / ████████ District DOB: ██████████ 1970 Male / White
Involved Individual #1:	██████████ Male / Black

¹ Att. 17, 46. While the decision of a court in legal proceedings is not binding on COPA, COPA finds it appropriate to partially rely on the *legal* conclusions of a federal judge who interpreted the facts in the light most favorable to the city and the police officers.

² See MCC 2-78-120(h) (stating that COPA may review lawsuits that were settled and may open or reopen investigations based on those lawsuits).

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Sgt. [REDACTED]	It is alleged that, on or about March 9, 2014, at approximately 9 pm, at or near [REDACTED] Sergeant [REDACTED] committed misconduct by ordering the arrest of [REDACTED] without justification, in violation of Rule 6.	SUSTAINED / 10-day suspension and re-training

IV. APPLICABLE RULES AND LAWS

Rules – The following acts are prohibited:

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

General Orders

1. G06-01: Processing Persons Under Department Control
2. G04-01: Preliminary Investigations

Federal Laws

1. Fourth Amendment to the United States Constitution

State Laws

1. Article I, Section 6 of the Constitution of the State of Illinois

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V. INVESTIGATION³

a. Interviews

Mr. ██████ sat down for a deposition on October 14, 2015. At his deposition, Mr. ██████ stated that he was sitting in the lower floor of the home when officers entered. He stated that he was detained in the home during the execution of the warrant, and that he was taken to a police station and kept there for over 12 hours.

Officer ██████ was deposed by Mr. ██████ counsel. Officer ██████ testified that Mr. ██████ was sitting in the basement when the officers made entry. Officer ██████ saw Mr. ██████ raise his arms to comply with officers' commands, at which point Mr. ██████ leaned back in his chair and fell; the officer was not sure whether the chair had given way or if there was another reason that Mr. ██████ fell.

According to Officer ██████, it is standard procedure to handcuff everyone in the house during the execution of a warrant for officer safety. As Officer ██████ reached for his handcuffs so he can detain Mr. ██████ Officer ██████ heard Officer ██████ yelling at someone atop the stairwell. As Officer ██████ looked in the direction of Officer ██████ he heard a gunshot and saw Officer ██████ fall backwards into the room. With Officer ██████ bleeding profusely, Officer ██████ yelled out that "█████ been shot." Officer ██████ went up two sets of stairs and eventually saw several individuals as well as the officers who had been assigned to enter the building from the front. Officer ██████ never saw Mr. ██████ after that.

Officer ██████ understood that Sgt. ██████ gave the order to arrest Mr. ██████ and the rest of the civilians and to transport them to the police station.⁴

Officer ██████ was also deposed by Mr. ██████ counsel. Officer ██████ stated that the team responsible for entering the home from the back. Officers ██████, ██████, ██████ and ██████ along with Sgt. ██████ sat in a TAC office and discussed execution of the warrant, including contingency plans. Upon entry into the exterior back door—the one that opens directly to the back yard—Officer ██████ saw: a stairwell to his left; a washing machine to his right; and another door, halfway open, directly ahead. Through that interior door, Officer ██████ saw Mr. ██████ sitting in a chair.

As officer ██████ approached Mr. ██████ Mr. ██████ started to put his hands in the air while still seated. After Officers ██████ and ██████ passed Mr. ██████ who had his hands up, Officer ██████ heard a crash that sounded like someone falling out of a chair. Officer ██████ continued walking into the living room then heard someone say, "Police; let me see your hands," followed by the sound of a gunshot. While Officer ██████ ran towards the gunshot, he saw Mr. ██████ lying facedown on the floor, about four feet from the chair in which he was sitting. Mr. ██████ was not handcuffed. Officer ██████ informed Officer ██████ that the gunshot came from the stairwell and indicated to Officer ██████ to remain with Mr.

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁴ Att. 28, 91:18 – 92:14.

██████████ after which Officer ██████████ handcuffed Mr. ██████████ while he was still lying on the ground, less than a minute after the gunshot. According to Officer ██████████ at that point, there were three reasons to detain Mr. ██████████ (1) to investigate the battery against Officer ██████████ (2) to make sure Mr. ██████████ could not reach the firearm that was within his reach (which ended up being Officer ██████████ firearm); and (3) to confirm whether he was the target of the search warrant.

After a few minutes, and after recovering Officer ██████████ gun, Officer ██████████ was relieved of detaining Mr. ██████████ by additional officers who had arrived. Officer ██████████ did not see Mr. ██████████ again until he saw him at the Area ████ Detectives Division; he also never saw Mr. ██████████ on the stairwell where the gunshot came from, never saw him in possession of any weapon, and never saw him interacting with the person who fired the shot at Officer ██████████ now known to be ██████████ Officer ██████████ did not see anyone using force on Mr. ██████████ during the incident and did not observe Mr. ██████████ to be injured.

Sgt. ██████████ was deposed by Mr. ██████████ counsel on April 26, 2016. Additionally, COPA interviewed Sgt. ██████████ on September 4, 2019. During his COPA interview, Sgt. ██████████ referred to his deposition, which he had reviewed before the interview, stating on multiple occasions that he stood by that statement.

In his deposition, Sgt. ██████████ stated that one of the reasons that Mr. ██████████ was arrested was because he “might have been the target of the warrant at the time.”⁵ Sgt. ██████████ further stated that he saw the contraband for the first time on the first floor of the house, not the basement, after the officers had already begun “organizing everybody to get transported.”⁶

b. Documentary Evidence

Sgt. ██████████ submitted an Affidavit⁷ in connection with the court case. In that statement, Sgt. ██████████ states that he “directed officers to remove civilians from the active crime scene.”⁸ COPA also reviewed the **search warrant**⁹, which stated that the subject of the warrant is ██████████ a Black male, 45-50 years old, 5’5”-5’8” with black hair. The warrant lists Sgt. ██████████ as the supervising sergeant.

VI. ANALYSIS

COPA sustains the allegations against Sgt. ██████████ because the evidence establishes that (1) Mr. ██████████ was arrested without probable cause and (2) that Sgt. ██████████ ordered that arrest.

a. Officers did not have probable cause to arrest Mr. ██████████

⁵ Att. 30, 62:9-14.

⁶ *Id.* at 77:5-19.

⁷ Att. 31.

⁸ Att. 31 at 4.

⁹ Att. 5.

COPA conducted its own analysis and has arrived at the same conclusion as the U.S. District Court for the Northern District of Illinois (the “Court”). In its Memorandum Opinion and Order¹⁰, the court entertained a Motion for Summary Judgment brought by Mr. [REDACTED]. After reviewing the facts in the light most favorable to Sgt. [REDACTED], the Court found that no genuine disputes of material fact remained as to whether Mr. [REDACTED]’s arrest and transport to the police station was reasonable. The Court explained that no reasonable jury could find that the arrest of Mr. [REDACTED] was reasonable “on the grounds of his mere presence in the same building where the shooting occurred, the drugs were discovered, and at least four other individuals with more robust connections to both were found.”¹¹ The court further stated that the outcome does not change just because Mr. [REDACTED] matches “the most generic characteristics of the relevant search warrant’s physical description, approximates a few more specific ones, and differs profoundly from the rest.”¹²

The first justification for arresting Mr. [REDACTED] was that he could have been [REDACTED] the target of the search warrant. COPA agrees with the Court that, while a reasonable jury could find that Mr. [REDACTED] matched the complexion and weight of the target of the search warrant, the differences in other characteristics, including age (67 versus 45-50), height (5’11” versus 5’5”-5’8”), and hair (bald versus dark hair worn long and wavy). Furthermore, a reasonable jury “would question why [the informant] did not at least mention that [REDACTED] spoke with a speech impediment,” which is the case with Mr. [REDACTED] likely a result of dysarthria.¹³ The Court found as a matter of law that the similarities between Mr. [REDACTED] and [REDACTED] the target of the search warrant, did “not amount to probable cause.”¹⁴

As for the other justification to arrest Mr. [REDACTED] COPA again agrees with the Court that the presence of a small amount of crack cocaine on the first floor of the residence did not grant police probable cause to arrest Mr. [REDACTED]. Explaining that none of the officers had seen Mr. [REDACTED] on the first floor that night and that it was clear to the officers that Mr. [REDACTED] did not own the property, the Court found—and COPA agrees—that no nexus existed between Mr. [REDACTED] and the drugs. And because such nexus did not exist, the officers could not argue that Mr. [REDACTED] had constructive possession of the narcotics. Additionally, the “undisputed facts indicate that [REDACTED] made the decision to order [REDACTED] arrest *before he saw narcotics at the residence*,” which shows that the narcotics were being used as a *post hoc* justification of the arrest.¹⁵

The Court found that no reasonable jury could find that probable cause existed to arrest Mr. [REDACTED] “either on the basis that he was [REDACTED] or on the grounds that he was in (constructive) possession of a controlled substance.”¹⁶ COPA, as the reasonable fact-finder in this case, agrees with the Court and finds that the arrest of Mr. [REDACTED] was without probable cause and was therefore unreasonable and unjustified.

¹⁰ Att. 17.

¹¹ *Id.* at 21.

¹² *Id.*

¹³ *Id.* at 36.

¹⁴ *Id.* at 39.

¹⁵ *Id.* at 44 (emphasis in original).

¹⁶ *Id.* at 45.

b. Sgt. ██████ ordered the arrest of Mr. ██████

The remaining question is whether it was Sgt. ██████ who ordered the arrest of Mr. ██████. Here, too, COPA's analysis reaches the same conclusion as the Court, which the Court succinctly laid out in its order.

Because ██████ ordered and was responsible for ██████ unlawful arrest, he was a participant in the deprivation of ██████ constitutional rights for purposes of a § 1983 action. *See, e.g., Moore v. State of Indiana*, 999 F.2d 1125, 1129 (7th Cir. 1993). The undisputed facts belie Defendants' evasive contention, based only on ██████ carefully worded affidavit, that his involvement was limited to directing officers "to remove the civilians from the home." (Defs.' St. ¶ 32.) While ██████ admits that ██████ did indeed order his removal from the home, testimony of Defendant Officers furnished to the Court clearly establishes that ██████ role was not so limited. (*See, e.g.,* ██████ Tr. 101:21-102:19 ("I believe Sergeant ██████ had ordered everyone to go to the Area for the investigation . . . He said[,] I told them to bring them to the Area."); ██████ Tr. 91:18-92:14 ("[A]ll individuals were removed from the house and brought in per the sergeant."); ██████ Tr. 62:9-14 ("Q. But, I mean, when he was placed under arrest, what was the reason or probable cause you had to put him in handcuffs and take him to the police station? A. That he might have been the target of the warrant at the time.") Thus, Defendant ██████ ordered ██████ removal to the police station in handcuffs and not merely from the residence.¹⁷

COPA finds that Sgt. ██████ ordered the arrest of Mr. ██████

Because Sgt. ██████ ordered the unjustified arrest of Mr. ██████ the allegation against him is sustained.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Sgt. ██████****i. Complimentary and Disciplinary History**

Sgt. ██████ has a long complimentary history consisting of 320 total awards, including 249 honorable mentions, 19 department commendations, and eight deployment operations center awards. He also has 10 problem solving awards, eight complimentary letters, one special commendation, one Superintendent's award of tactical excellence, and one Superintendent's award of valor. Sgt. ██████ has no relevant disciplinary history.

ii. Recommended Penalty

¹⁷ *Id.* at 46-47.

The act of arresting a civilian is one of the greatest responsibilities bestowed on a peace officer. To effectuate an arrest without justification is certainly an act which COPA considers serious misconduct. However, in mitigation, COPA notes Sgt. [REDACTED] complimentary history as well as his lack of disciplinary history. COPA further notes that this incident occurred in 2014 and was not brought to COPA’s attention until 2017. The delay in investigating this incident is further considered in mitigation. Accordingly, COPA recommends a 10-day suspension and re-training on the fourth amendment.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Sgt. [REDACTED]	It is alleged that, on or about March 9, 2014, at approximately 9 pm, at or near [REDACTED] Sergeant [REDACTED] committed misconduct by ordering the arrest of [REDACTED] without justification, in violation of Rule 6.	SUSTAINED / 10-day suspension and re-training

Approved:

[REDACTED]

January 29, 2020

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:

Investigator:

Supervising Investigator:

Deputy Chief Administrator:



Andrea Kersten