

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date/Time/Location of Incident:	August 7, 2019 / 9:30 A.M. / [REDACTED]
Date/Time of COPA Notification:	August 14, 2019 / 7:53 A.M.
Involved Officer #1:	Officer Lawrence Herhold / Star #20993 / Employee ID # [REDACTED] / DOA: 5 May 1997 / Unit: 620/606 / DOB: [REDACTED] 1973 / Male / White
Involved Individual #1:	[REDACTED] / DOB: [REDACTED] 1983 / Male / Black
Case Type:	4 th Amendment

At approximately 9:30 A.M., on August 7, 2019, Detective Lawrence Herhold (Det. Herhold) entered and searched the property at [REDACTED], which is owned by [REDACTED] ([REDACTED]). A security video captured Det. Herhold entering the property and inspecting a piece of machinery known as a skid steer. [REDACTED] did not consent to Det. Herhold’s entry and search and Det. Herhold acknowledged that he was not given permission to enter and search the property owned by [REDACTED]. The allegation that Det. Herhold entered the property of [REDACTED], without justification, is sustained. Additionally, the allegation that Det. Herhold searched the property of [REDACTED], without justification, is also sustained.

II. ALLEGATIONS

Officer	Allegation	Finding
Detective Lawrence Herhold	It is alleged by [REDACTED] that on or about August 7, 2019, at approximately 9:30 A.M., at or near [REDACTED], Chicago, IL 60615, that you, Detective Lawrence Herhold committed misconduct through the following acts or omissions, by:	
	1. Entering the premises of [REDACTED], without justification.	Sustained
	2. Searching the premises of [REDACTED], without justification.	Sustained

III. APPLICABLE RULES AND LAWS

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

Federal laws

1. Fourth Amendment to the United States Constitution

State Laws

1. Article I, Section 6 of the Illinois Constitution

IV. SUMMARY OF EVIDENCE

Det. Herhold was identified as having been assigned CPD Car No. 9121.¹ Security camera footage provided to COPA by ██████ shows Det. Herhold in CPD Unit #9121 park in the alley behind ██████. It is clear that the rear of the property of ██████ is under construction and there is no clear fencing blocking the property from the alley. Det. Herhold parks his vehicle and enters the property to inspect a piece of machinery known as a skid steer. After briefly looking at the skid steer, Det. Herhold surmised he approached the rear of the building to see if there are any workers on the property that may own or may be associated with the machinery.² Det. Herhold returns to the skid steer and again inspects the piece of machinery.³ Det. Herhold approaches the rear of the building a second time and returns to further inspect the skid steer.⁴ Det. Herhold returns to the rear of the house a third time and leaves the property.

In Det. Herhold's statement to COPA, he identified himself in the video that ██████ provided. Det. Herhold is assigned to a citywide Auto Theft Unit and said that the theft of skid steers⁵ is very common.⁶ Asked why Det. Herhold was inspecting the skid steer, he said that it was likely because there was a reported theft of one of them in the area and was attempting to identify if it was stolen.⁷ Det. Herhold denied that he entered and searched ██████'s property.⁸ Det. Herhold was not given consent to enter ██████'s property.⁹ Asked if he had consent to search ██████'s property, Det. Herhold denies that he conducted a search of the

¹ Att. 12

² Att. 13 at 9:10 – 9:23

³ Att. 7 at 0:54

⁴ Att. 13 at 10:37 – 10:59

⁵ A skid steer is a piece of construction equipment primarily used for digging and commonly known as a "Bobcat"

⁶ Att. 13 at 21:45 – 21:48

⁷ Att. 13 at 12:30 – 13:24

⁸ Att. 13 at 16:13 – 16:22

⁹ Att. 13 at 18:34

property.¹⁰ Det. Herhold stated that he would have inspected the machinery on the property regardless of whether or not he had seen a security camera.¹¹

V. 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;^[§ 2-100]
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 been 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. Legal Analysis

As early as 1886, the Supreme Court has recognized a concern for privacy in the home,¹² and has required law enforcement to obtain a search warrant, absent consent or exigent circumstances, to conduct a lawful search.¹³ The same protections afforded to one’s home also extend to the area “immediately surrounding and associated with the home.”¹⁴ This area, known as the curtilage, is “intimately linked to the home, both physically and psychologically,” and is where “privacy expectations are most heightened.”¹⁵

Generally, police officers are permitted to enter a property’s curtilage to “knock and talk” in the same manner as any reasonable member of the public would, such as a neighbor or salesperson.¹⁶ Therefore, a

¹⁰ Att. 13 at 18:38 – 18:45

¹¹ Att. 13 at 23:54 – 24:07

¹² *Boyd v. United States*, 116 U.S. 616 (1886).

¹³ *Payton v. New York*, 445 U.S. 573, 590 (1980)

¹⁴ *Florida v. Jardines*, 569 U.S. 1, 9 (2013).

¹⁵ *Id.* (quoting *California v. Ciraolo*, 476 U.S. 207, 213 (1986)).

¹⁶ *Id.*

police officer may approach a home without a warrant, “precisely because that is no more than any private citizen might do.”¹⁷ The Supreme Court has clarified that this “implicit license” for law enforcement to enter upon the curtilage is typically limited to an “approach [of] the home from the front path, knock promptly, wait to be received, and then (absent invitation to linger longer) leave.”¹⁸ Finally, the Supreme Court has explicitly found that entry by law enforcement upon private property to examine a potentially stolen vehicle is unlawful.¹⁹

In this instance, Det. Herhold acknowledged that he did not have a warrant or consent to enter ██████’s property at ██████. Additionally, Det. Herhold did not claim he was entering the property to speak with anyone, or “knock and talk.” Video evidence and Det. Herhold’s interview established that Det. Herhold looking around/searching the ██████’s backyard and inspecting the skid steer. Det. Herhold justified his actions on his belief that skid steers are a commonly stolen item of construction equipment. Other than this general belief, Det. Herhold could not produce any specific information to justify his entry to ██████’s property and the inspection of the skid steer located there. Furthermore, Det. Herhold searched throughout ██████’s backyard, including up against the home itself.

In sum, COPA finds that Det. Herhold did not have a warrant to enter upon ██████’s property to search the area and inspect the skid steer located there, nor was there consent to do so or any exigent circumstance. For these reasons, COPA finds allegations 1 and 2 are sustained.

VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Detective Lawrence Herhold

i. Complimentary and Disciplinary History

1. Complimentary History: 1 Life Saving Award, 2 Problem Solving Awards, 1 Commendation, 15 Complimentary Letters, 17 Department Commendations, 116 Honorable Mentions, and 12 Miscellaneous Awards.

2. Disciplinary History: No applicable disciplinary history.

ii. Recommended Penalty, by Allegation

1. Allegation No. 1 & 2: 3-Day Suspension and retraining on the 4th Amendment and legal searches.

¹⁷ *Id.* (quoting *Kentucky v. King*, 563 U.S. 452, 469 (2011)).

¹⁸ *Id.*

¹⁹ *Collins v. Virginia*, 138 S. Ct. 53 (2017)

VI. CONCLUSION

Officer	Allegation	Finding
Detective Lawrence Herhold	<p>It is alleged by [REDACTED] that on or about August 7, 2019, at approximately 9:30 A.M., at or near [REDACTED] Chicago, IL 60615, that you, Detective Lawrence Herhold committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> <li data-bbox="516 562 1138 625">1. Entering the premises of [REDACTED], without justification. <li data-bbox="516 730 1154 793">2. Searching the premises of [REDACTED], without justification. 	<p>Sustained / 3-Day Suspension & Retraining</p> <p>Sustained / 3-Day Suspension & Retraining</p>

Approved:

[REDACTED]

3/18/2021

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	Anthony Wall
Supervising Investigator:	Bob Coleman
Deputy Chief Administrator:	Matthew Haynam