

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	June 12, 2019 / 6:21 p.m. / ██████████, Basement Unit
Date/Time of COPA Notification:	August 3, 2020 / 1:52 p.m.
Involved Officer #1:	Enrique Delgado Fernandez, Star # 6261, Employee ID # ██████████, Date of Appointment: October 31, 2012, Rank: Police Officer, Unit of Assignment: 007/716, DOB: ██████████, 1984, Male, White Hispanic
Involved Officer #2:	Jerald Williams, Star # 3317, Employee ID # ██████████, Date of Appointment: August 26, 2013, Rank: Police Officer, Unit of Assignment: 002/376, DOB: ██████████, 1987, Male, Black
Involved Officer #3:	Cesar Astorga, Star #14757, Employee ID # ██████████, Date of Appointment: February 02, 2015, Rank: Police Officer, Unit of Assignment: 006/716, DOB: ██████████, 1993, Male, White Hispanic
Involved Individual #1:	██████████ DOB: ██████████, 1961, Male, Black
Case Type:	4 th Amendment - Search Warrant

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Enrique Delgado Fernandez	It is alleged by ██████████ that on or about June 12, 2019, at approximately 6:21 p.m., at or near ██████████ Officer Delgado Fernandez, Star No. 6261, committed misconduct through the following acts or omissions, by: 1. conducting an unlawful search of the premises, 2. conducting an unlawful detention, and 3. arresting ██████████ without justification.	 EXONERATED EXONERATED EXONERATED
Officer Jerald Williams	It is alleged by ██████████ that on or about June 12, 2019, at approximately 6:21 p.m., at or near ██████████.	

	<p>██████████, Officer Williams, Star No. 3317, committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> 1. conducting an unlawful search of the premises, 2. conducting an unlawful detention, and 3. arresting ██████████ without justification. 	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p>
<p>Officer Cesar Astorga</p>	<p>It is alleged by ██████████ that on or about June 12, 2019, at approximately 6:21 p.m., at or near ██████████ ██████████ Officer Astorga, Star No.14757, committed misconduct through the following acts or omissions, by:</p> <ol style="list-style-type: none"> 1. conducting an unlawful search of the premises, 2. conducting an unlawful detention, and 3. arresting ██████████ without justification. 	<p>EXONERATED</p> <p>EXONERATED</p> <p>EXONERATED</p>

II. SUMMARY OF EVIDENCE^{1, 2}

On June 12, 2019, at approximately 6:21 p.m., officers executed a search warrant at the basement apartment of ██████████ Street. Officers observed ██████████ inside the residence and arrested him after they recovered an illegal controlled substance. ██████████ contacted the Civilian Office of Police Accountability alleging Officers Enrique Delgado Fernandez, Jerald Williams, and Cesar Astorga searched the residence and arrested him without justification.

The **Search Warrant³** commands officers to search “a male black known as ██████████ who is approximately 35 years old, 5’8 in height, wears glasses, and has short black hair, brown eyes, and medium-dark skin. The warrant identifies the premises to be searched as the basement unit of ██████████ Street, a three-story yellow brick multi-family apartment complex with a white front entrance door, white windowsills, and “██████████” affixed above the front entrance. The warrant authorizes officers to seize any narcotics-related evidence, including a white rock-like substance, suspect crack cocaine.

The **Original Case Incident Report⁴** lists ██████████ demographics as male, black, 58 years old, 5’9 in height, with short grey hair, brown eyes, and a black complexion. The report indicates that Team 6728 executed the search warrant on June 12, 2019, assisted by Teams 6726 and 6723. The officers approached the targeted unit, knocked on the door, and announced “Chicago Police

¹ COPA conducted a full and complete investigation of this matter, including the collection and review of digital and documentary evidence. As part of COPA’s ongoing efforts to increase case closure capacity, certain cases are summarized more succinctly in a Modified Summary Report of Investigation.

² COPA attempted to obtain body worn camera (BWC) and in car camera (ICC) footage of the incident, with negative results. None of the officers who entered the residence were equipped with BWCs on the date of the incident. Attachment #12, CPD Response to Request for BWC/ICC Video; *see also* CMS Notes CO-0074959, 81420.

³ Attachment #15, pg. 2, Search Warrant #19 ██████████, issued June 09, 2019. Executed on June 12, 2019, at 6:21 pm.

⁴ Attachment #3, Original Case Incident Report.

Search Warrant.” Someone inside the unit opened the front door, removing the need for the officers to breach the door. The officers then entered the unit, where they observed a sheet hanging from a wire, dividing the living space into two areas (the “main room” and “west room”). The officers encountered ██████ walking away from the west room, and they detained him and three other occupants. After securing the scene, the officers conducted a systematic search of the residence.

When the officers searched the west room, which they initially observed ██████ walking away from, they recovered multiple plastic baggies containing a white rock-like substance, suspect crack cocaine. ██████ waived his Miranda rights and told the officers, “The rocks get dropped off by a guy named ██████”⁵ ██████ further admitted he sells the “rocks”⁶ for ██████ in exchange for \$40.00. The officers arrested and charged ██████ with possession of a controlled substance,⁷ and they left a copy of the search warrant and inventory log on top of the nightstand in the basement. On August 12, 2019, all criminal charges against ██████ were dismissed.⁸

On July 23, 2020, ██████ filed a **civil lawsuit**⁹ in federal court, alleging unreasonable search and seizure, as well as unlawful detention, by the officers who executed the search warrant. The complaint states ██████ was visiting a friend’s residence at the time of the raid, and the officers entered and searched the premises without probable cause. Further, the complaint alleges the officers failed to knock and announce their presence, or present a search warrant, prior to forcibly entering the residence. ██████ did not consent to the entry or search, and he denied possessing any illegal drugs on the date in question. On January 7, 2021, the judge dismissed the civil suit.¹⁰

III. ANALYSIS AND CONCLUSION

██████████ alleged Officers Delgado Fernandez, Williams, and Astorga conducted an unlawful search of the basement apartment at ██████ Street, and detained and arrested him without justification. After examining the available documentary evidence, including the case and arrest reports, search warrant package, and civil suit, COPA has determined by clear and convincing evidence that the officers’ actions were lawful and proper.

a. Applicable Laws and Department Directives

The Fourth Amendment of the United States Constitution prohibits “unreasonable searches and seizures” and requires that warrants be issued based on “probable cause.” Probable cause to search exists where law enforcement officers reasonably believe that a crime has been or is being committed and they will find evidence of the crime in the place to be searched.

Department directives guide officers in the execution of search warrants.¹¹ Members serving a search warrant must adhere to both the “Knock and Announce Rule” and 725 ILCS

⁵ Attachment #3, pg. 3, Original Case Incident Report.

⁶ “Rocks” is a slang term for crack cocaine.

⁷ See Attachment #8, Arrest Report.

⁸ See Attachment #16, Criminal Case Docket and Dismissal.

⁹ Attachment #1, Complaint, ██████ v. *City of Chicago, et. al* (Case 20-CV-██████).

¹⁰ See Attachment #14, Civil Suit Docket and Agreed Order of Dismissal.

¹¹ Special Order S04-19, Search Warrants (effective September 3, 2015 – January 2, 2020).

5/108-8. When applicable, these provisions require officers to announce their presence and provide residents a reasonable opportunity to allow entry.¹² Officers will then secure the scene and process persons under Department control.¹³

b. The officers did not conduct an unlawful search of the residence

COPA finds there is clear and convincing evidence the officers entered the basement unit of ██████████ Street and searched the residence based on a valid search warrant. The warrant was approved by a prosecutor from the Cook County State's Attorney's Office and signed by an independent judicial magistrate. It clearly describes the location to be searched, and there is no evidence the officers searched any areas outside the scope of the warrant. Additionally, the officers maintained they knocked and announced their presence, and did not need to breach the unit door because an occupant opened the door for the officers. COPA has uncovered no video or documentary evidence refuting the officers' account, nor is there evidence of damage to the door or any property damage claims filed with the City.

Moreover, ██████████ statements to officers and the evidence recovered during the search corroborate the factual basis of the warrant. The object of the warrant was crack cocaine and related narcotics evidence, and the officers recovered over a dozen plastic baggies containing a white rock-like substance, suspect crack cocaine. Additionally, ██████████ acknowledged he knew ██████████ "the target of the warrant, and admitted ██████████ dropped off drugs for ██████████ to sell from the residence. For these reasons, COPA finds the evidence establishes the officers did not conduct an unlawful search of the residence, and Allegation #1 against all three officers is **EXONERATED**.

c. The officers did not unlawfully detain ██████████ during the execution of the search warrant

Law enforcement officers are permitted under the Fourth Amendment to detain a household's occupants while executing a search warrant.¹⁴ Occupants may be detained under this rule only within the "immediate vicinity of the premises to be searched."¹⁵ Additionally, in Illinois, the weight of the authority indicates that officers may detain visitors as well as residents during the execution of a search warrant at a private residence. For example, in *United States v. Pace*, the Seventh Circuit considered the detention of two visitors at a home where officers were executing a search warrant for gambling. The court noted that, despite the fact the detainees were not residents, "[I]t is still significant that they were present in a condominium that a neutral magistrate had found probable cause to believe contained evidence of illegal gambling activities... We think it was reasonable for the police to protect themselves and assure that the search proceeded smoothly by detaining Pace and Besase while they searched Savides' condominium."¹⁶

¹² Special Order S04-19 (VIII)(D)(1)(b).

¹³ Special Order S06-01, Processing Persons Under Department Control (effective January 29, 2015 – present).

¹⁴ *People v. Edwards*, 144 Ill. 2d 108, 126 (1991) ("For fourth amendment purposes, a warrant to search for contraband founded on probable cause, implicitly carries with it the authority to detain occupants of the premises while the search is being conducted.").

¹⁵ *Bailey v. United States*, 568 U.S. 186, 202 (2013) (holding that apprehending and detaining an occupant a mile from the home being searched constituted an unreasonable seizure under the Fourth Amendment).

¹⁶ *United States v. Pace*, 898 F.2d 1218, 1239 (7th Cir. 1990); see also *United States v. Bullock*, 632 F.3d 1004, 1019 (7th Cir. 2011) (holding a visitor's detention reasonable "given his suspected criminal activity in connection with the

In this case, the officers who executed the search warrant at ██████████ Street encountered four individuals inside the basement residence, including ██████████. Given the number of occupants, their presence in a home believed to contain illegal drugs, and the officer's reasonable safety concerns, COPA finds there is clear and convincing evidence the officers did not violate the law or Department policy when they detained ██████████ and the three other individuals. Therefore, Allegation #2 against all three officers is **EXONERATED**.

d. The officers had probable cause to seize and/or arrest ██████████

The third and final allegation against the officers arises from ██████████ claim that he was falsely arrested during the execution of the warrant. According to ██████████ civil suit, the officers arrested ██████████ for possession of a controlled substance despite the fact they knew he did not reside at the residence, was not the target of the search warrant, and no contraband was found in ██████████ custody or control.¹⁷ However, COPA's review of the available evidence indicates the officers had sufficient probable cause to arrest ██████████

According to the arrest and case reports, as the officers entered the residence, they observed ██████████ walking away from the partitioned-room where the suspected drugs were subsequently recovered. Although ██████████' the target of the warrant, was not present, the officers temporarily detained ██████████ and three other occupants while they conducted the search. After the officers located the suspected crack cocaine inside the partitioned-room, ██████████ waived his Miranda Rights and admitted he sold the "rocks" for ██████████ in exchange for \$40.00. ██████████ further stated he had just started selling ten minutes before the officers executed the warrant. The officers took ██████████ into custody and charged him with possession of a controlled substance based on his own admissions and the officers' observations.

In this situation, COPA finds the officers had probable cause to arrest ██████████ as the totality of the facts and circumstances known to the officers would lead a person of reasonable caution to believe ██████████ had committed a crime.¹⁸ A reasonable officer in the same situation would have considered the recovery of the drugs, coupled with ██████████ own admissions, sufficient probable cause to arrest him. Therefore, COPA finds there is clear and convincing evidence the officers did not falsely arrest ██████████ and Allegation #3 against all three officers is **EXONERATED**.

residence, his risk of flight, and the potential danger he posed to officers if not detained."); *People v. Conner* 358 Ill. App. 3d 945, 958 (1st Dist. 2005) (finding a visitor's detention was reasonable under the *Pace* approach and noting Supreme Court dicta supports the proposition that anyone on the premises may be detained during the execution of a valid search warrant).

¹⁷ See Attachment #1, ¶ 23, Complaint, ██████████ v. *City of Chicago, et. al.*

¹⁸ See, e.g., *People v. D.W.*, 341 Ill. App. 3d 517, 526 (1st Dist. 2003).

Approved:



10/26/2021

Matthew Haynam
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad No.:	6
Investigator:	Emmily Stokes
Supervising Investigator:	Steffany Hreno
Deputy Chief Administrator:	Matthew Haynam