

## SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	January 13, 2019 / 7:39 pm / [REDACTED] Chicago, IL 60619.
Date/Time of COPA Notification:	February 20, 2019 / 12:19 pm.
Involved Sergeant #1:	Sergeant Patrick Boyle / Star#975 / Employee ID#[REDACTED] / DOA: August 31, 1998 / Unit: 007/312 / Male/ White.
Involved Officer #1:	Officer Efrain Carreno / Star #17367 / Employee ID# [REDACTED] / DOA: November 29, 2004 / Unit: 007/716 / Male / Hispanic.
Involved Officer #2:	Officer Joseph Chlipala / Star#5299 / Employee ID#[REDACTED] / DOA: January 24, 2000 / Unit: 006/716 / Male / White.
Involved Officer #3:	Officer Enrique Delgado Fernandez / Star#6261 / Employee ID#[REDACTED] / DOA: October 13, 2012 / Unit: 007/716 / White / Hispanic.
Involved Officer #4:	Officer John Foertsch / Star#9195 / Employee ID#[REDACTED] / DOA: September 11, 2000 / Unit: 003/716 / Male / White. <sup>1</sup>
Involved Officer #5:	Officer Edward Garcia / Star#13694 / Employee ID#[REDACTED] / DOA: October 25, 2004 / Unit: 007/716 / Male / Hispanic.
Involved Officer #6:	Officer Michael Higgins / Star#3766 / Employee ID#[REDACTED] / DOA: September 1, 2010 / Unit: 004/716 / Male / White.
Involved Officer #7:	Officer Patrick Kennedy / Star#14414 / Employee ID#[REDACTED]1 / DOA: December 16, 2009 / Unit: 004/716 / Male / White. <sup>2</sup>
Involved Officer #8:	Officer Lawrence Kerr / Star#4871 / Employee ID#[REDACTED] / DOA: March 25, 2002 / Unit: 025/716 / Male / White.
Involved Officer #9:	Officer Jeffery Lawson / Star#8353 / Employee ID#[REDACTED] / DOA: April 30, 2007 / Unit: 004/716 / Male / White.

<sup>1</sup> On September 15, 2021, Officer Foertsch separated from the Department, after providing COPA a statement.

<sup>2</sup> On December 27, 2021, Officer Kennedy separated from the Department, after providing COPA a statement.

Involved Officer #10: Officer Kevin Omara / Star#4048 / Employee ID# [REDACTED] / DOA: June 25, 2001 / Unit: 006/716 / Male / White.

Involved Officer #11: Officer Christopher Paschal / Star#11996 / Employee ID# [REDACTED] / DOA: December 14, 2012 / Unit: 004/716 / Male / Black.

Involved Officer #12: Officer Jerald Williams / Star#3317 / Employee ID# [REDACTED] / DOA: August 26, 2013 / Unit: 002/376 / Male / Black.

Involved Individual #1: [REDACTED] / Female / Black.

Case Type: 16C –Search Warrant – Missing Property

**I. ALLEGATIONS<sup>3</sup>**

Officer	Allegation	Finding / Recommendation
Sergeant Boyle	1. Seizing United States Currency, without justification.	Not Sustained.
	2. Failing to inventory seized United States Currency.	Not Sustained.
	3. Failing to ensure your office was announced prior to making entry during the execution of a search warrant.	Exonerated.
	4. Failing to provide a copy of the Evidence Recovery Log prior to leaving the scene of the search warrant.	Not Sustained.
	5. Failing to request the signature of an on-scene person on the Evidence Recovery Log.	Sustained / Written Reprimand.
	6. Failing to indicate on the Evidence Recovery Log that an on-scene person refused your request to sign the form.	Sustained / Written Reprimand.
Officers Carreno, Chlipala, Delgado Fernandez,	1. Seized \$500 in United States Currency, from [REDACTED] without justification.	Not Sustained.

<sup>3</sup> COPA renumbered some of the allegation for the purpose of this report.

Foertsch, Garcia, Higgins, Kennedy, Kerr, Lawson, Omara, Paschal, and Williams	2. Seized \$100 in United States Currency, from ██████████ without justification.  3. Failed to inventory United States Currency recovered during the execution of search warrant, Search Warrant Number 19SW4241.	Not Sustained.  Not Sustained.
Officer Carreno	4. Seized a Taurus Model PTII G2 Black 9mm firearm from ██████████ Chicago, IL.	Exonerated.
Officer Higgins <sup>4</sup>	4. Failed to accurately complete the Original Case Incident Report pertaining to RD: JC115818.  5. Failed to accurately complete the Property Inventory Report for Inv. No. ██████████.  6. Failed to accurately complete the Property Inventory Report for Inv. No. ██████████.  7. Failed to provide a copy of the Evidence Recovery Log pertaining to Search Warrant Number: ██████████, to ██████████	Unfounded.  Unfounded.  Unfounded.  Unfounded.
Officer Kennedy	4. Seized a Savage Model 65 Black .22 Rifle, from ██████████ Chicago, IL.	Exonerated.
Officer Kerr	4. Seized a 20 Gauge Mossberg Model 500C Black Shotgun, from ██████████ Chicago, IL.	Exonerated.

**II. SUMMARY OF EVIDENCE**

Members of the Area South Gun Team, the above listed accused, sought, and obtained a search warrant that authorized the search of ██████████ for cannabis and evidence of the sale of narcotics.<sup>5</sup> After obtaining the search warrant, the members traveled to the target location to execute the search warrant. Upon arrival and prior to making entry the members knocked on the door and announced their office.<sup>6</sup> This knocking woke ██████████ and caused her, and her adult son, ██████████ to believe unknown persons were attempting to enter the residence. Out of concern for safety, ██████████ armed himself with a firearm but placed it on a table prior to the members forcing entry.<sup>7</sup> Once the members entered the residence, all the

<sup>4</sup> Officer Higgins was initially served an eighth allegation. However, after the serving COPA Investigator resigned and the investigation was reviewed, there was no factual basis for the eighth allegation contained in the case file nor was there any notation by the prior investigator related to the factual basis of the eighth allegation. Therefore, COPA determined that the eighth allegation should not have been served. Based on this determination, the eighth allegation was deleted from the case management system and is no longer included in this investigation.

<sup>5</sup> Atts. 78, and 144.

<sup>6</sup> Att. 132, pg. 15; Att. 133, pg. 13; Att. 134, pg. 12, Att. 135, pg. 11; Att. 136, pg. 13; Att. 137, pg. 12; Att. 140, pg. 14; Att. 142, pg. 15, Att. 150, pgs. 10 and 11; and Att. 151, pgs. 63.

<sup>7</sup> Att. 138; pgs. 10 and 11.

occupants were detained in the living room. During the search members recovered suspected cannabis, several firearms, and ammunition.<sup>8</sup> After completing the search, the recovered items, to include the firearms, were seized.

During her statements to COPA, ██████ alleged that members, at the direction of Sergeant Patrick Boyle, improperly seized her legally owned and possessed firearms.<sup>9</sup> Additionally, ██████ alleged members stole \$600 in United States Currency. Initially, ██████ stated \$100 was taken from her wallet but later stated it was removed from atop her nightstand.<sup>10</sup> Additionally, ██████ alleged \$500 was removed from an envelope concealed in the top of a closet.<sup>11</sup> Further, ██████ explained that Sgt. Boyle informed her he would mail her copies of the Evidence Recovery Log (Log), and that she received a copy of the Log via mail.<sup>12</sup>

During their statements to COPA, the members all explained that at no time did they locate or remove any United States Currency from the residence, nor did they observe any other member locating or removing currency, and had they located the currency it would have been inventoried as required by policy.<sup>13</sup> Additionally, Officer Higgins denied any inaccuracies in the Original Case Incident Report and being the author of Inventories ██████ and ██████.<sup>14</sup> Further, the members who located and recovered the firearms all explained that the decision to seize the firearms was made by Sgt. Boyle.<sup>15</sup> Further, Sgt. Boyle confirmed that he did in fact determine that the firearms should be seized because ██████ and ██████ failed to update the address on their respective FOID cards within the time frame required by 430 ILCS 65/13.2 thereby rendering the FOID cards invalid.<sup>16</sup> Finally, Sgt. Boyle explained that he could not recall if he presented ██████ with the Log on scene and that upon returning to the station he discovered an error on the Log and refilled out the Log but did not indicate on the revised Log if ██████ was presented the original Log or refused to sign the original Log.<sup>17</sup>

### III. LEGAL STANDARD

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

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<sup>8</sup> Att. 144, pg. 4.

<sup>9</sup> ██████ presented members and COPA with copies of her Firearms Owner Identification (FOID) Card which displayed an address of ██████. See Att. 75. Further, ██████ confirmed that she had moved to ██████ sometime in September and that ██████ had moved sometime in December. See Att. 138, pgs. 12 and 29.

<sup>10</sup> Att. 138, pg. 34 and Att. 139, pgs. 4, 7 and 32.

<sup>11</sup> ██████ explained that the envelope was left and only the \$500 was removed. Att. 138, pg. 35 and 36.

<sup>12</sup> Att. 138, pgs. 29 and 30; Att. 139, pg. 9.

<sup>13</sup> Att. 130, pgs. 24, 27, 29 and 30; Att. 131, pgs. 45 and 46; Att. 132, pgs. 50 and 51; Att. 133, pgs. 24, 25, 30 and 31; Att. 134, pgs. 24, 25, 29 and 30; Att. 135, pgs. 24, 25 and 32; Att. 136, pgs. 37, 38, 41 and 42; Att. 137, pgs. 26, 27, 34 and 35; Att. 140, pgs. 21, 22, 35 and 36; Att. 141, pgs. 25, 26, 32 and 33; Att. 142, pgs. 35, 36, 46 and 47; Att. 150, pgs. 10, 12 and 13; Att. 151, pgs. 78.

<sup>14</sup> Att. 151, pgs. 94 and 95.

<sup>15</sup> Att. 132; pgs. 34, 35, 50 and 51; Att. 136, pgs. 28, 30 and 40; Att. 142, pgs. 31, 45 and 46; Att. 150, pg. 13; and Att. 151, pgs. 85.

<sup>16</sup> 430 ILCS 65/13.2 states in part "Whenever any person moves from the residence address named on his or her card, the person *shall* within 21 calendar days thereafter notify ... the [Illinois State Police] Department of his or her ... new residence address." See Att. 150, pgs. 7 to 9.

<sup>17</sup> Att. 150, pgs. 11 and 13.

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.

#### IV. ANALYSIS AND CONCLUSION

##### a. Allegations Related to Seizure of United States Currency

COPA finds that Allegations #1 and 2 against Sgt. Boyle and Allegations #1, 2 and 3 against all other accused officers are **not sustained**. COPA was unable to locate any evidence other than ██████████ and the members' statements that support or refute the allegations that United State Currency was seized and not inventoried.

##### b. Allegations Related Seizure of Firearms<sup>18</sup>

COPA finds that Allegation #4 against Officers Carreno, Kennedy, and Kerr is **exonerated**. During her statements ██████████ was clear that the decision to seize the firearms was made by Sgt. Boyle. Further, during his statement, Sgt. Boyle confirmed that he determined the firearms were to be seized for ██████████ failure to properly update her FOID card as required by state law. Therefore, COPA determined Officers Carreno's, Kennedy's and Kerr's seizure of the firearms was at the direction of Sgt. Boyle and therefore they have no liability for any seizure action.

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<sup>18</sup> Sgt. Boyle was originally notified of his allegations for the case, the original assigned investigator did not serve allegations related to the seizure of the firearms. Further, that once the original assigned investigator resigned from COPA, a determination was made to proceed with the initial allegations served to Sgt. Boyle.

COPA notes that even if Sgt. Boyle had received allegations related to the seizure of the firearm, Sgt. Boyles, explanation as to why he seized the firearm combined recovery of cannabis in the same area as the firearms made the decisions reasonable and proper.

### c. Miscellaneous Procedural Allegations

COPA finds Allegation #3 against Sgt. Boyle is **unfounded**. Department members are required to announce their officer prior to making entry during the execution of a search warrant.<sup>19</sup> Here, the record supports a finding that the members both knocked and announced their office prior to making entry. Specifically, ██████ recounted that in response to the knocking ██████ armed himself but placed the firearm on the table prior to members making entry; this action alone supports the inference that ██████ learned of the members' identity prior to them forcing entry. In addition to ██████ actions, at least 10 Department members recalled that at least one person announcing their office prior to making entry. These two specific instances are clear and convincing evidence that members announced their office prior to making entry of the residence.

COPA finds that Allegations #4, 5 and 6 against Officer Higgins are **unfounded**. There is no information in the record that any of the paperwork completed by Officer Higgins was deficient or incorrectly completed, in fact the photographs from the search warrant detail two boxes of shotgun ammunition.<sup>20</sup> Further, Officer Higgins was clear, and the Inventory Sheets clearly show, that at no time did Officer Higgins authorize the records. Based on a review of the materials, COPA determined that Officer Higgins completed the required reports in accordance with Department policy.

COPA finds that Allegation #4 against Sgt. Boyle is **Unfounded**. During her statements to COPA, ██████ admitted she received a copy of the Log from Sgt. Boyle via the mail. While best practice would have been for Sgt. Boyle to provide a copy to ██████ prior to leaving the residence, Department policy is ambiguous as to this requirement. Further, Sgt. Boyle's explanation that he needed to correct an error on the Log, makes his decision to mail ██████ a copy the Log even more reasonable.

COPA finds that Allegation #5 and 6 against Sgt. Boyle are **sustained**. When a searched location is occupied, supervising members are required to "request the on-scene person to sign the [Evidence Recovery Log] in the box marked 'Acknowledged By'... [and i]f refused, check the [refused] box."<sup>21</sup> Here, it is clear there is no signature in the "Acknowledged By" box nor is there a check in the refused box. Therefore, this lack of information is in violation of Department policy.

COPA finds that Allegation #7 against Officer Higgins is **unfounded**. While COPA was unable to locate any evidence to determine if ██████ was presented with a copy of the Log, Sgt. Boyle, during his statement to COPA, acknowledged that he was responsible for providing the Log to ██████ and could not recall if in fact he did or did not. Since Sgt. Boyle accepted responsibility for the provision of ██████ with a copy of the Log, Officer Higgins has no liability for any failure to provide the Log.

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<sup>19</sup> S04-19 IX(D)(1)(b).

<sup>20</sup> Att. 99, pgs. 26 and 30.

<sup>21</sup> S04-19 IX(E)(8)(b).

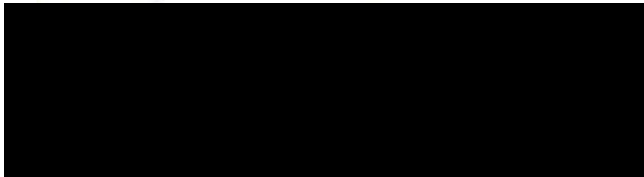
**V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS****a. Sergeant Patrick Boyle****i. Complimentary and Disciplinary History**

Sgt. Patrick Boyle has 139 Honorable Mentions, 14, Department Commendations, 12 Emblem of Recognition -Physical Fitness Awards, 6 Complimentary letters, 5 Attendance Recognition Awards, 5 Unit Meritorious Performance Awards. Sgt. Boyle has 2 Problem Solving Awards, 1 award for the following categories, 2004, 2009, 2019 Crime Reduction Ribbon, Annual Bureau Award of Recognition, Chicago Police Leadership Award, Deployment Operations Center Award, Emblem of Recognition- Appearance, Honorable Mention Ribbon Award, Joint Operations Award, Nato Summit Service Award, Police Blue Star Award, Presidential Election Deployment Award 2008, and Special Commendation.

**ii. Recommended Penalty**

While it is undisputed that final version of the Evidence Recovery Log fails to comply with Department policy, COPA believes that this lack of compliance was, at least in part, caused by the need to correct errors on the original document and therefore, recommends a **WRITTEN REPRIMAND**.

Approved:



Angela Hearts-Glass  
*Deputy Chief Investigator*

7-6-2022

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Date