

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	March 14, 2021
Time of Incident:	11:26 AM
Location of Incident:	[REDACTED]
Date of COPA Notification:	March 26, 2021
Time of COPA Notification:	4:22 PM

On March 14, 2021, members of Unit 716, the Community Safety Team, executed a search warrant seeking cocaine and related paraphernalia at the second-floor apartment of [REDACTED] and their two minor [REDACTED] [REDACTED] friend, [REDACTED] was also present during the warrant’s execution. Officer Sergio Martinez was the warrant’s affiant and Sergeant (Sgt.) Guy Habiak was the search team supervisor.

During the execution of the search warrant, members knocked and announced their presence, but they failed to allow sufficient time for the occupants of the residence to respond before forcing entry. Once inside the apartment, the members impermissibly sought consent from [REDACTED] to search beyond the scope of the warrant. They then proceeded to search locations not listed in the warrant, including the entire multi-unit apartment building, the attic, the garage, and at least one of [REDACTED] vehicles. Finally, one of the members questioned a handcuffed [REDACTED] about his criminal activity in the presence of his minor children and refused to allow [REDACTED] to take custody of the minor children during the duration of the search.

On March 26, 2021, a Legal Affairs sergeant submitted an Initiation Report, alleging the search team failed to comply with Department policy, and COPA began its investigation. At the same time, [REDACTED] their [REDACTED], and [REDACTED] filed a lawsuit against the Department and various members. COPA requested statements from [REDACTED] and [REDACTED] however, their attorney denied the request.<sup>1</sup>

COPA’s investigation determined that misconduct occurred during both the acquisition and execution of the search warrant. Those allegations and COPA’s findings are detailed below.

**II. INVOLVED PARTIES**

Involved Member #1:	Lieutenant Thomas Wiczorek, Star #268, Employee ID # [REDACTED], Date of Appointment: January 18, 1994, Unit 009, Male, White.
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<sup>1</sup> Despite the lack of cooperation, COPA determined that the Initiation Report from Legal Affairs constituted a member-on-member complaint, and no affidavit was required to investigate any of the accused members.

Involved Member #2: Sergeant Guy Habiak, Jr., Star #1493, Employee ID # [REDACTED], Date of Appointment: November 29, 2004, Unit 211, Male, White.

Involved Member #3: Officer Sergio Martinez, Star #19512, Employee ID # [REDACTED], Date of Appointment: December 2, 2002, Unit 193, Male, Hispanic.

Involved Member #4: Officer Andrew Kats, Star #17577, Employee ID # [REDACTED], Date of Appointment: July 27, 2018, Unit 211, Male, White.

Involved Member #5: Officer Angelo Dicera, Star #14902, Employee ID # [REDACTED], Date of Appointment: July 27, 2018, Unit 211, Male, Hispanic.

Involved Member #6: Officer Anthony Palumbo, Star #7751, Employee ID # [REDACTED], Date of Appointment: August 16, 2017, Unit 610, Male, White.

Involved Member #7: Officer Cesar Soto, Star #8166, Employee ID # [REDACTED], Date of Appointment: July 17, 2017, Unit 193, Male, White Hispanic.

Involved Member #8: Officer Chen Zheng, Star #18483, Employee ID # [REDACTED], Date of Appointment: August 27, 2018, Unit 009, Female, Asian/Pacific Islander.

Involved Member #9: Officer Johnathan DiBiase, Star #14050, Employee ID # [REDACTED], Date of Appointment: November 30, 2012, Unit 008, Male, White.

Involved Member #10: Officer Sean Lynch, Star #18495, Employee ID # [REDACTED], Date of Appointment: November 24, 2014, Unit 006, Male, White.<sup>2</sup>

Involved Individual #1: [REDACTED] Male, White Hispanic.

Involved Individual #2: [REDACTED] Female, White.<sup>3</sup>

Involved Individual #3: [REDACTED] Male, White Hispanic.<sup>4</sup>

<sup>2</sup> On October 3, 2021, Officer Lynch separated from the Department after providing COPA with a statement related to this matter. Att. 94.

<sup>3</sup> [REDACTED] is referred to as [REDACTED] in press reports related to this incident. COPA refers to her as [REDACTED] in this report, consistent with the civil lawsuit.

<sup>4</sup> [REDACTED] was a 12-year-old juvenile at the time of this incident.

Involved Individual #4: [REDACTED] Male, White Hispanic.<sup>5</sup>

Involved Individual #5: [REDACTED] Male, White Hispanic.

**III. ALLEGATIONS**

Officer	Allegation	Finding
Lt. Wieczorek	<p>1. Failed to ensure the information included in Search Warrant # [REDACTED] was verified and corroborated by an independent investigation</p> <p>2. Signed Search Warrant # [REDACTED] after the warrant was approved by the Cook County State’s Attorney’s Office</p>	<p>Unfounded.</p> <p>Exonerated.</p>
Sgt. Habiak, Jr.	<p>1. Submitted the Complaint for Search Warrant and the Search Warrant for # [REDACTED] to the Cook County State’s Attorney’s Office before obtaining the signature of the designated unit supervisor the rank of lieutenant or above.</p> <p>2. Failed to ensure that Department members executing Search Warrant # [REDACTED] waited a reasonable period of time before making or attempting to make forcible entry into [REDACTED].</p> <p>3. Failed to notify the Office of Emergency Management and Communications (“OEMC”) dispatched and obtain an event number after [REDACTED] gave consent to search beyond the scope of Search Warrant # [REDACTED]</p> <p>4. Inappropriately accepted [REDACTED] offer to search beyond the scope of Search Warrant # [REDACTED] when [REDACTED] made the officer under duress.</p> <p>5. Failed to ensure a Consent to Search form was completed.</p> <p>6. Searched beyond the scope of Search Warrant # [REDACTED]</p>	<p>Sustained.</p> <p>Sustained.</p> <p>Sustained.</p> <p>Sustained.</p> <p>Sustained.</p> <p>Sustained.</p>

<sup>5</sup> [REDACTED] was a three-year-old juvenile at the time of this incident.

	<p>7. Failed to adequately supervise officers under his supervisor in that he permitted them to search beyond the scope of Search Warrant # [REDACTED]</p> <p>8. Failed to complete a City Claims Notification form regarding damage to [REDACTED] [REDACTED] which occurred during the execution of Search Warrant # [REDACTED]</p>	<p>Sustained.</p> <p>Exonerated.</p>
<p>Officer Martinez</p>	<p>1. Authored a Search Warrant and a Complaint for Search Warrant for Search Warrant # [REDACTED] with specific information that had not been verified and corroborated by an independent investigation.</p> <p>2. Submitted the Complaint for Search Warrant and the Search Warrant for # [REDACTED] to the Cook County State’s Attorney’s Office before obtaining the signature of the designated unit supervisor the rank of lieutenant or above.</p> <p>3. Failed to wait a reasonable period of time before making or attempting to make forcible entry into [REDACTED] [REDACTED], while executing Search Warrant # [REDACTED]</p> <p>4. Failed to notify the Office of Emergency Management and Communications (“OEMC”) dispatched and obtain an event number after [REDACTED] gave consent to search beyond the scope of Search Warrant # [REDACTED]</p> <p>5. Searched beyond the scope of Search Warrant # [REDACTED]</p> <p>6. Failed to document damage at [REDACTED] [REDACTED], [REDACTED], which occurred during the execution of Search Warrant # [REDACTED]</p> <p>7. Questioned [REDACTED] about his involvement with guns and drugs in the presence of his minor children.</p> <p>8. Failed to allow [REDACTED] to retrieve [REDACTED] children while Search Warrant # [REDACTED] was being executed.</p>	<p>Unfounded.</p> <p>Sustained.</p> <p>Not Sustained.</p> <p>Sustained.</p> <p>Not Sustained.</p> <p>Exonerated.</p> <p>Sustained.</p> <p>Sustained.</p>

<p>Officer Kats</p>	<p>1. Failed to wait a reasonable period of time before making or attempting to make forcible entry into [REDACTED] while executing Search Warrant # [REDACTED]</p> <p>2. Searched beyond the scope of Search Warrant # [REDACTED]</p>	<p>Unfounded.</p> <p>Unfounded.</p>
<p>Officers Dicera, Soto, and Zheng</p>	<p>1. Failed to wait a reasonable period of time before making or attempting to make forcible entry into [REDACTED], while executing Search Warrant # [REDACTED]</p> <p>2. Searched beyond the scope of Search Warrant # [REDACTED]</p>	<p>Unfounded.</p> <p>Not Sustained.</p>
<p>Officers Palumbo, DiBiase and Lynch</p>	<p>1. Failed to wait a reasonable period of time before making or attempting to make forcible entry into [REDACTED] while executing Search Warrant # [REDACTED]</p> <p>2. Searched beyond the scope of Search Warrant # [REDACTED]</p>	<p>Not Sustained.</p> <p>Not Sustained.</p>

**IV. APPLICABLE RULES AND LAWS**

Rules

1. **Rule 2:** Prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. **Rule 3:** Prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals
3. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.

Special Orders

1. **S03-10:** City Claims Notification Program.<sup>6</sup>
2. **S04-10-01:** Consent to Search Incidents.<sup>7</sup>
3. **S04-19:** Search Warrants.<sup>8</sup>

<sup>6</sup> Att. 56.

<sup>7</sup> Att. 69.

<sup>8</sup> Att. 68. The Search Warrant policy referenced in this report was effective from January 3, 2020 – May 28, 2021.

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**State Laws**

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1. **725 ILCS 5/108-8**: Use of force in the execution of search warrant.<sup>9</sup>

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**Federal Laws**

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1. **Fourth Amendment to the United States Constitution**: Guarantees protection from unlawful arrest and unreasonable search and seizure to all person in this country.

**V. INVESTIGATION****a. Interviews**

COPA interviewed **Lieutenant (Lt.) Thomas Wieczorek** on August 17, 2021.<sup>10</sup> Lt. Wieczorek related that on March 14, 2021, he was the 2<sup>nd</sup> Watch commanding officer in the 9<sup>th</sup> District. Lt. Wieczorek related that officers from an outside unit presented him with the search warrant, which he signed to indicate his approval for them to conduct a search warrant within the 9<sup>th</sup> District.<sup>11</sup> Lt. Wieczorek believed policy dictated that a lieutenant from the team's chain of command would investigate and approve the warrant, and he was only giving permission for the execution of the warrant as the commanding officer in the district of occurrence.<sup>12</sup> Lt. Wieczorek did not believe the search warrant contained another lieutenant's signature when he signed it. He could not recall if he asked the officers any questions about the search warrant.

COPA interviewed **Sergeant (Sgt.) Guy Habiak** on January 24, 2022.<sup>13</sup> Sgt. Habiak never spoke to or met with J. Doe, who provided the information that was the basis of the warrant.<sup>14</sup> However, Sgt. Habiak and Officer Martinez performed database searches and confirmed [REDACTED] address. The warrant application was not submitted to Unit 716's then-lieutenant, Commander Bryan Spreyne, because he was out of town. It was instead submitted to Lt. Wieczorek from the 9<sup>th</sup> district, as that was the district where the warrant was being executed.<sup>15</sup> Sgt. Habiak was aware that the warrant had gone to the Cook County State's Attorney's Office (CCSAO) before a lieutenant.<sup>16</sup>

Upon the Department arrival at [REDACTED] [REDACTED], Sgt. Habiak checked the handle of the common external door and found it was locked. Members then knocked, announced themselves, and waited "about seven seconds"<sup>17</sup> before they began breaching the building's common external door. Sgt. Habiak related they announced themselves at the common door to "let everybody know

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<sup>9</sup> Att. 95.

<sup>10</sup> Atts. 18 (audio) and 88 (transcript).

<sup>11</sup> Lt. Wieczorek did not know the names of the members who presented him the warrant but recalled they were from Unit 716. Att. 88, pg. 7.

<sup>12</sup> Lt. Wieczorek explained this was his understanding of Department policy when a search warrant was being executed by a unit outside of his assigned district.

<sup>13</sup> Atts. 61 (audio) and 90 (transcript).

<sup>14</sup> Att. 90, pgs. 7, 9 and 13.

<sup>15</sup> Sgt. Habiak was unable to provide an answer, when specifically asked if the search warrant was presented to Lt. Wieczorek for approval or notification of the search occurring in his district. *Id.* pg. 11.

<sup>16</sup> *Id.*, pg. 12.

<sup>17</sup> *Id.*, pg. 13.

in the building that we're here and we're going to be coming in," but the members' goal was to "get to the second floor and knock and announce at that residence target location."<sup>18</sup> It took members several minute to get through the outer door, because the door was barricaded. Eventually, the members proceeded to the second floor, where they detained ██████ and ██████ in handcuffs. ██████ gave Officer Martinez consent to search the property, including the garage and his vehicles.<sup>19</sup> Sgt. Habiak admitted he did not notify OEMC of ██████ consent to search.<sup>20</sup> Sgt. Habiak believed ██████ consent to search was valid because it was verbally given, recorded on body worn camera (BWC), ██████ was near a member throughout the search and could have revoked the consent at any time, and Sgt. Habiak believed that ██████ had told Officer Martinez he owned the building.<sup>21</sup> A City Claims Notification was not completed because the side door was damaged as part of a valid warrant at the correct address.<sup>22</sup>

COPA interviewed **Officer Sergio Martinez** on February 16, 2022.<sup>23</sup> Officer Martinez stated he had previously used the J. Doe on warrants and knew him to be a reliable source.<sup>24</sup> J. Doe informed Officer Martinez about ██████ and narcotics sales at his residence.<sup>25</sup> Officer Martinez verified ██████ address through database records and through the J. Doe. Officer Martinez brought the warrant to Lt. Wieczorek on the date of execution because the warrant was being executed in Lt. Wieczorek's district, and Unit 716's then-lieutenant, Commander Spreyne, "was not available at the time."<sup>26</sup> Per Officer Martinez, Commander Spreyne was aware of the warrant when Officer Martinez began his investigation and knew that Officer Martinez had sent the warrant to an assistant state's attorney at CCSAO.<sup>27</sup> Officer Martinez asserted J. Doe was a real person and denied fabricating information in the search warrant.<sup>28</sup>

On March 14, 2021, Department members arrived at ██████ "multi-unit building and knocked and announce[d] office on the side door."<sup>29</sup> According to Officer Martinez, the members knocked and announced at the external door as a courtesy.<sup>30</sup> Officer Martinez explained they had to ram the external door multiple times to force entry, as behind the outermost external door, there was a steel door that was fortified at the top and bottom.<sup>31</sup> Once the members went upstairs, the door to ██████ apartment was already open.<sup>32</sup> The members detained ██████ and he gave consent

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<sup>18</sup> *Id.*, pg. 15.

<sup>19</sup> Sgt. Habiak related he was unaware of the Consent to Search form until after he was notified of his allegations by COPA. *Id.*, pg. 18.

<sup>20</sup> *Id.*, pgs. 18 and 19.

<sup>21</sup> *Id.*, pg. 19.

<sup>22</sup> Sgt. Habiak explained that a City Claim Notification is only required when there is accidental damage. *Id.*, pgs. 19 and 20.

<sup>23</sup> Atts. 74 (audio) and 84 (transcript).

<sup>24</sup> Att. 84, pg. 7.

<sup>25</sup> Officer Martinez explained that his investigation used several databases and confirmed the address provided by J. Doe had been used by ██████. Additionally, Officer Martinez learned there were possible weapons in the residence, the doors would likely be fortified, and that children and a dog would be present. *Id.*, pgs. 7 to 9.

<sup>26</sup> Officer Martinez explained the reason Lt. Wieczorek was presented with the warrant was to provide notification that it was going to be executed in his district. Att. 84, pgs. 10 and 11.

<sup>27</sup> *Id.*, pgs. 12 and 12.

<sup>28</sup> *Id.*, pg. 18.

<sup>29</sup> *Id.*, pg. 12.

<sup>30</sup> *Id.*, pgs. 13 and 22.

<sup>31</sup> *Id.*, pg. 13.

<sup>32</sup> *Id.*, pg. 14.

to search the entire building.<sup>33</sup> Officer Martinez searched the property, including both sides of the first and second floors, the garage, and ██████ vehicle, to which ██████ had provided the keys. Officer Martinez acknowledged that he searched beyond the scope of the warrant and reiterated that ██████ gave consent. No contraband was located, aside from minimal amounts of suspected cannabis and related paraphernalia.<sup>34</sup>

Officer Martinez explained that he did not believe there was an issue with him questioning ██████ about contraband and weapons in front of his children.<sup>35</sup> Additionally, Officer Martinez stated he did not consider allowing ██████ to take custody of the children during the search but would have considered it had ██████ been arrested.<sup>36</sup>

COPA interviewed **Officers Andrew Kats,**<sup>37</sup> **Officer Dicera,**<sup>38</sup> **Anthony Palumbo,**<sup>39</sup> **Cesar Soto,**<sup>40</sup> **Chen Zheng,**<sup>41</sup> **Jonathan DiBiase,**<sup>42</sup> and **Sean Lynch.**<sup>43</sup> All the officers, except Officer Soto, denied interacting with J. Doe or participating in the warrant's approval process.<sup>44</sup> Officer Soto was uncertain if he joined Officer Martinez's meeting with the J. Doe or Lt. Wieczorek.<sup>45</sup> During the breach of the building, Officer Kats was the exterior front security officer and Officer Dicera was the rear security officer.<sup>46</sup> Officer Palumbo was assigned to the ram<sup>47</sup> and Officer DiBiase was equipped with the Chicago Bar.<sup>48</sup> Officers Zheng and Lynch were also part of the entry team,<sup>49</sup> while Officer Soto served as the inventory officer.<sup>50</sup>

Upon arrival, Sgt. Habiak confirmed the external door to ██████ ██████ was locked, at which point Officer DiBiase put the Chicago bar against the door to ensure the gap was wide enough for the pry bar.<sup>51</sup> Officer DiBiase proceeded to knock on the door and announce the members' presence.<sup>52</sup> At Sgt. Habiak's instruction, Officer Palumbo then began ramming the

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<sup>33</sup> Officer Martinez explained that ██████ consent was captured on BWC but he did not complete a Consent to Search form, as it was the responsibility of the supervisor to obtain the needed information for ██████ consent to search. *Id.*, pgs. 15, 16 and 22.

<sup>34</sup> *Id.*, pgs. 18 and 19.

<sup>35</sup> *Id.*, pg. 23.

<sup>36</sup> *Id.*, pgs. 23 and 24.

<sup>37</sup> Atts. 20 (audio) and 91 (transcript).

<sup>38</sup> Atts. 21 (audio) and 87 (transcript).

<sup>39</sup> Atts. 22 (audio) and 85 (transcript).

<sup>40</sup> Atts. 31 (audio) and 92 (transcript).

<sup>41</sup> Atts. 36 (audio) and 83 (transcript).

<sup>42</sup> Atts. 45 (audio) and 86 (transcript).

<sup>43</sup> Atts. 54 (audio) and 89 (transcript).

<sup>44</sup> Att. 91, pgs. 7 and 8; Att. 87, pgs. 7 and 8; Att. 85, pgs. 6 and 7; Att. 83, pgs. 6 and 7; Att. 86, pgs. 7 and 8; Att. 89, pgs. 7 and 8.

<sup>45</sup> Officer Soto explained that he accompanied Officer Martinez to meetings with J. Doe in the past, but he could not remember if it was for this specific warrant. Att. 92, pgs. 7 and 10.

<sup>46</sup> Att. 91, pgs. 7 and 9; Att. 87, pgs. 9 and 10.

<sup>47</sup> Att. 85, pgs. 6 and 7.

<sup>48</sup> Att. 89, pg. 9.

<sup>49</sup> Att. 83, pg. 6; Att. 89.

<sup>50</sup> Att. 92, pg. 11.

<sup>51</sup> Officer DiBiase stated that this action was to ensure he had the proper equipment should he need to force entry. Att. 89, pg. 9.

<sup>52</sup> Officer DiBiase was clear that he was not attempting to force entry prior to being instructed to do so, and his placement of the Chicago Bar in the gap was to ensure he was ready to act if required. Att. 89, pg. 9.

door.<sup>53</sup> Officer Palumbo heard a voice on the other side of the door, waited a couple seconds, and resumed ramming.<sup>54</sup> At the same time, Officer Lynch spoke with ██████ through the window and instructed ██████ to wait, rather than allowing ██████ to open the door.<sup>55</sup> Officer Lynch thought it was safer for ██████ to remain at the window while the members forced entry. The members struggled to force the external door open, as the door was fortified. Eventually, they proceeded upstairs, handcuffed ██████ and ██████ and ██████ gave permission to search the entire property. Officer Kats searched the front bedroom and the bathroom of ██████ apartment.<sup>56</sup> Officers Dicera and Soto searched the entire second floor, including the back porch.<sup>57</sup> Officer Palumbo could not recall the specific areas he searched but did recall searching the first floor.<sup>58</sup> Officer Zheng searched both the first and second floors.<sup>59</sup> Officer DiBiase searched a storage area on the first floor and both sides of the second floor.<sup>60</sup> Members found paraphilia but no illegal substances and Sgt. Habiak told the team to leave.<sup>61</sup>

### b. Digital Evidence

**Body Worn Camera**<sup>62</sup> (“BWC”) footage captured the members’ arrival outside of ██████ ██████. Officer DiBiase placed the Chicago bar on the screen door, knocked, and said “Chicago police, search warrant.”<sup>63</sup> Approximately four seconds after this announcement, Officer Palumbo rammed the screen door open.<sup>64</sup> Sgt. Habiak stood nearby as Officers DiBiase and Palumbo breached the screen door. Members took turns ramming the main door, which was made of metal and seemingly reinforced. During the breach, Officer Dicera went to the rear of the property while Officer Kats remained near the front. Multiple officers had their firearms unholstered. The videos captured ██████ shouting “hang on” as members continued to ram the door.<sup>65</sup> ██████ who was near the front window, related he could not open the door while members were hitting it. Officer Lynch told ██████ to stay put, and that they already knew children and a dog were inside.

Members broke down the door after roughly three minutes of ramming and proceeded to the second floor with their firearms drawn. Officer Zheng handcuffed ██████ and Officer Soto handcuffed ██████. Sgt. Habiak then announced the warrant to OEMC, obtained an event number,

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<sup>53</sup> Officer Zheng stated that Sgt. Habiak made the decision to begin forcing entry. Att. 83, pg. 8; Att. 85, pg. 9; Att. 89, pg. 10.

<sup>54</sup> Att. 85, pg. 8.

<sup>55</sup> Officer Lynch explained that he recognized ██████ as the target of the warrant and told him to wait for officer safety reasons. According to Officer Lynch, because the ramming had already begun, it was tactically safer for the members and occupants of the residence for ██████ to remain at the window rather than approach the door. Att. 89, pg. 11.

<sup>56</sup> Att. 91, pg. 12.

<sup>57</sup> Att. 87, pg. 11. Officer Soto stated he did not search any areas not listed in the warrant until ██████ consented to their search and Officer Soto observed Sgt. Habiak searching those areas. Att. 92, pg. 15.

<sup>58</sup> Officer Palumbo explained that he searched the first floor after he heard ██████ consent to the search. Att. 85, pgs. 11 and 12.

<sup>59</sup> Officer Zheng explained that her search of the first floor occurred after she heard ██████ provide consent. Att. 83, pgs. 11 and 16.

<sup>60</sup> Officer DiBiase stated he searched areas not listed in the warrant based on his understanding that ██████ had given consent to Sgt. Habiak and Officer Martinez. Att. 86, pgs. 14, 15 and 22.

<sup>61</sup> Att. 86, pg. 16; Att. 89, pg. 16.

<sup>62</sup> Atts. 5 to 9, 13, 19, 57, and 60.

<sup>63</sup> Att. 8 at 02:17; Att. 13 at 02:20.

<sup>64</sup> Att. 19 at 02:24.

<sup>65</sup> Att. 7 at 03:48.

and began taking photos. The entire building was seemingly under construction, with missing walls and ill-defined spaces. ██████ asked to see the search warrant and related that his dog and two kids were in another room. After Officer Martinez told ██████ they were searching for narcotics, ██████ acknowledged he had some cannabis. ██████ asked if his ██████ could pick up his children and was told that it would not happen immediately. ██████ again asked for the search warrant, which Sgt. Habiak showed him. ██████ then announced that they could “search everything,” including his vehicles.<sup>66</sup> ██████ was allowed to relocate his dog into the bathroom, and his ██████ joined him and ██████ in the living room.

The members then proceeded to search the entire property. While searching the master bedroom, Officers Kats and Lynch found a personal-use amount of cannabis. Officer Martinez found keys, confirmed they were for two cars and the garage, and used them to search the garage and a parked Jeep. He also searched the attic space, the first floor, an external staircase and porch, and the second floor, including removing kitchen cabinet baseboards. Officer Martinez also asked ██████ about his involvement with guns and drugs while his two ██████ were present.<sup>67</sup> During the search of the first floor, Officers Zheng and Martinez entered a bedroom and encountered ██████ lying in bed.<sup>68</sup> Throughout the warrant’s execution, officers discussed if they had permission to search everywhere, and they continuously reassured each other that ██████ had given consent. Sgt. Habiak told Officer DiBiase that ██████ would not be charged for his personal-use cannabis. There was also discussion as to whether there would be charges regarding prescription pills and the reinforced metal door. Eventually, Officer Martinez told Officer Lynch they should “cut [their] losses.”<sup>69</sup> Officer Zheng obtained ██████ and the children’s information and uncuffed ██████. Officer Soto finished with the evidence log, which ██████ refused to sign. The members then left the residence.

### c. Documentary Evidence

The **Search Warrant**<sup>70</sup> and **Complaint for Search Warrant**<sup>71</sup> were signed by an Assistant State’s Attorney on March 13, 2021, at 1:08 PM. At 2:32 PM, a judge approved the warrant. Lt. Wiczorek subsequently signed the warrant the following morning. The warrant authorized the search of ██████ and the “entire 2nd floor front apartment of a multi-unit residence with blue siding located at ██████, ██████”<sup>72</sup> as well as the seizure of cocaine and items related to narcotics sales. According to the Complaint for Search Warrant, J. Doe told Officer Martinez he had repeatedly purchased cocaine from ██████ second-floor apartment at ██████, ██████. J. Doe also related ██████ stored cocaine inside a cooking grill in his garage. Officer ██████ confirmed ██████ was associated with ██████, ██████, confirmed ██████ photo with J. Doe, and had J. Doe confirm ██████ residence.

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<sup>66</sup> Att. 6 at 12:00.

<sup>67</sup> Att. 60 at 01:03:00.

<sup>68</sup> Att. 8 at 01:15:43

<sup>69</sup> Att. 60 at 01:20:30.

<sup>70</sup> Atts. 66 and 67.

<sup>71</sup> Att. 67, pgs. 5 – 7.

<sup>72</sup> Att. 67, pg. 4.

According to the **Search Warrant Data**,<sup>73</sup> Officer Martinez made notification prior to entry, which Lt. Wiczorek received. Sgt. Habiak then made notification after entry. The members did not recover any contraband during the search.

An **Original Case Incident Report**<sup>74</sup> authored by Officer Martinez related that his team executed Search Warrant # [REDACTED] at [REDACTED] [REDACTED]. The officers “knocked and announced office on the exterior side door with no response.”<sup>75</sup> As they began to force entry to the fortified door, [REDACTED] stated, “Wait I’ll open it,”<sup>76</sup> but he then refused to open the door. The members made entry and detained everyone inside the second-floor apartment. [REDACTED] was shown the warrant and the members began their search. At that point, [REDACTED] “gave r/o’s verbal consent to search the whole residence, rear garage and his vehicle.”<sup>77</sup> The search was negative, and members left a copy of the warrant and exited the residence.

**Evidence Photographs**<sup>78</sup> taken during the execution of Search Warrant # [REDACTED] confirmed damage to the exterior side door at [REDACTED] [REDACTED]. The photographs also showed this door and the door to [REDACTED] apartment were fortified.

**Legal Affairs’ Initiation Report**<sup>79</sup> states that, during the warrant’s execution, the search team “did not comply with the mandates in the Special Order titled Consent to Search Incidents.”<sup>80</sup>

A **Civil Lawsuit**<sup>81</sup> filed on behalf of [REDACTED] their two [REDACTED], and [REDACTED] alleges that “the [Search Warrant] Complaint and affidavit which were the basis for the issuance of the warrant contained fabricated, false and misleading information purportedly obtained from a ‘John Doe.’”<sup>82</sup> The lawsuit further alleges “there was no independent investigation to verify or corroborate the alleged information provided by the purported ‘John Doe’ informant.”<sup>83</sup> The document also asserts that [REDACTED] was renting the first-floor unit, and that the children “were forcibly removed from the presence of their parents and placed in a separate room along with the family dog, with the door closed.”<sup>84</sup> According to the civil complaint, the members failed to give [REDACTED] time to open the door prior to breach, damaged a door, pointed their guns at the plaintiffs, searched beyond the scope of the warrant, handcuffed [REDACTED] without justification, forced [REDACTED] to tender his garage and car keys, caused “needless destruction of food” and “unnecessary property damage,”<sup>85</sup> mocked [REDACTED] lingerie, and “fabricated official police reports which contained multiple false statements regarding the facts and circumstances of the execution of the warrant - including that they knocked and announced with no response and that the Plaintiffs refused to

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<sup>73</sup> Atts. 58 & 59.

<sup>74</sup> Att. 12.

<sup>75</sup> *Id.*, pg. 1.

<sup>76</sup> *Id.*, pg. 1.

<sup>77</sup> *Id.*, pg. 1.

<sup>78</sup> Att. 55.

<sup>79</sup> Att. 10.

<sup>80</sup> *Id.*, pgs. 1-2.

<sup>81</sup> Atts. 2, 3, 76 – 82, & 93.

<sup>82</sup> Att. 2, pg. 3, paragraph 8.

<sup>83</sup> *Id.*, pg. 4, paragraph 15.

<sup>84</sup> *Id.*, pgs. 4 - 5, paragraph 20.

<sup>85</sup> *Id.*, pg. 5, paragraph 26.

answer the door.”<sup>86</sup> A subsequently filing further alleges the members “vindictively adulterated food in Plaintiffs’ refrigerator by putting batons into mayonnaise jars and other food containers.”<sup>87</sup>

## VI. 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;<sup>88</sup>
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;<sup>89</sup> or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it was lawful and proper.

## V. ANALYSIS & CONCLUSION

### A. Allegations Related To The Acquisition Of The Search Warrant

#### 1. Warrant approval process

COPA finds that Allegation #1 against Sgt. Habiak and Allegation #2 against Officer Martinez, that they submitted the Complaint for Search Warrant and the Search Warrant to the CCSAO before obtaining the signature of their unit supervisor (the rank of lieutenant or above), is **sustained**.

COPA finds that Allegation #1 against Lt. Wieczorek, that he failed to ensure the information included in the search warrant was verified, is **unfounded**. COPA finds Allegation #2 against Lt. Wieczorek, that he signed the warrant after it was presented to and approved by the CCSAO, is **exonerated**.

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<sup>86</sup> *Id.*, pg. 6, paragraph 28.

<sup>87</sup> Att. 80, pg. 4.

<sup>88</sup> 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.

<sup>89</sup> **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.

When seeking a search warrant based on information provided by a J. Doe, Department members are required to present the Complaint for a Search Warrant and Search Warrant to a supervisory member equal to or above the rank of a lieutenant for review.<sup>90</sup> Additionally, when Bureau of Patrol members are serving a search warrant outside their district of assignment, they must notify and seek the approval of the command staff from the district where the warrant is being executed.<sup>91</sup> Supervisory members are also obligated to “[e]nsure that all Policy, Rules, Regulation, Order and Directives of the Department are enforced and implemented by their subordinates” and “remain accountable for the failure, misconduct or omission by their subordinates.”<sup>92</sup>

Here, it is undisputed that the search warrant for [REDACTED] residence was based on information provided by a J. Doe. It is also undisputed that neither Sgt. Habiak nor Officer Martinez presented the Complaint for Search Warrant or Search Warrant to any supervisory member the rank of lieutenant or above until *after* the warrant application was approved by the CCSAO and a judge.<sup>93</sup> This violated Department policy and Rules 2, 3 and 6.

It is also undisputed that, after the CCSAO and the judge approved the Complaint for Search Warrant, Officer Martinez presented the documents to Lt. Wieczorek. By Officer Martinez’s own admission, the sole purpose of this was to inform Lt. Wieczorek that Officer Martinez’ unit intended to serve a warrant at an address located within Lt. Wieczorek’s district. Further, Lt. Wieczorek explained that as the lieutenant of a different unit than Officer Martinez, he was not required to complete the independent investigation to verify and corroborate the J. Doe’s information. Lt. Wieczorek’s explanation is consistent with the notification section of the applicable policy;<sup>94</sup> therefore, COPA finds Lt. Wieczorek was not responsible for nor obligated to complete the independent investigation. Additionally, given the limited nature of Lt. Wieczorek’s involvement, the fact that he signed the Complaint for Search Warrant and Search Warrant after the CCSAO and judge approved the documents did not violate Department policy.<sup>95</sup>

## 2. Verification of J. Doe’s information

COPA finds Allegation #1 against Officer Martinez, that he authored a Search Warrant and a Complaint for Search Warrant with specific information that had not been verified and corroborated by an independent investigation, is **unfounded**.

When seeking a search warrant based on information provided by a J. Doe, Department members are required to verify and corroborate the information provided by the J. Doe through an

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<sup>90</sup> S04-19 VI(A)(3), Search Warrants (effective September 3, 2015 to January 3, 2020). *See* Att. 68.

<sup>91</sup> S04-19 V(C).

<sup>92</sup> Article IV (B) of the Rules and Regulations of the Chicago Police Department.

<sup>93</sup> While the policy does not explicitly state that a sergeant is responsible for ensuring this requirement is met, the facts of this case make it clear that Sgt. Habiak either knew or should have known that a lieutenant from his unit was not available to complete the needed independent investigation to verify the information presented by Officer Martinez. *See* Att. 75 (showing no lieutenant or above was on duty in Sgt. Habiak’s unit when the warrant was sought).

<sup>94</sup> S04-19 V(C).

<sup>95</sup> COPA notes that the policy text requiring a lieutenant to approve a warrant application before it is submitted to the CCSAO does not appear to apply to notifications such as the one made to Lt. Wieczorek. *See* S04-19 V(C).

independent investigation.<sup>96</sup> Here, Officer Martinez informed COPA that he took numerous steps to verify the information provided by J. Doe. Those steps included inquiring with Chicago's High Intensity Drug Trafficking Area (HIDTA) for other investigative conflicts and when finding none obtaining a deconfliction number, and searching the CLEAR Data Warehouse and Thompson-Reuters databases to ensure the target location was associated with [REDACTED]. These database searches produced a 2020 police report in which [REDACTED] listed his address as [REDACTED], as well as vehicle registration records linking him to the same address. Additionally, Officer Martinez told COPA that J. Doe had a prior history of providing accurate information related to narcotic sales during unrelated investigations. Based on the recounting of steps as provided by Officer Martinez, combined with the accuracy of the information listed in the search warrant documents, the preponderance of the evidence shows that Officer Martinez' investigation complied with Department policy. Therefore, COPA finds the search warrant documents were properly authored.

## A. Allegations Related To The Execution Of The Search Warrant

### 1. Knock-and-Announce Allegations

COPA finds Allegation #2 against Sgt. Habiak, that he failed to ensure that Department members executing the warrant waited a reasonable period of time before making or attempting to make forcible entry, is **sustained**. However, Allegation #1 against Officers DiBiase, Palumbo and Lynch, and Allegation #3 against Officer Martinez, that they failed to wait a reasonable period of time before making or attempting to make forcible entry, is **not sustained**.

Supervisory Department members are required to ensure that members executing a search warrant "adhere to the Knock and Announce Rule" as required by law and provide a "reasonable opportunity" for the occupants to allow entry.<sup>97</sup> The knock-and-announce rule emanates from the Fourth Amendment jurisprudence of the U.S. Supreme Court and provides that, before police officers use force to enter private residences, they must first knock, identify themselves, and provide occupants a reasonable opportunity to answer. The rule is no mere formality: it protects substantive human interests by giving individuals "the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry."<sup>98</sup>

Here, it is undisputed that members knocked and announced their presence prior to forcing entry on the common exterior door of the building.<sup>99</sup> However, at Sgt. Habiak's direction, the members waited less than seven seconds after knocking and announcing before they began to force entry.<sup>100</sup> In fact, when Officer Palumbo failed to properly strike the Chicago Bar, Sgt. Habiak specifically identified where on the Chicago Bar Officer Palumbo should strike.<sup>101</sup> As Officer Palumbo continued attempting to force entry, approximately 40 to 50 seconds after the first ram strike, BWC video captured an unidentified voice (likely [REDACTED] from inside the building. Officer

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<sup>96</sup> S04-19 IV(A)(1)(c).

<sup>97</sup> S04-19 VIII(D)(b).

<sup>98</sup> See *United States v. Vazquez*, No. 3:15-cr-00119 (MPS), doc. 69 at 24 (D. Conn. 2006)

<sup>99</sup> Att. 13 at 02:20.

<sup>100</sup> Att. 13 at 02:27.

<sup>101</sup> Att. 60 at 02:35.

Palumbo briefly stopped trying to force entry and ordered the person to open the door; however, the door did not open.<sup>102</sup> Officer Palumbo then resumed his efforts to force entry, and Officers DiBiase, Martinez, and Lynch also took turns using the ram. The members eventually made entry and proceeded upstairs to the [REDACTED] apartment, where they found the door open and [REDACTED] inside. Sgt. Habiak personally supervised the breach, but he took no actions to increase the time between the knock and announce and when the members forced entry, nor did he instruct his subordinates to stop when they heard [REDACTED] voice on the other side of the door.<sup>103</sup>

COPA finds the short period of time between knocking and announcing and forcing entry was unreasonable. This is based on (1) the fact that the warrant was executed on a multi-unit building, and the members knocked and announced on the exterior-most door; (2) the high unlikelihood that any occupant could make their way from their respective unit to the common exterior door in seven seconds; and (3) the length of time between the first ram strike and [REDACTED] offering to open the door. Additionally, COPA finds that Sgt. Habiak made the decision to force entry and that he, as the on-scene supervisory member, issued the order that the other members complied with. It is for these reasons that COPA finds Sgt. Habiak's decision to wait only seven seconds violated Department policy and Rules 2, 3, and 6. However, Officers Martinez, DiBiase, Palumbo, and Lynch forced entry in accordance with Sgt. Habiak's directions; as a result, the allegation is not sustained as to these members.

Finally, COPA finds that Allegation #1 against Officers Dicera, Kats, Zheng, and Soto, that they failed to wait a reasonable period of time before making or attempting to make forcible entry, is **unfounded**. COPA's investigation determined that these officers did not participate in the breach; thus, they had no obligation to ensure a "reasonable opportunity" was provided for the occupants to open the door.

## 2. Consent-Related Allegations

### a. Obligations upon receiving consent to search

COPA finds Allegation #3 against Sgt. Habiak and Allegation #4 against Officer Martinez, that they failed to notify the Office of Emergency Management and Communications (OEMC) to obtain an event number after [REDACTED] gave consent to search beyond the scope of search warrant, are **sustained**. Additionally, COPA finds Allegation #5 against Sgt. Habiak, that he failed to ensure a Consent to Search form was completed, is **sustained**.

Department policy authorizes members to obtain an individual's consent to search a premise either verbally or in writing. When verbal consent is given, members are required to: 1) request that a supervisor from the member's unit of assignment respond to the scene of the consent; 2) notify OEMC and obtain an event number for the consent; and 3) notify the station supervisor in the district of occurrence.<sup>104</sup> Additionally, upon arrival, the supervisory member must "ensure

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<sup>102</sup> Att. 19 at 03:18.

<sup>103</sup> Notably, Sgt. Habiak told COPA the members were not required to knock and announce on the exterior door, only the door to [REDACTED] apartment. This is an incorrect interpretation of both Department policy and Fourth Amendment case law.

<sup>104</sup> S04-19-01 III(C)(1-3), Consent to Search Incidents (effective August 10, 2015 to current) See Att. 69.

the citizen giving consent to search has the authority to give a consent to search” and “ensure the Consent to Search form is completed.”<sup>105</sup> Supervisory members are also obligated to “[e]nsure that all Policy, Rules, Regulation, Order and Directives of the Department are enforced and implemented by their subordinates” and “remain accountable for the failure, misconduct or omission by their subordinates.”<sup>106</sup>

As set forth below, while COPA determined that ██████ consent was not freely, knowingly, and voluntarily given, the members believed it was at the time. This belief, even though unreasonable, triggered specific Department policy obligations for Sgt. Habiak and Officer Martinez. However, neither Sgt. Habiak nor Officer Martinez informed OEMC of ██████ consent to search beyond the scope of warrant, nor did they complete a Consent to Search form or ask ██████ to sign the form. These actions violated Department policy and Rules 2, 3, and 6.

#### b. Improper acceptance of ██████ consent to search

COPA finds Allegations #4 against Sgt. Habiak, that he inappropriately accepted ██████ offer to search beyond the scope of the search warrant when ██████ made the officer under duress, is **sustained**. Citizens are permitted to consent to a search of their person and/or property under their control. However, the consent must be voluntary and knowing.<sup>107</sup> To determine if consent was properly obtained, a totality of the circumstances review must be completed. Instances in which an officer asserts their official status and claim of right to search render any consent invalid.<sup>108</sup>

Here, COPA finds that ██████ did not reasonably possess the required authority to consent to a search of the entire multi-unit apartment building. This determination is based on the following factors: (1) ██████ apartment was one of four units in the building and one of two units on the second floor; (2) members only sought a search warrant for ██████ apartment, not the entire building; (3) the search warrant specifically identifies the building as a multi-unit apartment building; (4) there is no evidence that members made any attempts to determine who was the owner and/or agent for the building; and (5) the building was occupied by other citizens who did not reside in ██████ apartment – specifically ██████. Additionally, *before* Sgt. Habiak obtained ██████ consent to search, members had (1) forced entry into ██████ building; (2) detained ██████ and his family; (3) handcuffed ██████ and ██████ and (4) presented ██████ with a search warrant for his apartment. Based on these factors, COPA finds that ██████ consent was not freely given, but was in fact coerced. ██████ detention and handcuffing, combined with the presentation of a search warrant, would cause any reasonable person to conclude that the members were permitted to search the location regardless of ██████ desires or wishes.

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<sup>105</sup> S04-19-01 III(F).

<sup>106</sup> Article IV (B) of the Rules and Regulations of the Chicago Police Department.

<sup>107</sup> *Bumper v. North Carolina*, 391 U.S. 543, 546-550 (1968) (holding that a consent to search was invalid where it was obtained by officers after they asserted their possession of a search warrant, concluding, “When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion -- albeit colorably lawful coercion. Where there is coercion, there cannot be consent.”); *see also Johnson v. United States*, 333 U.S. 10, 13 (1948).

<sup>108</sup> *Amos v. United States*, 255 U.S. 313 (1921).

For these reasons, COPA finds that ██████ did not possess the authority to consent to a search of the multi-unit apartment building, and his consent was not voluntarily given. Therefore, Sgt. Habiak's acceptance of ██████ consent violated Department policy and Rule 2, 3, and 6.

### c. Searching beyond the scope of the warrant

COPA finds that Allegations #6 and 7 against Sgt. Habiak, that he searched beyond the scope of the warrant and permitted his subordinates to do the same, are both **sustained**. Department members are permitted to search a premise with a search warrant authorized by a court or upon receiving valid consent. Additionally, supervisory members are obligated to “[e]nsure that all Policy, Rules, Regulation, Order and Directives of the Department are enforced and implemented by their subordinates” and “remain accountable for the failure, misconduct or omission by their subordinates.”<sup>109</sup>

Here, the search warrant specifically authorized a search of the “entire 2<sup>nd</sup> floor front apartment of a multi-unit residence” located at ██████ ██████. However, as discussed above, during the execution of the warrant Sgt. Habiak improperly accepted ██████ consent to search. All of the members present, with the exception of Officer Kats, then proceeded to search areas not listed in the warrant, including the entire first floor, portions of the second floor, the attic space, an exterior stairwell, the garage, and one of ██████ vehicles. Sgt. Habiak not only participated in the improper search; he authorized his subordinates to do the same. His conduct was improper and violated Department policy and Rules 2, 3, and 6.

However, COPA lacks a preponderance of evidence to sustain this allegation against the other members of the search team. While it is undisputed that Officers DiBiase, Palumbo, Dicera, Zheng, Soto, Lynch, and Martinez searched beyond the scope of the warrant, their actions occurred after Sgt. Habiak improperly accepted ██████ consent to search. Thus, their search of the building, while improper, was at least tacitly approved by Sgt. Habiak and premised on a good-faith belief that ██████ had consented to the search. Therefore, Allegation #2 against Officers DiBiase, Palumbo, Dicera, Zheng, Soto and Lynch, and Allegation #5 against Officer Martinez, are **not sustained**. COPA finds Allegation #2 against Officer Kats is **unfounded**, as the BWC footage and other evidence confirm he did not search outside the scope of the warrant.

## 3. Juvenile Presence Allegations

COPA finds that Allegations #7 and 8 against Officer Martinez, that he questioned ██████ about his involvement with guns and drugs in the presence of his minor children and refused to allow ██████ to take custody of the children during the execution of the search warrant, are both **sustained**.

When Department members discover that children are present during the execution of a search warrant, the members are obligated to “maintain a sensitive approach and use due care to safeguard the emotional and physical well-being to minimize trauma following the execution of a search warrant.”<sup>110</sup> Here, it is undisputed that Officer Martinez questioned ██████ about his

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<sup>109</sup> Article IV (B) of the Rules and Regulations of the Chicago Police Department.

<sup>110</sup> S04-19 VIII(E)(3).

potential criminal activity in front of [REDACTED] juvenile children, and that he denied [REDACTED] request for his [REDACTED] to take custody of the children during the execution of the warrant. In this situation, the context and timing of Officer Martinez's questions were critical. When Officer Martinez made his inquiry with [REDACTED] members had (1) forced entry into the building; (2) detained [REDACTED] and his family; (3) handcuffed [REDACTED] and [REDACTED] (4) sat [REDACTED] on the couch next to his juvenile children; and (5) began to actively search the apartment. All of these actions could reasonably be traumatic for any person, especially a juvenile who believes their father is being investigated by the police or is under arrest.<sup>111</sup> Thus, Officer Martinez' decision to question [REDACTED] in the presence of his juvenile children violated Department policy and Rules 2, 3, and 6.

Additionally, during his COPA statement, Officer Martinez was clear that he would have released the juvenile children to either [REDACTED] or [REDACTED], but only if [REDACTED] was arrested. While [REDACTED] arrest would have clearly rendered him incapable of caring for his juvenile children, Officer Martinez' reasoning disregards the potential trauma to the children during the execution of the search warrant. Further, there is no evidence that either of the juvenile children were suspected of being involved in any criminal activity requiring their presence during the warrant's execution. For these reasons, COPA finds that Officer Martinez' failure to allow [REDACTED] to take custody of the children violated Department policy and Rules 2, 3 and 6.

### **B. Post-Execution Allegations**

COPA finds Allegation #8 against Sgt. Habiak, that he failed to complete a City Claims Notification form regarding damage that occurred during the execution of the search warrant, and Allegation #6 against Officer Martinez, that he failed to document damage that occurred during the execution of the search warrant, are both **exonerated**.

Department members who accidentally damage property while engaged in official business are required to make a City Claims Notification and complete a City Claims Notification form. Here, it is undisputed that damage occurred during the execution of the search warrant. However, the damage caused was limited and reasonably permitted by the search warrant. Specifically, the damage to the exterior common door was the result of the door being locked and fortified. Because the damage was not accidental, neither Sgt. Habiak nor Officer Martinez were no obligated to make a City Claims Notification or complete the related form.

## **VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. Sgt. Habiak**

#### **i. Complimentary and Disciplinary History**

Sgt. Habiak has received 415 various awards, including six complimentary letters, 28 Department commendations, one life saving award, one police officer of the month award, one top

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<sup>111</sup> While [REDACTED] was not under arrest, a juvenile – especially a three-year-old – could easily have perceived that was the case, particularly upon seeing his father in handcuffs while numerous officers searched their home.

gun arrest award, and 352 honorable mentions. He received a reprimand for a 2018 incident involving an improper detention, vehicle search, and failure to complete required reports.<sup>112</sup>

## ii. Recommended Penalty

COPA has found that Sgt. Habiak violated Rules 2, 3, and 6 when he failed to ensure that Officer Martinez completed all the required steps to obtain the search warrant; improperly instructed his subordinates to force entry without allowing sufficient time for the occupants to respond; improperly accepted ██████ consent to search; improperly searched and permitted his subordinates to search the entire multi-unit building; failed to make the required notifications; and failed to complete the required paperwork. All of these failures directly resulted in members taking actions that violated the rights of ██████ his family, and the owner of the multi-unit building. Additionally, Sgt. Habiak's decisions in this incident demonstrate, at best, an utter lack of understanding the basic components of supervisory duties while executing a search warrant. It is for these reasons, combined with Sgt. Habiak's minimal disciplinary history and extensive complimentary history, that COPA recommends a **90-day suspension and retraining on search warrants and consent to search incidents.**

## b. Officer Martinez

### i. Complimentary and Disciplinary History

Officer Martinez has received 278 various awards, including three complimentary letters, seven Department commendations, one police blue star award, two police officer of the month awards, and 249 honorable mentions. He received one SPAR in 2021 for failure to perform an assigned task.<sup>113</sup>

### ii. Recommended Penalty

COPA has found that Officer Martinez violated Rules 2, 3, and 6 by failing to comply with his obligations while seeking the search warrant, failing to take reasonable steps to limit the trauma caused to ██████ juvenile children, and failing to make the required notifications. These failures resulted in the approval of a search warrant that was not properly reviewed, and the improper documentation of a consent to search incident. Additionally, Officer Martinez's conduct with respect to ██████ children undermined public trust and brought discredit to the Department. It is for these reasons, combined with Officer Martinez' extensive complimentary history and minimal disciplinary history, that COPA recommends a **20-day suspension and retraining on search warrants and consent to search incidents.**

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<sup>112</sup> Att. 99, pg. 3.

<sup>113</sup> Att. 98, pg. 4.

Approved:

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Steffany Hreno  
*Director of Investigations*

9/27/2022

Date



Matthew Haynam  
*Deputy Chief Administrator*

9/27/2022

Date