

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	November 20, 2017
Time of Incident:	4:15 PM
Location of Incident:	██
Date of COPA Notification:	November 20, 2017
Time of COPA Notification:	10:00 PM

On November 20, 2017, Department members from the 10<sup>th</sup> District executed a search warrant at ██████████. The warrant was for the first-floor rear apartment. After entering an exterior door on the first floor the officers breached a door to their left toward the rear of the property. Officer Acosta saw the target, ██████████ in the first-floor front apartment door to the right. After ██████████ was detained, Officer Acosta entered and eventually department members searched that right/front apartment. ██████████ mother, went to the 10<sup>th</sup> District later that day to complain her apartment – first floor front - was searched without a warrant. After reviewing available Department reports and reviewing Body Worn Camera (BWC) footage, COPA brought allegations related to searching the first-floor front apartment without a warrant and failing to record on BWC. COPA’s findings are discussed in the Analysis portion of this report.

**II. INVOLVED PARTIES**

Involved Officer #1:	Robert Garza, Star #1105, Employee ID # ██████████ Date of Appointment: November 29, 1999, Sergeant of Police, 10 <sup>th</sup> District, Date of Birth: ██████████, 1970, Male, Hispanic
Involved Officer #2:	Andrew David, Star #16316, Employee ID # ██████████ Date of Appointment: July 15, 2013, Police Officer, 10 <sup>th</sup> District, Date of Birth: ██████████ 1988, Male, Hispanic
Involved Officer #3:	Jaime Acosta, Star #16462, Employee ID # ██████████ Date of Appointment: December 14, 2015 Police Officer, 10 <sup>th</sup> District, Date of Birth: ██████████, 1980, Male, Hispanic
Involved Officer #4:	Alfred Caruso, Star #11419, Employee ID # ██████████ Date of Appointment: June 26, 2006 Police Officer, 10 <sup>th</sup> District, Date of Birth: ██████████, 1973, Male, White
Involved Officer #5:	

Yezenia Jimenez, Star #10390, Employee ID # [REDACTED] Date of Appointment: April 25, 2016, Police Officer, 10<sup>th</sup> District, Date of Birth: [REDACTED], 1986, Female, Hispanic

Involved Individual #1: [REDACTED] Date of Birth: [REDACTED], 1960, Female, Hispanic

Involved Individual #2: [REDACTED] Date of Birth: [REDACTED], 1984, Male, Hispanic

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Sergeant Garza	1. Breached the gate to [REDACTED] without a warrant or an exception to the warrant requirement, in violation of Rule 1.	Exonerated
	2. Searched the first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, in violation of Rule 1.	Sustained/10-day suspension
	3. Failed to supervise by allowing subordinates to search the wrong apartment without a warrant or an exception to the warrant requirement, in violation of Rule 3.	Sustained/10-day suspension
	4. Failed to report your and your team’s entry into the wrong apartment, in violation of Rule 3 and Rule 22.	Sustained/10-day suspension
Officer David	1. Searched the first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, in violation of Rule 1.	Exonerated
	2. Failed to specify addresses in [REDACTED] arrest report under RD #JA519442, thereby creating a misleading report and obscuring the entry and search of a dwelling for which a warrant did not exist, in violation of Rule 2.	Exonerated

<p>Officer Acosta</p>	<p>1. Breached the gate to [REDACTED] without a warrant or an exception to the warrant requirement, in violation of Rule 1.</p> <p>2. Searched the first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, in violation of Rule 1.</p> <p>3. Failed to initiate your Body Worn Camera (BWC) at the beginning of the incident, in violation of Rule 6.</p>	<p>Exonerated</p> <p>Exonerated</p> <p>Sustained/1-day suspension</p>
<p>Officer Caruso</p>	<p>1. Failed to record any portion of the search warrant execution on Body Worn Camera (BWC), in violation of Rule 6.</p>	<p>Exonerated</p>
<p>Officer Jimenez</p>	<p>1. Failed to record any portion of the search warrant execution on Body Worn Camera (BWC), in violation of Rule 6.</p>	<p>Not Sustained</p>

**IV. APPLICABLE RULES AND LAWS**

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Rules

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1. **Rule 1:** Prohibits violation of any law or ordinance.
2. **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.
3. **Rule 3:** Prohibits any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
4. **Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
5. **Rule 22:** Prohibits failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

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Special Orders

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1. **S03-14:** Body Worn Cameras.

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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 persons in this country.

## V. INVESTIGATION<sup>1</sup>

### Background

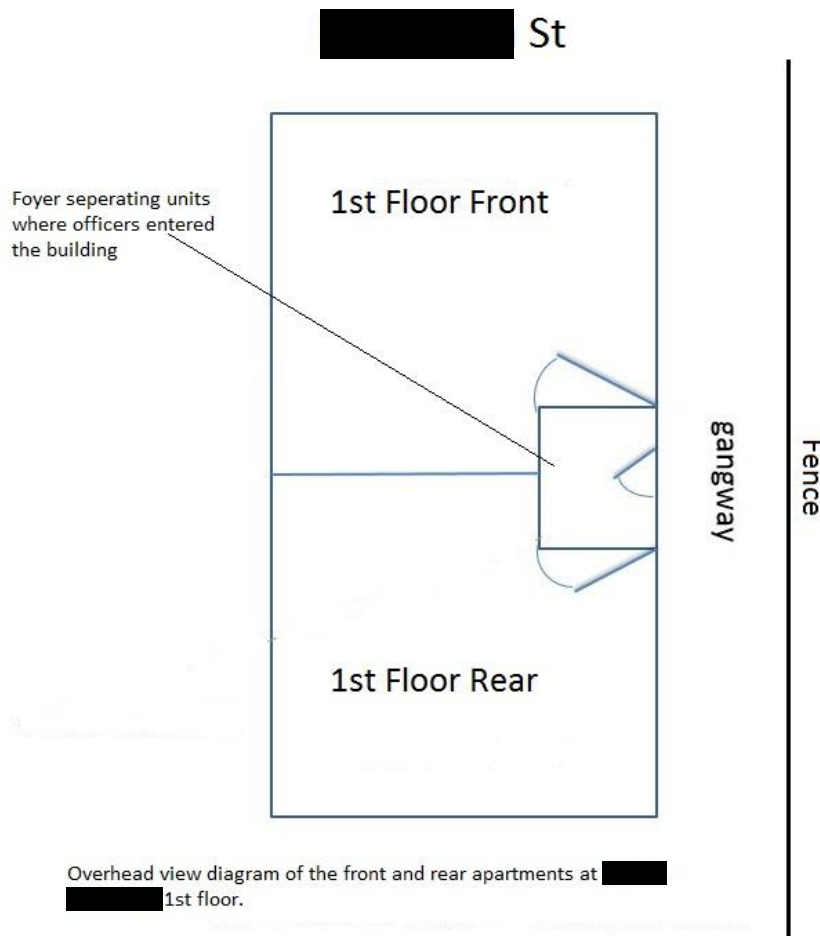
This investigation involves allegations associated with the execution of a Search Warrant for ██████████ dated November 19, 2017.<sup>2</sup> The warrant authorized police to search ██████████ and the following premises: “a multi-unit 2 story residence located at ██████████ 1<sup>st</sup> floor rear apartment.” The warrant authorized the seizure of “Cannabis, an illegal substance and all paraphernalia used for weighing, packaging of illegal [d]rugs, documentation showing residency, U.S.C., and any records detailing illegal drug transactions.” Officer David and a John Doe provided the complaint for the warrant’s probable cause.

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<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Att. 7



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**a. Interviews<sup>4</sup>**

The complainant, [redacted] failed to appear for two scheduled statements with COPA.<sup>5</sup> A letter was also sent to [redacted] but COPA has not received a response as of this report.<sup>67</sup>

**Officer Andrew David** was interviewed by COPA on August 29, 2018.<sup>8</sup> On November 20, 2017, Officer David was the affiant and executed a search warrant at [redacted]. Details about [redacted] residence were provided to Officer David from an informant identified in the search warrant as John Doe, an individual who had previously purchased cannabis

<sup>3</sup> Diagram is not to scale and was produced by COPA to illustrate the distinction between the two apartments.

<sup>4</sup> COPA did not bring allegations against every officer that entered apartment [redacted] or participated in the search or detention of persons in [redacted]. Additionally, COPA chose not to interview every officer as there are no disputed facts that officers did enter and search apartment [redacted].

<sup>5</sup> Att. 16

<sup>6</sup> Att. 13

<sup>7</sup> COPA chose not to pursue interviews of civilians detained on scene as there was no issue of fact that the officers entered and searched the first-floor front apartment.

<sup>8</sup> Att. 35

from [REDACTED]. The purchase occurred “a couple days” before the search warrant’s execution.<sup>9</sup> John Doe told Officer David, he saw weapons and gang members inside the apartment and that [REDACTED] was on electronic monitoring and could not leave his apartment. Prior to executing the search warrant, John Doe took Officer David to the location and described how he entered the residence/apartment and specifically stated that [REDACTED] lived in the “back apartment” on the first floor in the rear.<sup>10</sup> John Doe also advised that when entering the external door, he entered straight into a kitchen. According to Officer David, John Doe did not tell him there would be additional doors inside the apartment once the officers entered. Officer David advised they did confirm that [REDACTED] electronic monitoring device was registered to apartment first-floor rear. Based on the above, Officer David advised he sought a warrant for [REDACTED] apartment and specified first-floor rear.

Prior to executing the search warrant, Department members got permission and keys from the neighbor at [REDACTED] to access the target property through her gate. Officer David described the neighbor as a middle aged, Hispanic, female who owns [REDACTED] and operates a store on the first floor. When asked why team members turned their back on Officer Acosta while Officer Acosta opened the gate at [REDACTED] Officer David stated it was to protect the neighbor since she gave them keys. This was also to allow officers to stand guard. Thereafter, Officers entered through the gate and scaled the fence into the yard of [REDACTED]. [REDACTED] Officer David identified the door to [REDACTED] that John Doe showed him, which permitted access via the gangway, and observed it was open. Officer David stated that he entered and saw a door to the left, a door to the right, and a boiler room across from the external door. Officer David stated that based on John Doe’s description of the apartment, he expected to immediately be in the apartment once he went into the external door. Officer David stated he knocked on the door to the left assuming it was the rear apartment and was followed by another officer who, subsequently, breached the door. At the same approximate time, Officer David advised the door to the right opened and he saw [REDACTED] inside. Officer David stated that he told [REDACTED] to come towards him and that he secured in the common entrance.

Officer David believed the two first floor apartments were illegal because there was only one entrance per unit. Officer David stated he was not sure if he was in the wrong apartment. [REDACTED] mother, who was present, told Sergeant Garza she lived in the front apartment – the apartment to the right. Officer David recalled talking to Sergeant Garza about whether there was a rear and a front apartment, or if there was just one apartment. Officer David articulated that he had a search warrant for [REDACTED] and identified [REDACTED] in the first-floor front apartment. Once he saw [REDACTED] Officer David needed to secure [REDACTED] and [REDACTED] “immediate area.”<sup>11</sup> Once [REDACTED] was secured, the officers searched the first-floor front apartment. Officer David could not recall how or when it was decided to search the first-floor front apartment, but stated Sergeant Garza was in charge of the scene.

Officer David authored [REDACTED] arrest report and the original incident case report. Officer David stated he forgot to specify an apartment number in the arrest report and it was not intentional.

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<sup>9</sup> Approximately 30:18 minute mark at Att. 35

<sup>10</sup> Approximately 8:37 minute mark at Att. 35

<sup>11</sup> Approximately 15:17 minute mark of Att. 35

Officer David stated he did include first-floor on the case report. Officer David also stated that since the apartments were illegal, he did not “have authority” to identify if there were front or rear apartments.<sup>12</sup> Additionally, Officer David referenced the Cook County Assessor’s records that lists two total units in the building (first and second floor).<sup>13</sup> Finally, Officer David denied telling Officer Jimenez to turn off or that she no longer needed her BWC activated and did not hear anyone else tell her such.

**Officer Jaime Acosta** was interviewed by COPA on August 23, 2018.<sup>14</sup> On November 20, 2017, he was working as a 10<sup>th</sup> District tactical officer and executing a search warrant at [REDACTED]. According to Officer Acosta, the team spoke with a store cashier at [REDACTED] prior to the execution of the search, to alert her and ask permission to enter through the parking lot behind the store at [REDACTED].<sup>15</sup> The cashier gave Officer Acosta the keys to unlock the gate. Officer Acosta returned the keys but left the gate unlocked. During the pre-execution meeting, the officers discussed the address, how they would make entry, and that they would be entering one-rear. [REDACTED] was on house arrest and the team confirmed his address through Cook County Electronic Monitoring Department as 1<sup>st</sup> Floor rear.

According to Officer Acosta, when the officers returned to execute the search warrant, the gate was still unlocked. Officer Acosta described the cashier as an older, Hispanic female. Officer Acosta related his team members turned their backs to Officer Acosta when he opened the gate in order to protect themselves. Officer Acosta elaborated that this tactic is done to see if anyone is watching the officers and to monitor the area to protect them from being shot. Officer Acosta denied the officers turned their backs to prevent BWC from recording their entry through the gate. Officer Acosta again asserted that his BWC was turned on at this point and he recorded himself opening the gate on BWC.

Once officers approached [REDACTED] the common/exterior door was open. There was a door to the left to the rear apartment (herein left/rear) and a door to the right to the front apartment (herein right/front). Officers knocked on the left door. No one answered, and the officers made forced entry into the left/rear apartment. At roughly the same time, the door to the right/front apartment was opened by the occupants and the officers observed that [REDACTED] was inside that apartment. Per Officer Acosta, the first floor at [REDACTED] contained illegal apartments because there was only one entrance to the two apartments on that floor. Officer Acosta related that he believed the right/front apartment was the rear apartment because the building is on the rear of the lot and the left/rear apartment was an illegal apartment. According to Officer Acosta, he did not know why other officers breached the door to the left, as he assumed the door to the right was the unit associated with the search warrant because that’s where he saw that [REDACTED] was located.

Officer Acosta asserted he was wearing a BWC and believed he recorded the full event. However, Officer Acosta had not watched his BWC from this incident. Officer Acosta did not

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<sup>12</sup> Approximately 17:15 minute mark of Att. 35

<sup>13</sup> Att. 41

<sup>14</sup> Att. 30

<sup>15</sup> Google Maps identified the store on the first floor of [REDACTED] as [REDACTED] [REDACTED]

recall telling Officer Jimenez to not activate/record the incident on her BWC nor did he recall hearing anyone tell her not to record.

Officer Acosta denied hearing any conversation among Department members about entering the wrong apartment. Officer Acosta did not recall Sergeant Garza voicing concern about going into an apartment to which they did not have a warrant. Officer Acosta stated this was one of his first search warrants, so he was not fully confident about what to do and was guided by team members. Officer Acosta stated that the doors to the front and rear units were not marked. Officer Acosta confirmed the left/rear and right/front units were not connected, aside from the common vestibule area where each apartment had its own door. Officer Acosta believed he wrote the case report for ██████ November 20, 2017 arrest. Officer Acosta could not recall why he did not specify an apartment number. Officer Acosta denied that he was directed not to include an apartment number. After reviewing the case report, Officer Acosta elaborated he may have made a mistake by not including one-rear.

**Sergeant Robert Garza** was interviewed by COPA on September 19, 2018.<sup>16</sup>

Sergeant Garza acknowledged he was the supervising sergeant for this warrant. Prior to arriving at ██████ Sgt. Garza advised that he and the team thought the entire first floor was one apartment. He advised another officer had called and verified ██████ was on house arrest at this location. Sergeant Garza stated he believed Officer Acosta spoke with the resident at ██████ and got a key to her gate for the purpose of accessing the neighboring property. According to Sgt. Garza, the officers planned to use the key they obtained to go through the gate at ██████ and then into the yard of ██████ and upon arrival they gained entry as planned. While entering the gate, Sgt. Garza advised that Officers turned their backs to Officer Acosta while he opened the gate for security reasons and to protect the woman who provided the keys. Sergeant Garza elaborated that if the video was played in court, the officers did not want it known that the neighbor cooperated.

The officers then went through the parking lot at ██████ and hopped the fence into the yard at ██████ was located at the rear of the property with a yard in front. Sergeant Garza stated that the decision was made to go into the right/front apartment after ██████ told officers that was where his bedroom was located. According to Sergeant Garza, they believed ██████ family had the entire first floor as one apartment. The sergeant related that each unit on the first floor had separate entrances and were only connected by the entry foyer. Neither unit had a second entry door. Sergeant Garza did not recall if he specifically instructed officers to search the right/front apartment. According to Sergeant Garza, towards the end of the search he questioned if they were in the wrong apartment. The sergeant then looked throughout the first floor and realized there were no exits in the separate apartments. Sergeant Garza advised, he thought the warrant was valid for the search that was performed because the apartments were not legitimate, and ██████ home electronic monitoring box was in the right/front unit despite being registered to the first-floor rear apartment which was also the unit cited in the search warrant. Sergeant Garza stated no one was found in the left/rear apartment.

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<sup>16</sup> Atts. 42, 43



Sergeant Garza denied advising anyone to omit specific apartment numbers in Department reports. Sergeant Garza was not certain if he spoke to a supervisor after the warrant about searching the entire first floor. Sergeant Garza also denied telling Officer Jimenez to turn off her BWC prior to the end of the execution of the search warrant and did not hear anyone else tell Officer Jimenez to do so.

COPA interviewed **Officer Alfred Caruso** on August 22, 2018.<sup>17</sup> On November 20, 2017, Officer Caruso stated he assisted with a search warrant at [REDACTED] as the 10<sup>th</sup> District Intelligence Officer. Officer Caruso advised he is usually the guard officer and stays on the perimeter. Per Officer Caruso, he had never been issued a BWC because he mainly works as office personnel<sup>18</sup>. Officer Caruso did not recall what was discussed during of the pre-execution search warrant meeting. Officer Caruso also stated he had no memory of Department members entering the wrong apartment and denied hearing any Department members express concern that they searched the wrong apartment.

**Officer Yezenia Jimenez** was interviewed by COPA on August 21, 2018.<sup>19</sup> On November 20, 2017, Officer Jimenez stated that she was present for the execution of the search warrant at [REDACTED] pursuant to a request by the search warrant team for a uniformed presence and a CPD vehicle with a cage. Officer Jimenez advised she was outside when the apartment was breached and her BWC had been activated. After breach, she advised that an officer told her she did not need to have her BWC turned on but that she could not recall which Department member told her this. Officer Jimenez stated while there she searched the female civilians who were present during the search.

#### **b. Digital Evidence**

**Body Worn Camera (BWC)** and **In Car Camera (ICC)** was obtained pertaining to the events of November 20, 2017.<sup>20</sup>

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<sup>17</sup> Att. 25

<sup>18</sup> Attachment 50 is a request from COPA confirming that Officer Caruso was not issued a BWC at the time of this incident. While, COPA has yet to receive an official response from the Department, Attachments 49 and 48 include are a memo and email, respectively, from Officer Caruso supporting that he had not in fact been issued BWC at the time of this incident. Accordingly, COPA concludes that Officer Caruso had not been issued BWC at the time of this incident.

<sup>19</sup> Att. 20

<sup>20</sup> Att. 19



In the photo above the blue star indicates [REDACTED]. The red star marks [REDACTED]. The encircled officers were going over the fence between the two properties, towards [REDACTED]. A green star indicates the fence between [REDACTED] and [REDACTED] where officers entered before hopping the fence. The exterior entrance to [REDACTED] is located along the side of the building, near where the officers can be seen standing in this photograph.<sup>21</sup>

#### ***Body Worn Camera Summaries of Officers present during Execution of the Search Warrant***

***Officer Andrew David*** Officer David stood near the gate at [REDACTED] as Officer Acosta opened it. The officers went through a parking lot and hopped a fence between [REDACTED] and [REDACTED]. Once at [REDACTED] Officer David approached the external door, which was along the north side of [REDACTED] and was unlocked and ajar. Officer David entered a small hallway that had a closet immediately to the front, a door on the left towards the rear, and a door to the front apartment on the right. Officer David knocked on the door to the left towards the rear while an officer announced police presence. Officer Collins used breach tools to pound on the door to the left/rear. While that was occurring, Officer David turned around and saw the door to the right/front apartment open. Officer David saw [REDACTED] in this apartment and told [REDACTED] to come forward. At approximately 4:07 PM, a male believed to be [REDACTED] brother, [REDACTED] told the officers he did not live in the rear apartment (the apartment that had just been breached). Sergeant Garza was then on camera, stating they should bring [REDACTED] to the right/front apartment. At about 4:11 PM, Officer David spoke with Sergeant Garza and related “[t]hey opened this door [inaudible] and saw the target,” apparently referring to seeing [REDACTED] in the right/front apartment. The officers searched the front unit on the right, seizing and inventorying items, and performing pat downs on the occupants. At about 4:32 PM, the sergeant instructed the team to go through everything in the front apartment. At about 4:37 PM, Officer David spoke with Officer Acosta, who said “we should probably search across too, no?” while pointing towards the left/rear apartment. Officer Acosta proceeded to comment, “That door was open [...] That’s the rear and this looks like its [inaudible]”

<sup>21</sup> The image was captured from Sergeant Garza’s BWC with markings made by the reporting investigator.

***Sergeant Robert Garza***

Sergeant Garza arrived on scene at approximately 4:04 PM. The sergeant told the officers to turn their back to Officer Acosta while he breached the neighbor's gate at [REDACTED]. Sergeant Garza went towards the rear of [REDACTED] thereby recording the officers hopping the fence and the rear of the building (see photo above). Sergeant Garza then went into the left/rear apartment, where officers were searching. Sergeant Garza asked [REDACTED] [REDACTED] if the first floor was one apartment. [REDACTED] responded that the left/rear unit was not their apartment and his family lives in the right/front apartment. Sergeant Garza then instructed the officers to go to the right/front apartment. At about 4:09 PM, Sergeant Garza went back to the left/rear apartment, where a civilian woman complained that the left/rear apartment was not their dwelling. The sergeant directed the other Department members as they searched the right/front apartment. At about 4:15 PM, [REDACTED] told Sergeant Garza that [REDACTED] is on house arrest and sleeps on her couch<sup>22</sup>.

***Officer Nicholas Mukite***

When Officer Mukite entered [REDACTED] the door to the right/front apartment was open and [REDACTED] was seen inside. Officer Mukite handcuffed [REDACTED] in the common area. Additional civilians were seen in this apartment. Officer Mukite proceeded to search this apartment.

***Officer Marcos Hernandez***

After the door to the left rear unit was breached at [REDACTED] Officer Hernandez and additional officers entered. Officer Hernandez pointed to a man in the doorway of the unit across the hall (the right front apartment), announced that was the subject, and went into the front apartment. The officers then proceeded to search the front apartment. At about 4:42 PM, Sergeant Garza told Officer Hernandez that the warrant was for "one rear." Someone commented that they saw the target and entered the front apartment. Officer Hernandez terminated his BWC at about 4:42 PM while talking with the sergeant.

***Officer Vincent Ryan***

At about 4:05 PM, officers stated they had the target. Officer Ryan went across the hall to the right front apartment. At about 4:09 PM, a woman voiced concern that officers had the civilians detained in the rear apartment while the search was conducted in the front apartment.

***Officer Guadalupe Sanchez***

When Officer Sanchez got to the external door, Department members had already breached the left rear apartment and the right front apartment was open. [REDACTED] was seen inside the right front unit and an officer was heard identifying [REDACTED]. At about 4:05 PM, Officer Sanchez entered the left rear apartment and [REDACTED] was brought into that apartment shortly after. At about 4:07 PM Sergeant Garza stated "Let's come over here. He said this is his apartment right here."

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<sup>22</sup> [REDACTED] stated numerous times that the front unit was her unit.

Officer Sanchez entered the front apartment at about 4:17 PM. At roughly 4:18 PM, Sergeant Garza handed a search warrant to an adult woman believed to be [REDACTED]

***Officer Emil Hageline***

The door to the left rear apartment was breached and Officer Hageline entered. [REDACTED] was brought into that apartment and is then taken back to the front apartment on the right. Officer Hageline remained in the front apartment as officers searched that apartment. At about 4:41 PM, [REDACTED] asked for a copy of the warrant.

***Officer Brian Collins***

To breach the door for entry Officer Collins used a battering ram to pound on the interior door to the left rear apartment. At about 4:05 PM, the door for the right front apartment opened as Officer Collins kicked open the door to the rear apartment. He entered the rear apartment and additional officers followed. At roughly 4:06 PM, [REDACTED] was seen in handcuffs in the rear apartment. [REDACTED] related that the rear apartment was not their home and [REDACTED] was taken back to the right/front apartment. Multiple officers and civilians were seen inside the right/front apartment. Officer Collins proceeded to search the right/front apartment.

***Officer Joel Soto***

By the time Officer Soto was over the gangway fence, Officer Collins was breaching the left/rear apartment door. Officer Soto entered the left/rear apartment while individuals were seen in the doorway of the front apartment. At about 4:06 PM, [REDACTED] was in handcuffs in the rear apartment. At about 4:13 PM, Officer Sanchez asked Officer [REDACTED] "Are we going?" while pointing in the direction of the front apartment. Officer [REDACTED] responded by nodding in agreement. Officer Soto proceeded to assist in searching and inventorying the first-floor right/front apartment.

***Officer Mitchell English, Jr.***

Officer English entered the left/rear apartment with additional officers. Officer English then entered and proceeded to search the right/front apartment. At about 4:38 PM, officers were heard discussing which was the rear apartment.

***Officer Alexander Cerezo***

Officer Cerezo remained outside while the search warrant team performed its search.

***Officer Jaime Acosta***

Officer Acosta initiated his BWC at about 4:40 PM, as he was taking photos of the first-floor right/front unit. At about 4:41 PM, [REDACTED] stated she wanted a copy of the warrant and Sergeant Garza agreed. Officer Acosta turned his BWC off at approximately 4:42 PM.

*Officer Alfred Caruso*

Per CPD, no BWC was found for Officer Caruso from this incident. Officer Caruso related he had never been assigned BWC at the time of his COPA interview.

*Officer Yezenia Jimenez*

No relevant BWC footage was provided for Officer Jimenez from the search warrant's execution at [REDACTED]

**c. Physical Evidence**

No relevant physical evidence was obtained pertaining to the present investigation.

**d. Documentary Evidence**

Sergeant Juan Escalante submitted an **Initiation Report** on November 20, 2017.<sup>23</sup> [REDACTED] came to the 10<sup>th</sup> District police station and reported “that plain clothed police officers came into her apartment without a search [w]arrant.” [REDACTED] said she lives in the front apartment and officers showed [REDACTED] a warrant for the rear apartment. [REDACTED] and her family woke up when officers knocked “down the rear apartment door.” The officers found “a little weed” in their apartment and [REDACTED] son, [REDACTED] was placed into custody and arrested. Another of [REDACTED] sons was also placed in custody but released.

A **Search Warrant** was located for [REDACTED] dated November 19, 2017.<sup>24</sup> The warrant authorized police to search [REDACTED] IR # [REDACTED] a Male Hispanic, 32 years old, D.O.B. [REDACTED] 84, 5'09” tall, 230 lbs. in weight, with a light complexion and brown eyes” and the following premises: “a multi-unit 2 story residence located at [REDACTED] 1<sup>st</sup> floor rear apartment” The warrant authorized the seizure of “Cannabis, an illegal substance and all paraphernalia used for weighing, packaging of illegal [d]rugs, documentation showing residency, U.S.C., and any records detailing illegal drug transactions.” Officer David and a John Doe provided the complaint for the warrant's probable cause.

[REDACTED] **Arrest Report** was completed on November 20, 2017 with **RD #JA519442**.<sup>25</sup> [REDACTED] was arrested for possessing 30 – 100 grams of cannabis, possession of a controlled substance, and unlawful use of a weapon. Officers recovered 40 grams of cannabis and 10 grams of suspected cocaine. Per this report, officers were executing a warrant on [REDACTED] at [REDACTED] [REDACTED].<sup>26</sup> The arresting officers searched the residence and recovered baggies containing suspect marijuana, 32-caliber bullets, a weighing scale, a baggy containing suspect cocaine, 9mm bullets, small baggies, proof of [REDACTED] residence, and a black rifle scope attachment. The arresting officers were Officer David and Officer [REDACTED] with several assisting officers.

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<sup>23</sup> Att. 6

<sup>24</sup> Att. 7

<sup>25</sup> Att. 8

<sup>26</sup> [REDACTED] unit number is not specified in this arrest report.

An **Original Case Incident Report** was also located for **RD #JA519442**.<sup>27</sup> [REDACTED] and most of the witnesses were listed as Latin Kings. According to the report, the officers learned [REDACTED] was on electronic monitoring at [REDACTED] in the 1<sup>st</sup> floor, rear apartment. The officers “located the 1<sup>st</sup> floor rear door.” The “1<sup>st</sup> floor exterior door was unlocked and open.” The officers entered and announced their presence. The officers “made entry into left door which was locked.” At the same time, an unknown individual opened the door to the right and officers saw [REDACTED] “standing in the room to the right.” [REDACTED] was detained, along with additional civilians. [REDACTED] told the officers that was where he resides. The officers photographed the first-floor apartment before conducting their search.<sup>28</sup>

An **Office of Emergency Management and Communications Event Query Report** was obtained related to [REDACTED] November 20, 2017 arrest.<sup>29</sup> The warrant began at about 4:06 PM. At approximately 4:33 PM, Beat 1033 reported going to the 10<sup>th</sup> district with two arrestees.

Inventory Sheets were obtained from **RD #JA519442**.<sup>30</sup> <sup>31</sup> The following items were inventoried for [REDACTED] narcotic/drug equipment, bullets/ammunition, proof of residence, a rifle scope, and narcotics/drugs. Also inventoried was a copy of the warrant, an evidence log, and photographs.

The following relevant criminal dockets were obtained through the **Cook County Clerk of the Circuit Court**.

- **Case Number** [REDACTED] was filed on November 21, 2017.<sup>32</sup> [REDACTED] was charged with felony unlawful use of a weapon, felony possession of a controlled substance, and misdemeanor cannabis possession. On December 19, 2017, the case was superseded by direct indictment and transferred to the criminal division.
- **Case Number** [REDACTED] was filed on December 15, 2017.<sup>33</sup> [REDACTED] was charged with five felonies: felon in possession/use of a weapon/firearm, three counts of felon in possession/use of a firearm, and manufacture/deliver 10 – 30 grams of cannabis. [REDACTED] pleaded not guilty on January 2, 2018. On March 27, 2018, Count 1 (felon in possession/use of a weapon/firearm) was amended and [REDACTED] pleaded guilty. [REDACTED] was sentenced to two years in the Illinois Department of Corrections, with the sentence to run concurrent with Case Number [REDACTED]. [REDACTED] was given 274 days credit for time served and sentenced to one year of mandatory supervised release.

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<sup>27</sup> Att. 9

<sup>28</sup> This narrative fails to distinguish which unit [REDACTED] was found in, which unit(s) the officers entered, or how many units were located at [REDACTED]

<sup>29</sup> Att. 10

<sup>30</sup> Att. 12

<sup>31</sup> The Inventory Sheets failed to distinguish which unit [REDACTED] and his seized items were found in.

<sup>32</sup> Att. 17

<sup>33</sup> Att. 18

- While not directly related to the present investigation, ██████████ was out on bond for **Case Number** ██████████ at the time of his November 20, 2017 arrest.<sup>34</sup> This case was filed on July 24, 2017, with one count of felony possession of a controlled substance. ██████████ pleaded not guilty on August 2, 2017. A petition for violation of bail bond was entered on November 21, 2017. The charge was amended on March 27, 2018 and ██████████ pleaded guilty.

██████████ **Cook County Sheriff Electronic Monitoring Memorandum and related documents** were obtained.<sup>35</sup> On October 3, 2017, ██████████ was “given a Participant Information brochure that provides important information regarding program requirements.” A copy of this brochure was obtained.<sup>36</sup> Per this brochure, ██████████ agreed to “allow Sheriff’s Office personnel entry into your home at all times during [...] the program.” No specifications were given for additional law enforcement, including CPD, to have access to ██████████ home.

## VI. LEGAL STANDARDS

### a. Potential findings and standards of review

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. 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.<sup>37</sup> 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.<sup>38</sup> Clear and Convincing can be

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<sup>34</sup> Att. 40

<sup>35</sup> Att. 51

<sup>36</sup> Att. 52

<sup>37</sup> 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).

<sup>38</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

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.”<sup>39</sup>

**b. Applicable law – statutes, cases, constitutional provisions**

*1. Warrant requirement for search of home*

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. Supreme Court precedent states “that searches and seizures inside a home without a warrant are presumptively unreasonable.”<sup>40</sup> Even where contraband is in plain view, the Supreme Court “has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure.”<sup>41</sup> “[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.”<sup>42</sup> The Fourth Amendment also has requirements about a warrant’s content and prohibits general searches.

The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one particularly describing the place to be searched and the persons or things to be seized. The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe that it may be found.<sup>43</sup>

In *Garrison*, the police obtained a warrant authorizing them to search “the premises known as 2036 Park Avenue third floor apartment” because they did not know that the third floor was split into two separate apartments.<sup>44</sup> The police arrived at the apartment building and the target of the warrant, McWebb, was outside and let them into the building. When the police reached the third floor there were two doors that were open – one belonged to McWebb the other belonged to Garrison.<sup>45</sup> The police did not have a warrant for Garrison’s apartment as they “reasonably concluded that there was only one apartment on the third floor and that it was occupied by McWebb.”<sup>46</sup> The police began searching Garrison’s apartment and realized - after discovering contraband, that the floor had two apartments.<sup>47</sup> They immediately ceased searching Garrison’s

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<sup>39</sup> *Id.* at ¶ 28.

<sup>40</sup> *Kentucky v. King*, 563 U.S. 452, 459 (2011) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

<sup>41</sup> *Collins v. Virginia*, \_\_\_ U.S. \_\_\_, \_\_\_, 138 S. Ct. 1663, 1672 (2018)(quoting *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 354 (1977)) (U.S. reporter citation unavailable as of this report’s publication.)

<sup>42</sup> *King*, 563 U.S. at 460 (quoting *Payton v. New York*, 445 U.S. 573, 584 (1980)).

<sup>43</sup> *Maryland v. Garrison*, 480 U.S. 79, 84 (1987)(internal citations omitted).

<sup>44</sup> *Id.*, 480 U.S. at 80.

<sup>45</sup> *Id.*, 480 U.S. at 80-81.

<sup>46</sup> *Id.*, 480 U.S. at 81. (Prior to the search, the police confirmed with the utility company that there was only one apartment on the third floor.)

<sup>47</sup> *Id.*



apartment after realizing it did not belong to McWebb.<sup>48</sup> The Supreme Court held the search did not violate Garrison's Fourth Amendment rights, holding:

If the officers had known, or should have known, that the third floor contained two apartments before they entered the living quarters on the third floor, and thus had been aware of the error in the warrant, they would have been obligated to limit their search to McWebb's apartment. Moreover, as the officers recognized, they were required to discontinue the search of respondent's apartment as soon as they discovered that there were two separate units on the third floor and therefore were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant. The officers' conduct and the limits of the search were based on the information available as the search proceeded.<sup>49</sup>

## 2. *Exigent circumstances exception to warrant requirement*

The Supreme Court has recognized that exigent circumstances may allow for officers to perform a warrantless search of a home.<sup>50</sup> The recognized exceptions include entering a home to render emergency assistance to an injured occupant or to prevent imminent harm to an occupant, when they are pursuing a fleeing suspect, and "to prevent the imminent destruction of evidence."<sup>51</sup> However, "police may not rely on the need to prevent destruction of evidence when that exigency was 'created' or 'manufactured' by the conduct of the police."<sup>52</sup> For the fear of destruction of evidence to be a valid exception, police need "more than mere proof that fear of detection by the police caused the destruction of evidence."<sup>53</sup>

## VII. ANALYSIS

**Allegation 1** against **Sergeant Garza** and **Officer Acosta**, that they breached the gate to [REDACTED] without a warrant or an exception to the warrant requirement, is **Exonerated**. Officer Acosta reported he personally got the keys to the gate at [REDACTED] from a tenant. The tenant allowed the Department members to unlock her back gate and go through her rear parking lot. Officer David also asserted CPD obtained permission and keys from a resident at [REDACTED]. Sergeant Garza confirmed Officer Acosta obtained a key to [REDACTED] from a resident. Since the officers had permission, this allegation is Exonerated.

**Allegation 2** against **Sergeant Garza** that he searched the right first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, is **Sustained**. **Allegation 2** against **Officer Acosta** and **Allegation 1** against **Officer David** that they searched

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, 480 U.S. at 86-87.

<sup>50</sup> *Kentucky v. King*, 563 U.S. at 460 (citing *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*, 563 U.S. at 461.

<sup>53</sup> *Id.*

the right first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, are **Exonerated**.<sup>54</sup>

*The warrant clearly specified that the CPD members could only search apartment 1R and [REDACTED] person.*

This case is the exact opposite of the *Garrison* case, discussed above, where entry of the wrong apartment was found not to violate the Fourth Amendment.<sup>55</sup> Here, Officer David obtained a warrant for the rear first-floor apartment based on information provided by a John Doe informant. The John Doe informant told the officer that [REDACTED] sold him narcotics in a rear apartment on the first floor. The application for the warrant and the warrant both recognize that there were two units on the first floor of the building. The warrant plainly authorizes the police to search the “1st floor rear apartment” of the subject property.<sup>56</sup> Additionally, Officer David stated during his statement to COPA and the incident report confirms that [REDACTED] electronic monitoring agreement stated [REDACTED] lived in the first-floor rear apartment.

It is unquestioned that the warrant specified first-floor rear apartment for [REDACTED]. The police entered the first floor of the building and found a common vestibule, which had a door leading to the front apartment on the right and a door leading to the rear apartment on the left. The officers breached the apartment to the left which was to the rear of the building and consistent with the apartment associated with the warrant. As the officers searched the rear apartment, consistent with the warrant’s instructions, the police seized [REDACTED] in the common area and searched him. Thereafter, officers commenced a search of the front apartment. The officers knew, or should have known, that the front apartment was a separate dwelling. If they believed they had probable cause to search the front apartment, the Fourth Amendment required that they obtain a warrant to search that apartment.

*The CPD members had no exigent circumstances or any sufficient bases to search apartment [REDACTED]*

In the instant case, the officers have offered no exigent circumstances that would have authorized them to enter the front apartment, and COPA found no evidence of exigent circumstances during its investigation. Officer Acosta acknowledged that the front apartment was not entered or searched until after officers observed [REDACTED] inside that apartment.<sup>57</sup> Officer Acosta entered the apartment immediately after [REDACTED] was detained and cuffed in the common entrance. The officers articulated that they searched the unit because of [REDACTED] presence and the fact that

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<sup>54</sup> Officer Acosta and Sergeant Garza are the only officers who were served allegations related to the search of apartment [REDACTED]. Officer Acosta entered apartment [REDACTED] after [REDACTED] was detained in the common entrance; however, this allegation only accuses the members of an illegal search, not an illegal entry. For reasons explained more fully below, since the officers, including Officers Acosta and David, only searched the apartment after Sergeant Garza instructed them to do so, Sergeant Garza is ultimately the member responsible for the improper search.

<sup>55</sup> *Maryland v. Garrison*, 480 U.S. 79, 80-87 (1987).

<sup>56</sup> Att. 7.

<sup>57</sup> Even if officers had observed contraband inside the front apartment when [REDACTED] opened the door, the Fourth Amendment would have required officers to obtain a warrant to enter the apartment to seize it. See *Collins v. Virginia*, \_\_\_ U.S. \_\_\_, \_\_\_, 138 S. Ct. 1663, 1672 (2018) (U.S. reporter citation unavailable as of this report’s publication.)

he later made statements he was living in the front. There were no exigent circumstances that required entry into the right/front unit especially after [REDACTED] was detained in the common area.

Officer Acosta believed the first floor had two illegal apartments, however that is not a sufficient basis to conduct a search of the distinctly separate units. Just as the Supreme Court noted in *Garrison*, which also addressed a search warrant executed on what could be described as an illegal apartment<sup>58</sup> the apartment's legality is immaterial:

If the officers had known, or should have known, that the third floor contained two apartments before they entered the living quarters on the third floor, and thus had been aware of the error in the warrant, they would have been obligated to limit their search to [the apartment listed in the warrant.]<sup>59</sup>

Here, there was no mistake about the number of apartments on the first floor. The police found and searched the apartment described in the warrant, and then upon seeing [REDACTED] in a different apartment, decided to search that apartment with full knowledge they were acting without a warrant. Moreover, at the time of the search [REDACTED] was already in custody and thus no exigent circumstances existed. To allow this search to be permissible would be to allow law enforcement to search any home wherein [REDACTED] could have been located.

*Sergeant Garza was aware that the building had two separate apartments, instructed the search warrant team members to search the apartment [REDACTED]*

Sergeant Garza reported that the first floor, right/front apartment was searched after [REDACTED] stated that was where his bedroom was located. Sergeant Garza believed that [REDACTED] family used the entire first-floor and that there were not two separate dwellings. However, the sergeant also confirmed that the first-floor apartments were physically separate with the exception of the common entrance. More importantly, Sergeant Garza acknowledged that he participated in a pre-execution meeting and was aware the warrant was for the rear apartment. Since the sergeant was supervising the warrant he was responsible for ensuring his team searched the correct apartment. BWC shows the sergeant taking control and directing officers to detain individuals and complete the search. For all the reasons stated above, this allegation is Sustained against Sergeant Garza.

*Officers David and Acosta were obligated to follow Sergeant Garza's instructions to search apartment [REDACTED]*

Shortly after [REDACTED] was cuffed Sergeant Garza instructed the team to enter apartment [REDACTED]. Pursuant to the CPD Special Order applicable to search warrants (S04-19) the search team supervisor, here Sergeant Garza, is responsible for: "ensuring the team members are familiar with the purpose and scope of the warrant"; (*id.* §VIII.A.2.a.,b.); ensuring "the premises to be searched are in fact those described in the Search Warrant"; (*id.* §VIII.C.2.); and for "personally coordinat[ing] the movements and activities of [search] team members." (*Id.* §VIII.D.1.b.) The officers who entered the apartment on Sergeant Garza's instructions were required to obey his instructions. Sergeant Garza is responsible for ensuring the propriety of his team's actions, therefore he alone is subject to discipline for his team members' actions. The department members

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<sup>58</sup> The utilities records showed that there was only one apartment on the third floor. *Garrison*, 480 U.S. at 81.

<sup>59</sup> *Garrison*, 480 U.S. at 86-87.

who followed his orders in good faith are not subject to discipline here. While Officers Acosta and Mukite entered the right/front apartment after detaining [REDACTED] the search was directed by and under the supervision of Sergeant Garza, therefore the allegations against Officer Acosta and Officer David are exonerated.

**Allegation 3** against **Sergeant Garza**, that he failed to supervise by allowing subordinates to search the wrong apartment without a warrant or an exception to the warrant requirement, is **Sustained**. Officer David reported he spoke with Sergeant Garza about the discrepancy with the front and rear apartments. As the supervising sergeant, Sergeant Garza was in charge of the scene. As seen in Officer David's BWC, the sergeant instructed the team to go through everything in the first-floor front apartment. Sergeant Garza was aware the warrant specified the rear unit and was not for the entire first floor. Instead of getting a new warrant, Sergeant Garza allowed the officers to proceed with searching the front apartment. Sergeant Garza did not appropriately direct and lead his team during this warrant and this allegation is Sustained.

**Allegation 4** against **Sergeant Garza**, that he failed to report the team's entry into the wrong apartment, is **Sustained**. Per Sergeant Garza, he realized towards the end of the search that they may have searched the wrong apartment. However, he dismissed the concern and never consulted his superiors about searching the entire first floor. Since Sergeant Garza never documented that his team searched a dwelling without a warrant, this allegation is Sustained.

**Allegation 2** against **Officer David**, that he failed to specify addresses in [REDACTED] arrest report under RD #JA519442, thereby creating a misleading report and obscuring the entry and search of a dwelling for which a warrant did not exist, is **Exonerated**. Officer David stated he unintentionally omitted an apartment number on [REDACTED] arrest report. Officer David further asserted that since the first floor had two illegal apartments, he was hesitant to label them. Based on available evidence, Officer David made a mistake and went into the wrong unit. There is no reason to believe he was intentionally misleading or dishonest in how he authored his reports. Rather, he was uncertain if there were two or one apartments on the first floor. As such, this allegation is **Exonerated**.

**Allegation 3** against **Officer Acosta**, that he failed to initiate his Body Worn Camera (BWC) at the beginning of the incident, is **Sustained**. Based on information provided to COPA from CPD, Officer Acosta initiated his BWC over 30 minutes after the search warrant began. While Officer Acosta believed he recorded the entire event, he appears to be mistaken. Since Officer Acosta did not initiate BWC until the event was almost over, this allegation is Sustained.

**Allegation 1** against **Officer Caruso**, that he failed to record any portion of the search warrant execution on Body Worn Camera (BWC), is **Exonerated**. Officer Caruso reported he is exempt from wearing BWC on Commander Sanchez's orders and has never been assigned a BWC. As such, this allegation is Exonerated.

**Allegation 1** against **Officer Jimenez**, that she failed to record any portion of the search warrant execution on Body Worn Camera (BWC), is **Not Sustained**. Sergeant Garza denied telling Officer Jimenez to turn off her BWC, as did Officers Acosta, David, and Caruso. Officer Jimenez was unable to identify who told her to turn off her BWC. None of the BWC reviewed showed an officer telling Officer Jimenez to turn off her camera. The Department was unable to provide any

BWC footage from Officer Jimenez. It is possible that Officer Jimenez never had her BWC activated, it is also possible Officer Jimenez complied with what she understood to be an order to turn off her camera. Special Order S03-14 mandates Department members “activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities.” Based on the evidence, COPA cannot determine why the camera footage does not exist or who was responsible for that. Therefore, COPA finds this allegation is Not Sustained.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding
Sergeant Garza	1. Breached the gate to ██████████ without a warrant or an exception to the warrant requirement, in violation of Rule 1.  2. Searched the first-floor front apartment at ██████████ without a warrant or exception to the warrant requirement, in violation of Rule 1.  3. Failed to supervise by allowing subordinates to search the wrong apartment without a warrant or an exception to the warrant requirement, in violation of Rule 3.  4. Failed to report your and your team’s entry into the wrong apartment, in violation of Rule 3 and Rule 22.	Exonerated  Sustained/10-day suspension  Sustained/10-day suspension  Sustained/10-day suspension
Officer David	1. Searched the first-floor front apartment at ██████████ without a warrant or exception to the warrant requirement, in violation of Rule 1.  2. Failed to specify addresses in ██████████ arrest report under RD #JA519442, thereby creating a misleading report and obscuring the entry and search of a dwelling for which a warrant did not exist, in violation of Rule 2.	Exonerated  Exonerated
Officer Acosta	1. Breached the gate to ██████████ without a warrant or an exception to the warrant requirement, in violation of Rule 1.	Exonerated

	<p>2. Searched the first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement, in violation of Rule 1.</p> <p>3. Failed to initiate your Body Worn Camera (BWC) at the beginning of the incident, in violation of Rule 6.</p>	<p>Exonerated</p> <p>Sustained/1-day suspension</p>
Officer Caruso	1. Failed to record any portion of the search warrant execution on Body Worn Camera (BWC), in violation of Rule 6.	Exonerated
Officer Jimenez	1. Failed to record any portion of the search warrant execution on Body Worn Camera (BWC), in violation of Rule 6.	Not Sustained

**IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. Sergeant Garza**

**i. Complimentary and Disciplinary History**

Notably, Sergeant Garza has received one (1) Superintendent Award of Merit, thirty-two (32) department commendations, two hundred and forty (240) honorable mentions, two (2) Police Officer of the month awards. Equally notable is that this is not the first time Sergeant Garza has been engaged in similar conduct. Under log 1085682, Sergeant Garza was found to have committed the same offense as he is accused of here. Failing to properly supervise the execution of a warrant that led to a fourth amendment violation.

**ii. Recommended Penalty, by Allegation**

- 1. Allegation No. 2: Searched the first-floor front apartment at [REDACTED] without a warrant or exception to the warrant requirement.**

In the instant case, Sergeant Garza entered an apartment where the officer did not have a warrant and supervised the team as they searched the residence and detained all the occupants. Sergeant Garza is establishing a pattern which indicates either a lack of attention to important detail at best or at worst a lack of respect for citizens’ rights. COPA recommends a 10-day suspension for Sergeant Garza, fourth amendment training and some form of leadership training.

- 2. Allegation No. 3: Failed to supervise by allowing subordinates to search the wrong apartment without a warrant or an exception to the warrant requirement.**

For the same reasons as articulated above COPA recommends a suspension of 10-days, fourth amendment training and some form of leadership training.

**3. Allegation No. 4: Failed to report your and your team’s entry into the wrong apartment.**

The mistake was not inadvertent, the officers were aware they did not have a warrant for the front apartment. While none of the officers hesitated to enter the front apartment and Sergeant Garza told his team to go to the front apartment, there were discussions that the warrant was for the rear apartment. Sergeant Garza may have believed he had justification some to enter the front apartment, however he was aware that the warrant specified rear apartment. Therefore, a reasonable officer should have reported the discrepancy rather than ignore it. COPA recommends a suspension of 10-days, fourth amendment training and some form of leadership training.

**b. Officer Acosta**

**i. Complimentary and Disciplinary History**

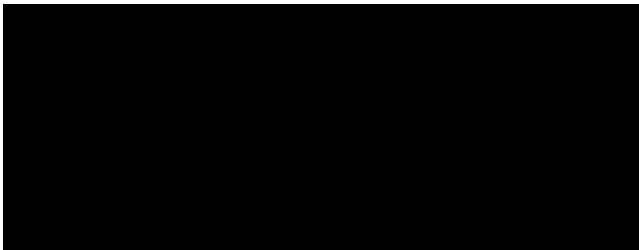
Notably, Officer Acosta has received five (5) department commendations, eleven (11) honorable mentions, one (1) Police Officer of the month awards. Officer Acosta has no publishable disciplinary history.

**ii. Recommended Penalty, by Allegation**

**1. Allegation No. 3: Failed to initiate your Body Worn Camera (BWC) at the beginning of the incident.**

Nothing about Officer Acosta’s failure to initiate his camera appears malicious or intentional. In his statement to COPA he believed he had activated the camera and he clearly does activate it later. He was also aware that the other involved officers had their cameras activated therefore it would not make sense he was trying to be deceptive. Therefore, COPA recommends a 1-day suspension for this allegation.

Approved:



*Chief Administrator*

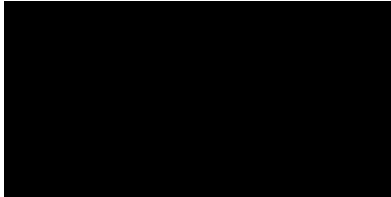
May 30, 2019

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	Four
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	