

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	November 6, 2015
Time of Incident:	10:50 pm
Location of Incident:	██████████
Date of COPA Notification:	November 7, 2016
Time of COPA Notification:	8:19 am

Sergeant James Cascone¹ and members of his team were executing a search warrant at ██████████ when Sgt. Cascone observed two black men enter the house at ██████████ Sgt. Cascone became suspicious when the two men “darted” into the house. Sgt. Cascone walked to the porch and started questioning ██████████ a resident of the home. Sgt. Cascone forced entry into the residence and physical altercation took place between Sgt. Cascone and ██████████ prompting additional officers to enter the residence. While the additional officers arrested ██████████ Sgt. Cascone searched the residence. COPA finds that Sgt. Cascone did not provide a sufficient basis for the search. Accordingly, COPA sustains the allegations against Lt. Cascone of an unjustified entry and search.

II. INVOLVED PARTIES

Involved Officer #1:	James D. Cascone Star #560 / Employee ██████████ Date of Appointment: May 31, 1994 Lieutenant / Unit 004 DOB: ██████████, 1967 Male / White
Involved Officer #2:	Ivan Passamentt Star #19259 / Employee ██████████ Date of Appointment: March 15, 2013 PO / Unit 007 DOB: ██████████, 1981 Male / Hispanic
Involved Officer #3:	Juan V. Gali Star #12394 / Employee ██████████ Date of Appointment: March 5, 2013 PO / Unit 007

¹ At the time of the incident, Lieutenant Cascone had the rank of sergeant. He will be referred to as Lt. or Sgt. Cascone depending on the time period being discussed.

Involved Officer #4:	DOB: [REDACTED], 1978 Male / Hispanic James N. Drish Star #19966 / Employee # [REDACTED] Date of Appointment: March 15, 2013 PO / Unit 007 DOB: [REDACTED], 1983 Male / Hispanic
Involved Officer #5:	Michael P. Donahue Star #11762 / Employee # [REDACTED] Date of Appointment: November 30, 2012 PO / Unit 007 DOB: [REDACTED], 1987 Male / White
Involved Officer #6:	Michael M. Carrasco Star #8564 / Employee # [REDACTED] Date of Appointment: December 16, 2009 PO / Unit 007 DOB: [REDACTED], 1978 Male / Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1992 Male / Black
Involved Individual #2:	[REDACTED] DOB: [REDACTED], 1971 Female / Black
Involved Individual #3:	[REDACTED] DOB: [REDACTED], 1948 Female / Black
Involved Individual #4:	[REDACTED] Male / Black
Involved Individual #5:	[REDACTED] DOB: [REDACTED], 1996 Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding/ Recommendation
Lieutenant Cascone	<p>It is alleged that on November 5, 2015, at approximately 11:40 pm, during the execution of a search warrant at 5543 S. Shields, Lt. Cascone (then Sgt. Cascone):</p> <ol style="list-style-type: none"> 1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission; 2. Searched the residence without a warrant or permission; and 3. Refused to identify himself upon request. 	<p>SUSTAINED</p> <p>SUSTAINED</p> <p>NOT SUSTAINED</p>
Officer Passament	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED] Officer Passament:</p> <ol style="list-style-type: none"> 1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission; 2. Pushed [REDACTED] into a cabinet; 3. Used unnecessary force and pulled [REDACTED] arm as he handcuffed him; and 4. Refused to identify himself upon request. 	<p>EXONERATED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>
Officer Gali	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Officer Gali:</p> <ol style="list-style-type: none"> 1. Punched [REDACTED] in the face 2. Pulled [REDACTED] hair, pulling out two of his dreadlocks; 3. Pushed [REDACTED] head against a police vehicle; and 4. Refused to identify himself upon request. 	<p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>

<p>Officer Drish</p>	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED] Officer Drish:</p> <ol style="list-style-type: none"> 1. Pushed [REDACTED] onto a sofa; 2. Grabbed [REDACTED] by the arm; 3. Threw [REDACTED] onto the floor; and 4. Refused to identify himself upon request. 	<p>NOT SUSTAINED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>NOT SUSTAINED</p>
<p>Officer Donahue</p>	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Officer Donahue:</p> <ol style="list-style-type: none"> 1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission; 2. Pushed [REDACTED] onto a sofa; 3. Grabbed [REDACTED] by his arm; 4. Threw [REDACTED] onto the floor; and 5. Refused to identify himself upon request. 	<p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p>
<p>Officer Carrasco</p>	<p>It is alleged that on November 6, 2015, during the arrest of [REDACTED] at [REDACTED] Officer Carrasco:</p> <ol style="list-style-type: none"> 1. Pointed a large weapon (rifle) at [REDACTED] and [REDACTED]; 2. Said to [REDACTED] "Bitch, step back." 	<p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>

IV. APPLICABLE RULES AND LAWS

Rules – The following conduct is prohibited:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

Rule 8: Disrespect or maltreatment of any person, while on or off duty.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 10: Inattention to duty.

Rule 11: Incompetency or inefficiency in the performance of any duty.

Rule 37: Failure of a member, whether on or off duty, to correctly identify himself by giving his name, rank and star number when so requested by other members of the Department or by a private citizen.

General Orders

1. G-03-02: Use of Force
 2. G-03-02-01: Force Options
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Special Orders

1. S-04-19: Search Warrants
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Federal Laws

1. Fourth Amendment to the United States Constitution

V. INVESTIGATION²

a. Interviews

1. Sergeant James Cascone – Accused Officer

IPRA interviewed Sergeant Cascone on March 3, 2016.³ Prior to the incident, Sgt. Cascone had known the 5500 block of South Shields to be a high-crime area. He also knew that a drug dealer, ██████████ (“█████████ resided at ██████████ ██████████, which was “a problem house”⁴ to which he had been called “on numerous occasions.”⁵

Sergeant Cascone arrived at ██████████ with members of his team to execute a narcotics-related search warrant. He was the evidence supervisor. Sgt. Cascone and his officers arrived on scene, announced their presence, got information, conducted a forced entry, and secured the premises.

While evidence was collected, Sgt. Cascone walked outside to ensure the front door and vehicles were secured. He saw three or four people standing on the porch of ██████████ including the “thug,”⁶ ██████████. At that point, two young black males, “dart[ed] in the house,”⁷ which Sgt. Cascone thought was suspicious. Sgt. Cascone and his team did not have a warrant for ██████████—but, Sgt. Cascone stated, “[W]hy would you run from the police, unless you’re guilty?”⁸ Sgt. Cascone did not observe any weapons and did not observe any other suspicious activity.⁹ He reasoned that running into a house after seeing police is a “common trait of criminals.”¹⁰

Sgt. Cascone wanted to know who those individuals were and why they ran into the house because he “figured they might [have] had a weapon, or some sort of narcotics on them.”¹¹ Although Sgt. Cascone was already carrying out the assignment of executing the warrant, it was normal for him to leave an assignment to deal with other activity if he “felt there was some sort of illegal, or suspicious activity.”¹²

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Attachment 80 (“Att. 80”).

⁴ Att. 80, 10:6-10.

⁵ *Id.*

⁶ *Id.* at 11:11.

⁷ *Id.* at 10:12-13.

⁸ *Id.* at 39:7-8; *see also id.* at 40:1-6 (“It’s been my experience, in that area, when people run from me they usually have a reason to run. They’re doing an illegal activity. Most of the time it’s involving narcotics, or, or firearms.”).

⁹ *Id.* at 42:6-15 (Q: “Did you observe any weapons being displayed when they were at the porch area?” A: “No, I did not.” Q: “Did you observe any other type of activity being done by any of these two, or three, or four individuals that were on the porch area?” A: “No. They were just watching us.” Q: “So, the only activity you saw, was that they ran in the house?” A: “Yes.” Q: “Okay. And, your assumption from being in that area, is that usually they have narcotics, or they have a weapon, or something that’s illegal?” A: “Based on my experience, yes, ma’am.”).

¹⁰ *Id.* at 46:15-16.

¹¹ *Id.* at 12:21 – 13:4.

¹² *Id.* at 13:5-17.

Sgt. Cascone approached the porch of [REDACTED] and asked [REDACTED] where his friends went. [REDACTED] stood in the doorway approximately two feet from Sgt. Cascone; he became evasive and attempted to block Sgt. Cascone's view by moving around while Sgt. Cascone looked inside the house. Sgt. Cascone asked [REDACTED] why his friends ran inside. [REDACTED] claimed no one ran inside. Sgt. Cascone did not ask [REDACTED] for identification or if he lived in the house. [REDACTED] attempts to block Sgt. Cascone's view heightened the sergeant's suspicion "that there's criminal activity at foot [sic]."¹³ Although Sgt. Cascone conceded that [REDACTED] may not have been required to answer any questions, he believed that "if they were doing nothing illegal, . . . they would've just stepped out of the shadows...and showed themselves."¹⁴

During his interaction with [REDACTED] Sgt. Cascone heard a commotion. Sgt. Cascone, swayed left to right to look over [REDACTED] shoulder. [REDACTED] mimicked Sgt. Cascone's actions to block his view. Finally, Sgt. Cascone saw someone "quickly [bolt] with a weap- – with a gun in his hand."¹⁵

The alleged gunman, who Sgt. Cascone described as a black male with dark clothing, ran to the back of the house.¹⁶ Sgt. Cascone attempted to enter but [REDACTED] blocked his path.

Sgt. Cascone passed [REDACTED] and entered the house alone—over [REDACTED] objections. Sgt. Cascone did not alert other officers before entering the house. When officers outside saw the struggle, they relocated to [REDACTED]. Sgt. Cascone did not inform the responding officers that he saw someone with a gun, nor did he call it out on the radio.

Inside the house, Sgt. Cascone saw a few people, including at least one female in her 40s or 50s, and a couple of males. Sgt. Cascone searched the house, including the level where he entered and the basement. Sgt. Cascone did not request consent because he believed the search was justified due to exigent circumstances. When asked what those circumstances were, Sgt. Cascone responded, "I thought I s- -- somebody's in there with a gun."¹⁷

Sgt. Cascone entered the basement and he saw two people, neither of whom he thought was the suspect. At first, he could not remember whether those people were even male or female; when pressed on how he knew they were not the suspect, he stated that one was female and the other one, the male, did not fit the description of the person he saw. Sgt. Cascone asked the two individuals if they saw someone with a gun; they said no. Sgt. Cascone went into some—but not all—of the rooms in the basement and did not find the suspect. He looked for a basement exit door but did not find one. Sgt. Cascone went back upstairs to look for other possible escape routes. He saw a rear/side door he had initially missed. Sgt. Cascone assumed the suspect escaped through that door; however, he did not go through the door to investigate.

¹³ *Id.* at 14:15-18.

¹⁴ *Id.* at 49:3-13; *see also id.* at 49:14 - 50:4 ("[I]f there was no criminal activity, and those two people produced themselves, you know what I mean, and just said, I ain't got nothing on me, I would've just said, okay, fine, and walk away. ... And then, my curiosity would've been, you know, it would've been [quelled] right there.").

¹⁵ *Id.* at 14:18-21.

¹⁶ *Id.* at 16:11-14 ("I saw him very briefly. I could clearly see a, with, with, with a gun in his hand. He took off to the rear of the house.").

¹⁷ *Id.* at 28:23.

Sgt. Cascone went back upstairs and observed a struggle between officers and ██████ who the officers were trying to arrest. ██████ resisted, but he was ultimately arrested. Later in the interview, Sgt. Cascone stated that when he came upstairs, ██████ was already handcuffed and he did not know who handcuffed him.

At no time did Sgt. Cascone witness any use of unnecessary force by the officers. He did not hear any officer use profanity or refer to anyone in the house in a derogatory manner.¹⁸ Sgt. Cascone never took out his weapon or felt unsafe. Nor did he see any officer draw his weapon in the house. Sgt. Cascone did not see any injuries on ██████ and, had ██████ complained of injuries, he would have transported him for medical care.

When asked why ██████ Arrest Report¹⁹ stated that Sgt. Cascone was on patrol and “conducting a person with a gun investigation,”²⁰ he explained that search warrants are part of his patrol procedures. After a break requested by Sgt. Cascone’s attorney, Sgt. Cascone explained, “in my view, the warrant [was] done being executed,” which meant he was back to his “normal patrol duties.”²¹ However, Sgt. Cascone later stated that as evidence supervisor, he was charged with ensuring “the proper, proper collection techniques are done, in securing evidence, associated with a search warrant,”²² and that a warrant generally “takes between an hour to two hours.”²³ Sgt. Cascone thereafter conceded that evidence processing was still ongoing at ██████ when he noticed the suspicious behavior at ██████, but he stated that his presence was not needed despite his role as evidence supervisor.

Initially, Sgt. Cascone did not recall being asked to identify himself at ██████; however, he insisted that if asked, he would have done so. Later in the interview, Sgt. Cascone stated the people in the house wanted everyone’s badge numbers, and that he responded by pointing to his star number and telling them who he was.

Sgt. Cascone never told any responding officers, the officers executing the warrant at ██████, or radioed OEMC that he saw a man with a gun. No guns were recovered at ██████.

2. Officer Ivan Passamentt – Accused Officer

On March 10, 2016, IPRA investigators interviewed Officer Ivan Passamentt. Officer Passamentt was on Sgt. Cascone’s team. While executing a search warrant at 5543 South Shields, he was in the front living room when, through a window, he saw Sgt. Cascone walk to ██████. Sgt. Cascone was focused on a group on the porch of ██████, who Officer Passamentt saw after coming down the stairs of ██████.

¹⁸ *Id.* at 28:24 – 29:4 (When asked if he heard such remarks, Sgt. Cascone responded, “No, I did not. If I did, I would’ve took [sic] corrective action.”).

¹⁹ See Section V.B.

²⁰ Att. 80, 25:1-8.

²¹ *Id.* at 26:21-24.

²² *Id.* at 33:11-19.

²³ *Id.* at 37:1-3.

Standing 10-15 feet away, Officer Passamentt saw Sgt. Cascone immediately walk up the stairs of [REDACTED] and attempt “to make entry right into the residence.”²⁴ [REDACTED] was in front of Sgt. Cascone trying to prevent him from entering by putting his hand on the sergeant’s vest and telling him he could not enter. Sgt. Cascone instructed [REDACTED] to remove his hands. Officer Passamentt “intervened and got in the middle between both of them.”²⁵ Sgt. Cascone did not communicate with Officer Passamentt.

After Officer Passamentt’s intervention, Sgt. Cascone entered and went to the back of the house. Officer Passamentt told [REDACTED] to put his hands behind his back. [REDACTED] refused, clenched his fists, and began flailing his arms. Officer Passamentt attempted to grab [REDACTED] but, because of their momentum, they ended up against a cabinet close to the entrance.

Officer Juan Gali then came to assist Officer Passamentt. Officer Passamentt viewed [REDACTED] as an assailant and conducted an emergency takedown. Simultaneously, while [REDACTED] arms flailed, Officer Gali directed one closed-hand strike to [REDACTED] face.

Officers Passamentt and Gali had [REDACTED] face-down on the floor and gained control of his arms. Officer Passamentt was positioned near [REDACTED] lower body while Officer Gali was near his upper body. At no time did Officer Passamentt witness Officer Gali pull [REDACTED] dreadlocks nor was he aware that [REDACTED] lost two dreadlocks. However, Officer Passamentt could not clearly see Officer Gali or what he was doing.

When asked why the arrest report for [REDACTED] indicates the officers were on patrol, when in fact, the search warrant was still being executed, Officer Passamentt responded that the team’s policy is to immediately return to patrol duties after executing a search warrant and that the team was “wrapping up” the execution of the warrant. Generally, at the sergeant’s discretion, some individuals complete the warrant processing, while others return to patrol.

Officer Passamentt said that, after all the officers involved in the search warrant and the incident at [REDACTED] had left the two houses, Sgt. Cascone told those officers that he went into [REDACTED] South Shields after he saw a man with a gun run toward the back of that house. Sgt. Cascone never mentioned a gun while the officers were in either house.

3. Other Officers – Accused

IPRA investigators interviewed **Officer Juan Gali**²⁶ on March 11, 2016. Officer Gali’s account of the incident substantially corroborates Officer Passamentt’s account. Officer Gali did concede that, as he directed the mechanical strikes at [REDACTED] he may have hit him in the face due to [REDACTED] movement.

²⁴ Att. 83 at 7:10-13.

²⁵ Att. 83 at 8:13-16.

²⁶ Att. 81.

On March 22, 2016, IPRA investigators interviewed **Officer James Drish**²⁷. Officer Drish's account substantially corroborates Officers Passamentt and Gali's accounts. However, Officer Drish stated he heard Sergeant Cascone call out on the radio that he needed assistance next door.²⁸

IPRA investigators interviewed **Officer Michael Donahue**²⁹ on March 23, 2016. Officer Donahue stated he was the inventory officer for the team that executed the search warrant. He remained inside [REDACTED] until the warrant was executed, never entering [REDACTED]. His duties as inventory officer included ensuring evidence was photographed and inventoried properly.³⁰ Officer Donahue stated that he had no first-hand knowledge of the incident or the involved parties' actions.

On May 17, 2016, IPRA investigators interviewed **Officer Michael Carrasco**.³¹ While Officer Carrasco was on the front porch, he observed two officers escorting [REDACTED] and his brother [REDACTED] to the police vehicles. That is when Officer Carrasco observed a woman, identified by IPRA as [REDACTED] run toward the officers and attempt to interfere with the detention. Officer Carrasco placed his body between [REDACTED] and the arresting officers to create distance and prevent her from getting involved. Officer Carrasco stated he carried an M-4 rifle—strapped over his shoulder and across his body—as part of his equipment as an entry officer during the execution of the search warrant. Officer Carrasco maintains that he did not address [REDACTED] with disrespect or vulgarity.

4. [REDACTED] – Complainant³²

IPRA interviewed [REDACTED] on November 9, 2015. [REDACTED] stated that on November 6, 2015, as she sat in her bedroom, she heard her nephew, [REDACTED] yell for her. [REDACTED] went to the living room where she witnessed officers pushing her son, [REDACTED] who stood in the doorway. [REDACTED] heard [REDACTED] ask the officers whether they had a warrant and refusing them entry.

One of the officers punched [REDACTED] in the mouth, took him to the ground, and handcuffed him. Additional officers entered and grabbed and tossed [REDACTED] aside. [REDACTED] ([REDACTED] brother, entered the living room from the back of the house. Officers grabbed him and threw him onto a sofa. [REDACTED] asked what was going on multiple times but did not receive an answer.

An officer, identified by IPRA as Sgt. James Cascone, searched the main floor and basement of the home. Sgt. Cascone did not tell [REDACTED] why he searched the home. [REDACTED]

²⁷ Att. 87.

²⁸ By Sgt. Cascone's own admission—and the testimony of Officers Passamentt and Gali—this did not occur.

²⁹ Att. 86.

³⁰ A Contact Card issued to [REDACTED] Friend (Att. 16) included Officer Donahue's name as the second preparing officer. Officer Donahue explained that it is common for an officer to include his partner's name on Field Contact Cards—the Contact Card was prepared by Officer Donahue's partner, Officer Drish.

³¹ Att. 92.

³² Att. 45.

Ramseur called 911 and informed the operator that officers were in the house without a warrant or consent.

The officers arrested [REDACTED] and [REDACTED]. When [REDACTED] questioned the officer, she said a large, white officer pointed a rifle in her direction and said, "Bitch step back." When a supervisor arrived, he refused to talk to her except to say, "Get the fuck back." According to [REDACTED] and [REDACTED] sustained some injuries but neither sought medical attention.

5. [REDACTED] – Complainant³³

On November 9, 2015, COPA interviewed [REDACTED]. The following is a summary of his recollection of the incident.

[REDACTED] received a phone call from his friends to let him know they arrived at his house. He opened the door and stood in the doorway. Earlier, [REDACTED] had noticed the police raiding the house next door.

An officer, later identified as Sgt. Cascone, then entered [REDACTED] gate and asked him if he lived there. [REDACTED] affirmed he did and Sgt. Cascone grabbed his arm. [REDACTED] pulled his arm away and asked what he did. Sgt. Cascone pushed [REDACTED] inside and into a cabinet. Another officer, later identified as Officer Passamentt, entered the residence, grabbed [REDACTED] and slammed him on the floor, placing his knee on [REDACTED] neck. A third officer, later identified as Officer Gali, entered and punched [REDACTED] in the face.

Officers Passamentt and Gali handcuffed [REDACTED] and, as they pulled him up to his feet, grabbed his hair and pulled out two dreadlocks. They escorted him to the car, where Officer Gali pushed [REDACTED] head, bumping it against the police vehicle. [REDACTED] did not seek medical treatment.

6. [REDACTED] – Complainant³⁴

IPRA interviewed Cedrick [REDACTED] brother, [REDACTED] on December 4, 2015. He stated he was in his bedroom when he heard a voice yell, "Get on the ground."³⁵ [REDACTED] ran to the living room and observed officers running inside the residence. [REDACTED] saw his brother handcuffed on the floor as an officer, later identified as Officer Drish, asked [REDACTED] his name and instructed him to sit down. [REDACTED] replied, "This my house. Like I know my rights. I ain't gotta do nothing. Do you have a warrant of being in my crib?"³⁶

Officer Drish again ordered him to sit down and [REDACTED] stated that, although he was complying, Officer Drish pushed him onto the sofa. [REDACTED] jumped to his feet, and Officer Drish grabbed him and threw him to the floor. Officer Drish handcuffed [REDACTED] brought him to his feet, and took him outside. [REDACTED] sustained bruises to his chest but did not seek medical

³³ Att. 21.

³⁴ Att. 46.

³⁵ *Id.* at 3:6-7.

³⁶ *Id.* at 7:12-16.

attention. He did not observe the interaction between his family members and the officers on-scene.

b. Documentary Evidence

Evidence Technician Photographs³⁷ of ██████████ depict two strands of braids, as well as an apparent bald spot on the left side of his head. Redness is apparent on the right side of ██████████ upper torso. Pictures from inside the house show a cracked wall and a cabinet with broken glass.

An **Arrest Report**³⁸ (CB#19218215; RD#HY492357; Event #1531017261) for ██████████ was generated by CPD. The report charges ██████████ with battery and two counts of Resisting/Obstruction. The report stated Sgt. Cascone was on patrol and “conducting a person with a gun investigation” when the incident began.

IV. LEGAL STANDARD

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

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.” *Id.* at ¶ 28.

³⁷ Att. 44.

³⁸ Att. 14.

VII. ANALYSIS

Under the Fourth Amendment, a search warrant must be obtained, absent exigent circumstances or consent, for a law enforcement officer to legally search a home.³⁹ The Fourth Amendment draws a firm line at the entrance to the house.⁴⁰ Without exigent circumstances, a house may not be reasonably entered without a warrant.⁴¹ In determining whether an exigency permitted law enforcement to enter without a warrant, the question is “whether a reasonable officer had a reasonable belief there was a compelling need to act and no time to obtain a warrant.”⁴² Courts consider “the totality of facts and circumstances as they would have appeared to a reasonable person *in the position of the ... officer*—seeing what he saw, hearing what he heard.”⁴³

COPA must sustain allegations if the evidence shows that it is more likely than not that the conduct in question occurred and that it was improper.⁴⁴ Here, the allegations can be divided into four categories: (1) Sgt. Cascone’s initial entry and search at [REDACTED] based on what he believed was exigent circumstances; (2) the entry of assisting officers; (3) the amount and type of force used by the officers; and (4) the refusal of various officers to identify themselves.

a. Unlawful entry and search by Sgt. Cascone Lt. Cascone – Allegations 1 and 2

The first allegation suggests Sgt. Cascone entered [REDACTED] without justification. Specifically, he entered the residence without a warrant, consent or exigent circumstances. Based on the evidence, COPA finds Allegations 1 and 2 are **SUSTAINED**.

“At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”⁴⁵ In this instance, [REDACTED] was in his home. Neither his presence on the porch nor the presence of his friends negates the inviolability of his place of residence.

Sgt. Cascone’s lack of a warrant or consent to enter [REDACTED] is undisputed. Accordingly, Sgt. Cascone’s entry and search of the home is “presumptively unreasonable.”⁴⁶ That presumption can be overcome only when “the exigencies of the situation make the needs of law enforcement so compelling that warrantless search is objectively reasonable under the Fourth Amendment.”⁴⁷ Exigent circumstances are present when a reasonable person would believe entry was necessary

³⁹ *Payton v. New York*, 445 U.S. 573, 590 (1980).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Martinez v. City of Chicago*, 900 F.3d 838, 845 (7th Cir. 2018) (citing *Bogan v. City of Chicago*, 644 F.3d 563, 572 (7th Cir. 2011)).

⁴³ *Id.* (emphasis in original).

⁴⁴ See *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E. 2d 801, 856 (2005) (explaining a preponderance-of-the-evidence standard).

⁴⁵ *Kyllo v. United States*, 533 U.S. 27, 41 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (internal quotation marks omitted).

⁴⁶ *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (quoting *Groh v. Ramirez*, 540 U.S. 551, 559 (2004)).

⁴⁷ *Mincey v. Arizona*, 437 U.S. 385, 394 (1978) (as quoted in *Kentucky v. King*, 563 U.S. 452 (2011)).

“to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”⁴⁸

Here, the totality of the circumstances do not suggest a reasonable officer with Sgt. Casone’s observations would find a compelling need to act without a warrant or consent. Specifically, Sgt. Cascone claimed to see two men dart into the residence and a man with a gun run toward the back of the home. Those facts, along with Sgt. Cascone’s identification of the location as “a problem house,” may warrant further investigation (c.g. seeking consent to enter or surveilling the perimeter). However, assuming *arguendo*, Sgt. Cascone’s account is true, there are insufficient facts to constitute exigent circumstances.

In this case, it is unclear why Sgt. Cascone determined the alleged man with a gun was a suspect or a threat. Mere possession of a gun on a public street cannot supply necessary suspicion to support even a Terry stop absent reasonable suspicion that the possession itself is unlawful.⁴⁹ Here, the presumption the man with the gun was engaged in criminal conduct is less reasonable where he was seen in a private residence. Concealed carry permits were issued in Illinois as early as February of 2014.⁵⁰ So, the gun could have been legally possessed. Further, the totality of the evidence calls Sgt. Cascone’s account into question. Sgt. Cascone stated that once he arrived at the porch, he saw a man, who he described as a black male with dark clothing, “bolt” with a gun in his hand inside the house. But when that claim is weighed against the rest of the evidence, it does not stand up to scrutiny. For the following reasons, COPA concludes that it is more likely than not that Sgt. Cascone did not see a man with a gun.

First, Officer Passamentt saw Sgt. Cascone immediately attempt to enter [REDACTED].⁵¹ Second, [REDACTED] who stood in the doorway, is almost a foot taller than Sgt. Cascone, making it unlikely Sgt. Cascone saw over his shoulder as he claimed. Third, the lighting inside the residence that night was described as dim and as likely consisting of a single lamp.⁵² Fourth, Sgt. Cascone’s actions were inconsistent with an officer searching for a gunman: Sgt. Cascone never drew his weapon; he opened some doors while leaving others shut; he never warned other officers on scene about the alleged gunman; and he did not use the radio channel dedicated to the warrant team to inform the officers next door a gunman may be running towards them, even though he claimed to enter the house because of the danger posed to his officers.

“[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.” Sgt. Cascone did not have a warrant to enter the residence in question. And, as explained above, the weight of the evidence contradicts Sgt. Cascone’s justification for warrantless entry. Therefore, Sgt. Cascone’s entry into, and search of, the house was unreasonable and violated the Fourth

⁴⁸ *U.S. v. Howard*, 961 F.2d 1265, 1267 (7th Cir. 1992) (citing *U.S. v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984), *cert. denied*, 469 U.S. 824 (1984)).

⁴⁹ *United States v. Myers*, 308 F.3d 251, 263 (3d Cir. 2002).

⁵⁰ See Dahleen Glanton, *Illinois’ first concealed carry licenses in the mail – 5,000 of them*, Chicago Tribune, February 28, 2014, <https://trib.in/2w799Nj>.

⁵¹ Att. 83, 7:8-13; *id.* at 8:12-24.

⁵² Att. 83, 52:8-16.

Amendment of the United States Constitution. Accordingly, the first and second allegations against Lt. Cascone are **SUSTAINED**.

b. Allegations of unlawful entry against other officers
Officer Passamentt – Allegation 1
Officer Donahue – Allegation 1

The entry of other officers into the residence is an entirely different matter from Sgt. Cascone's entry. Once Sgt. Cascone was seen tussling with [REDACTED] other officers were justified to enter based on the doctrine of exigent circumstances. A reasonable officer observing a partner in a physical altercation would feel compelled to act. Even if it is later revealed that the officer needing aid improperly caused the exigency, the assisting officers' response is untainted. There is undisputed evidence that Sgt. Cascone and [REDACTED] engaged physically with each other. Therefore, as it pertains to the allegation of entering the residence without justification, Officer Passamentt is **EXONERATED**. Additionally, there is clear and convincing evidence that Officer Donahue never entered the residence—none of the officers or the civilians place him there. Therefore, the allegation that Officer Donahue entered without justification is **UNFOUNDED**.

c. Allegations regarding use of force
Officer Passamentt – Allegations 2 and 3
Officer Gali – Allegations 1, 2, and 3
Officer Drish – Allegations 1, 2, and 3
Officer Donahue – Allegations 1, 2, 3, and 4

The nature and quality of the intrusion on a person's Fourth Amendment interests is balanced with the countervailing governmental interests at stake. There is no precise definition of reasonableness under the Fourth Amendment, so careful attention to the specific facts and circumstances of each case is necessary, including the severity of the crime involved, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade an arrest by flight.⁵³ Here, the totality of the evidence suggest the assisting officers used reasonable force against [REDACTED] and [REDACTED]. But while that evidence means that the allegations of excessive force against these officers cannot be sustained, there is not clear and convincing evidence that the levels of force used were, at all times, reasonable, proportionate, and necessary to control [REDACTED] and [REDACTED]. That the use of force may have resulted in injury or damage to the property is unfortunate, given that this entire incident should not have occurred; however, the allegations cannot be sustained by a preponderance of the evidence. But neither can the officers be exonerated by clear and convincing evidence.

The excessive-force allegations against Officers Passamentt, Gali, and Drish are **NOT SUSTAINED**. The excessive-force allegations against officer Donahue are **UNFOUNDED**; as discussed above, there is clear and convincing evidence showing he was not inside the house and did not participate in the detention of the subjects.

d. Officers' refusal to identify themselves
Allegation 3 – Lt. Cascone

⁵³ *Medina v. Chicago*, 238 Ill. App. 3d 385, 387 (1992).

- Allegation 4 – Officer Passamentt**
- Allegation 4 – Officer Gali**
- Allegation 4 – Officer Drish**
- Allegation 5 – Officer Donahue**

The allegations regarding the officers’ refusal to identify themselves are **NOT SUSTAINED**. On the one hand, the family asserts they asked the officers for their names and star numbers and received no responses. On the other hand, the officers insist the request was not made, or that they did in fact share their information, even if by informing the residents that the information is on their shirts. In any case, there is insufficient evidence to prove or disprove these allegations.

**e. Officer Carrasco’s interaction with [REDACTED]
Officer Carrasco – Allegations 1 and 2**

The final allegations concern Officer Carrasco’s interaction with [REDACTED] COPA identified Officer Carrasco as the person who had the “large gun,” *i.e.*, the M-4 rifle, referred to by [REDACTED] but he denies using derogatory terms or pointing a weapon at her. Because of the competing accounts COPA cannot find that the events either occurred or did not occur. Accordingly, both allegations against Officer Carrasco, that he pointed a large rifle at [REDACTED] and that he spoke to her using derogatory terms, are **NOT SUSTAINED**.

VIII. CONCLUSION

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

Officer	Allegation	Finding/ Recommendation
Lieutenant Cascone	It is alleged that on November 5, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Lt. Cascone (then Sgt. Cascone):	
	1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission;	SUSTAINED
	2. Searched the residence without a warrant or permission; and	SUSTAINED
	3. Refused to identify himself upon request.	NOT SUSTAINED
Officer Passament	It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of	

	<p>a search warrant at [REDACTED], Officer Passament:</p> <ol style="list-style-type: none"> 1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission 2. Pushed [REDACTED] into a cabinet without justification; 3. Used unnecessary force and pulled [REDACTED] [REDACTED] arm as he handcuffed him; and 4. Refused to identify himself upon request. 	<p>EXONERATED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>
<p>Officer Gali</p>	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Officer Gali:</p> <ol style="list-style-type: none"> 1. Punched [REDACTED] in the face 2. Pulled [REDACTED] hair, pulling out two of his dreadlocks, without justification; 3. Pushed [REDACTED] head against a police vehicle; and 4. Refused to identify himself upon request. 	<p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>
<p>Officer Drish</p>	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Officer Drish:</p> <ol style="list-style-type: none"> 1. Pushed [REDACTED] onto a sofa without justification; 2. Grabbed [REDACTED] by the arm without justification; 3. Threw [REDACTED] onto the floor without justification; and 4. Refused to identify himself upon request. 	<p>NOT SUSTAINED</p> <p>EXONERATED</p> <p>EXONERATED</p> <p>NOT SUSTAINED</p>

<p>Officer Donahue</p>	<p>It is alleged that on November 6, 2015, at approximately 11:40 pm, during the execution of a search warrant at [REDACTED], Officer Donahue:</p> <ol style="list-style-type: none"> 1. Entered the residence of [REDACTED] ([REDACTED]) without a warrant or permission; 2. Pushed [REDACTED] onto a sofa without justification; 3. Grabbed [REDACTED] by his arm without justification; 4. Threw [REDACTED] onto the floor without justification; and 5. Refused to identify himself upon request. 	<p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p> <p>UNFOUNDED</p>
<p>Officer Carrasco</p>	<p>It is alleged that on November 6, 2015, during the arrest of [REDACTED] at [REDACTED] Officer Carrasco:</p> <ol style="list-style-type: none"> 1. Pointed a large weapon (rifle) at [REDACTED] and [REDACTED] 2. Said to [REDACTED] "Bitch, step back." 	<p>NOT SUSTAINED</p> <p>NOT SUSTAINED</p>

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Lieutenant Cascone

i. Complimentary and Disciplinary History

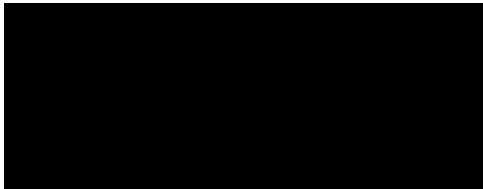
Lieutenant Cascone has received 93 honorable mentions, 13 emblems of recognition for physical fitness, 11 department commendations, 9 complimentary letters, 4 attendance recognition awards, 3 outside governmental agency awards, 2 honorable mention ribbon awards, and 2 superintendent Awards of Valor. Additionally, Lieutenant Cascone has received a Democratic National Convention Award, a Presidential Election Deployment Award, a Traffic Stop of the Month award, a 2004 Crime Reduction Ribbon, a Police Blue Star Award, a Life Saving Award, a NATO Summit Service Award, a 2009 Crime Reduction Award, a Joint Operations Award, a Unit Meritorious Performance Award, and a special commendation. Lieutenant Cascone has no publishable disciplinary history.

ii. Recommended Penalty, by Allegation

On one hand, this case is an egregious example of a fourth amendment violation. Lieutenant Cascone entered a home, where the constitution has drawn a firm line, without consent, a warrant, or any articulable exigent circumstances. As a sergeant, he left his fellow CPD members at the scene of a valid warrant execution where he was an evidence supervisor. He decided instead to chase civilians based on his admitted assumption that people in that area who avoid the police are likely engaged in illegal activity. Lieutenant Cascone displayed contempt for people exercising their constitutional rights when he argued that they would not care if they had nothing to hide, contrary to the accepted rule that the onus of proving probable cause lies with the police, and that civilians are presumed innocent. Finally, Lieutenant Cascone's entry led to additional officers entering the home and using force. And although those officers did not act unreasonably in using force, the entire situation would have been avoided had then-Sgt. Cascone acted reasonably.

After balancing the above aggravating factors with Lieutenant Cascone's impressive disciplinary history, COPA recommends a suspension of 15 days for Lieutenant Cascone.

Approved:



Andrea Kersten
Chief Administrator

July 19, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:	4
Investigator:	Tamer Abouzeid
Supervising Investigator:	James Murphy-Aguilú
Deputy Chief Administrator:	Andrea Kersten