

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	May 8, 2017
Time of Incident:	7:30 P.M.
Location of Incident:	██████████
Date of IPRA Notification:	May 9, 2017
Time of IPRA Notification:	11:48 A.M.

On May 8, 2017, a male caller indicated to OEMC that there was a woman in one of the above apartments screaming “don’t shoot,” “don’t shoot.” Several officers responded to the call which was at ██████████. The officers first on scene observed a male subject² run into the apartment of ██████████. The officers relocated to ██████████ apartment. ██████████ refused to let officers inside the apartment and stated she was fine. The officers made forced entry into the apartment after receiving permission from the on-scene sergeant. Once inside the apartment, the officers went to the bathroom, found and a male³ subject. After the male subject was detained, the officers conducted a sweep of the apartment looking for a weapon. The officers did not have a warrant or permission from the apartment owner to enter or search the apartment. The occupant of the apartment, ██████████ later filed a complaint in relation to the search of her apartment.

II. INVOLVED PARTIES

Involved Officer #1:	Kenneth Brink, Star #17865, Emp. # ██████████, DOA: July 15, 2013, Officer, Unit 006, DOB: ██████████, 1981, Male, White
Involved Officer #2:	Clara Cinta, Star #16577, Emp. ██████████, DOA: May 27, 2014, Officer, Unit 006, DOB: ██████████, 1987, Female, Hispanic
Involved Officer #3:	Katie Blocker, Star #14472, Emp. # ██████████, DOA: February 2, 2015, Officer, Unit 006, DOB: ██████████, 1988, Female, White

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² Now known as ██████████

³ Now known to be ██████████

Involved Officer #4: Nancy Castellano, Star #17028, Emp. [REDACTED], DOA: September 29, 2014, Officer, Unit 006, DOB: [REDACTED], 1989, Female, Hispanic

Involved Officer #5: Sean Lynch, Star #18495, Emp. [REDACTED], DOA: November 24, 2014, Officer, Unit 006, DOB: [REDACTED] 1987, Male, White

Involved Officer #6: Adrian Rosiles, Star #19462, Emp. [REDACTED], DOA: November 30, 2012, Officer, Unit 006, DOB: [REDACTED], 1985, Male, Hispanic

Involved Officer #7: Albert Rangel, Star #5339, Emp. [REDACTED], DOA: April 1, 2013, Officer, Unit 006, DOB: [REDACTED], 1984, Male, Hispanic

Involved Officer #8: John Lucid, Star #2361, Emp. [REDACTED] DOA: January 2, 1992, Sergeant, Unit 701, DOB: [REDACTED], 1965, Male, White

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Kenneth Brink	1. On May 8, 2017 at approx. 7:29P.M., Officer Brink performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Clara Cinta	1. On May 8, 2017 at approx. 7:29P.M., Officer Cinta performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Katie Blocker	1. On May 8, 2017 at approx. 7:29P.M., Officer Blocker performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Nancy Castellano	1. On May 8, 2017 at approx. 7:29P.M., Officer Castellano performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Sean Lynch	1. On May 8, 2017 at approx. 7:29P.M., Officer Lynch performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Adrian Rosiles	1. On May 8, 2017 at approx. 7:29P.M., Officer Rosiles performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Albert Rangel	1. On May 8, 2017 at approx. 7:29P.M., Officer Rangel performed an unconstitutional search of [REDACTED]	Not Sustained

Sergeant John Lucid	1. On May 8, 2017 at approx. 7:29p.m., you failed to properly supervise officers under your command when they searched the premises of [REDACTED] 2. On May 8, 2017 at approx. 7:29p.m., you failed to direct officers under your command to desist searching the premises of [REDACTED]	Sustained Sustained
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IV. APPLICABLE RULES AND LAWS

Chicago Police Department Rules & Regulations

1. Rule 1, Violation of any law or ordinance.

Constitutional Law

1. United States Constitution, Fourth Amendment
2. Illinois Constitution, Article I, § 6

V. INVESTIGATION⁴

A. Interviews⁵

COPA interviewed Officer Rangel on November 30, 2017 at COPA offices. According to Officer Rangel, on May 8, 2017, he was working in the 6th district with Officer Constantino Martinez. Officer Rangel also stated he was wearing a body-worn camera.

On the date of the incident, Officer Rangel received a call from dispatch that a concerned citizen heard screams from an adjacent apartment, stating “please don’t shoot me.” The concerned citizen met Officers Rangel and Martinez at the front of the apartment complex and lead the officers to the back of the building where he heard the commotion and screaming. The concerned citizen then pointed to the door⁶ where he heard the screams come from – now known to be [REDACTED] apartment. Officer Rangel observed a man, now known to be [REDACTED] standing next to the same door the concerned citizen pointed out. Officer Rangel asked [REDACTED] “what was going on,” and [REDACTED] stated, “they over there.” Officer Rangel approached [REDACTED] for a field interview, and [REDACTED] ran into [REDACTED] apartment.

Officer Rangel went to the apartment and knocked on the back-door [REDACTED] had just run into and spoke to the women who answered, now known to be [REDACTED]. After being denied entry by [REDACTED] Officer Rangel spoke to a sergeant on scene and asked for permission to make forced entry into the residence. The sergeant provided permission to enter. Once inside the residence,

⁴ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁵ IPRA sent [REDACTED] at least two letters attempting to interview her and obtain an affidavit. *See* att. 20 and 43. [REDACTED] refused to cooperate. COPA obtained an affidavit override from the Bureau of the Internal Affairs. *See* Att. 66. COPA did not attempt to interview any other civilian witnesses because their testimony was not material to the underlying issues or allegations.

⁶ Now known as [REDACTED] apartment.

Officer Rangel performed a search to locate [REDACTED]. Officer Rangel found [REDACTED] inside the bathroom and [REDACTED] was immediately detained. After [REDACTED] was detained, Officer Rangel stated that he and other officers performed a protective sweep of the apartment in search of a weapon. Officer Rangel acknowledged he did not have a warrant to search the apartment and was unsure if he had permission from the male subject to search.⁷

COPA interviewed Officer Rangel a second time⁸ on December 18, 2017 at COPA offices. According to Officer Rangel he searched the living room and a closet for a gun. Officer Rangel stated that he did not get a warrant because he believed exigent circumstances existed for the search.⁹

COPA interviewed Officer Brink on November 28, 2017 at COPA offices. According to Officer Brink, on May 8, 2017, he was working in the 6th district with his partner Officer Maribel Rosario. Officer Brink was in plain clothes and wearing a body-worn camera. On the date of the incident, Officer Brink responded to a foot pursuit in progress at the incident address. Officer Brink further stated that at that same address, he received a call from dispatch (OEMC) informing him that there was a call of a woman screaming “don’t shoot me.” When he arrived at the incident address, there was a female witness¹⁰ outside who informed him that a man had ran into the apartment where the woman was screaming “don’t shoot me.” Officer Brink went to the front of the apartment building at [REDACTED] and a citizen opened the front door for him.

Officer Brink proceeded up the stairs to the apartment. When he arrived at the door, there were already other officers there knocking on the door and trying to speak through the door with the woman¹¹ inside the apartment. According to Officer Brink, the woman inside the apartment told the officers that she was the only person in the apartment and there was no guy inside the apartment.¹² Officer Brink then proceeded back outside and heard another officer over the radio ask for permission to make forced entry into the apartment. When Officer Brink heard this, he proceeded back into the front of the apartment building.

Once upstairs, another officer on scene kicked in the apartment door, and Officer Brink entered the apartment. When Officer Brink entered the apartment, he encountered a male subject, now known to be [REDACTED] in the bathroom of the apartment. Officer Brink detained [REDACTED]. Officer Brink stated he began searching the apartment because he believed that there was a gun involved and that [REDACTED] was committing a crime with a gun. Officer Brink believed that he could search any place where a gun could be hidden. Officer Brink stated he looked inside the back of the toilet bowl, under the bathroom cabinet and opened the bathroom window to see if he saw a gun outside in the bushes below. Officer Brink stated that he talked to a sergeant outside the window and informed him he was going outside to continue his search for the weapon. Officer Brink then proceeded outside the apartment to search for a gun. Officer Brink turned his body-worn camera off before he left the apartment to go outside. According to Officer Brink, he did not

⁷ Att. 68

⁸ This statement was taken to show Officer Rangel the body-worn camera footage from the incident.

⁹ Att. 87

¹⁰ This woman was never identified.

¹¹ Now known as [REDACTED]

¹² [REDACTED] and [REDACTED] were in a relationship at the time of the incident.

recall if he searched any areas besides the bathroom. Officer Brink also did not recall how long he was inside the apartment. Officer Brink acknowledged he did not have a warrant or permission to enter or search the apartment.¹³

COPA interviewed Officer Cinta on December 5, 2017 at COPA offices. According to Officer Cinta, on May 8, 2017, she was working in the 6th district with her partner Officer Katie Blocker. Officer Cinta was wearing a body-worn camera. She responded to a call of a person with a gun, possibly a domestic. According to Officer Cinta, more calls kept coming in about someone saying they heard a woman screaming and getting beaten up. According to Officer Cinta, the caller heard a woman saying, “don’t shoot me.” When Officer Cinta arrived at the residence of [REDACTED] she saw a child¹⁴ in front crying hysterically and mumbling something about his mother. Other officers on scene asked the child where his mother was, and the child guided them to the back of the apartment building. The gate was locked so the child jumped over the gate to open the gate for the officers.

Once the gate was opened, officers went up to [REDACTED] apartment and made entry through the backdoor. Officer Cinta was not one of the officers who initially made entry into the apartment. Officer Cinta only entered the apartment after other officers gained entry to the front and back of the apartment. According to Officer Cinta, she did not have a warrant to enter the residence, and she is unsure if permission was obtained to enter the residence because she was not the first officer to enter the residence. Once inside the residence, she observed that a male¹⁵ subject was detained, and a sweep of the apartment was conducted. According to Officer Cinta, her search consisted of looking for a gun. Officer Cinta advised that she searched a bedroom, the bathroom, and the fridge. According to Officer Cinta, she continued to search the residence after the subject was detained because the owner of the apartment did not want to press charges against the male subject and she wanted to make sure that a gun was not in the apartment before they left the scene.¹⁶

COPA interviewed Officer Blocker on December 12, 2017 at COPA offices. According to Officer Blocker, on May 8, 2017, she was working in the 6th district with her partner Officer Clara Cinta. She was wearing plain clothes and she had on a body-worn camera. Officer Blocker does not remember the exact call she was responding to on that date. According to Officer Blocker, it was either a person with a gun or a person calling for help. Officer Blocker acknowledged she did not have a search warrant or permission to enter the apartment but stated that there were exigent circumstances. According to Officer Blocker, the exigent circumstances were that she heard children screaming and crying before she entered the apartment. Officer Blocker also acknowledged she did not have a warrant or permission to search the apartment, but again stated that there were exigent circumstances. Officer Blocker stated that she searched the residence for a gun. Officer Blocker searched a bedroom and a closet in the bedroom. According to Officer Blocker, she was present when officers detained the male¹⁷ subject who was found in the bathroom.

¹³ Att. 57

¹⁴ Appearing to be between 11-14 years of age.

¹⁵ Now known as [REDACTED]

¹⁶ Att. 72

¹⁷ Now known as [REDACTED]

After he was detained she acknowledged that she continued searching for a gun. According to Officer Blocker, a gun was never recovered.¹⁸

COPA interviewed Officer Castellano on January 23, 2018 at COPA offices. According to Officer Castellano, on May 8, 2017, she was working in the 6th district with her partner Officer Constantino Martinez. She does not recall what she was wearing but she did have on a body-worn camera. According to Officer Castellano, there was a call for service to the address of [REDACTED] regarding a person with a gun. When Officer Castellano arrived, a citizen informed her that a male ran through the back. Officer Castellano and another officer ran to the front of the apartment building. Officer Castellano acknowledged she did not have a warrant or permission to enter the residence¹⁹ but believed exigent circumstances existed to warrant entry. Specifically, Officer Castellano stated she observed children crying and she believed there was possibly a gun inside. When Officer Castellano entered the residence, she walked up to the female²⁰ in the residence to ask if she was okay. Officer Castellano was in the residence for approximately 10 minutes. She acknowledged searching for the weapon in a laundry bag. Officer Castellano acknowledged she did not have permission or a warrant to search the apartment.

COPA interviewed Officer Lynch on December 13, 2017 at COPA offices. According to Officer Lynch, on May 8, 2017, he was working in the 6th district with his partner Officer Nicholas Nesis. Officer Lynch was wearing a body-worn camera. On the date of the incident, Officer Lynch went to the location to assist other officers in regard to a person with a gun. Upon arrival, Officer Lynch advised he entered the residence and assisted with the search of a gun. Officer Lynch acknowledged he did not have a warrant or permission from the owner to enter or search the residence. Officer Lynch stated he searched two bedrooms and the bathroom. According to Officer Lynch, he entered the apartment because there was a dispatch from OEMC of a person with a gun and female screaming for help.²¹

COPA interviewed Officer Rosiles on December 21, 2017 at COPA offices. According to Officer Rosiles, on May 8, 2017, he was working in the 6th district with his partner Officer Albert Rangel. Officer Rosiles was wearing a body-worn camera. On the date of the incident, Officer Rosiles responded to a domestic incident involving a person with a gun. As soon as Officer Rosiles arrived on the scene he made his way to the front entrance. Officer Rosiles observed a child run out of the apartment crying while saying something about his mother and father. Officer Rosiles acknowledged he did not have a warrant or permission from the apartment owner to enter the residence.²² According to Officer Rosiles, he entered the apartment because of exigent circumstances. After entering the residence, Officer Rosiles advised he separated [REDACTED] and [REDACTED] and made sure they were both okay. Thereafter, Officer Rosiles advised the commenced a search for a firearm. Officer Rosiles stated he searched “a couple” of bedrooms, the living room, the kitchen and the bathroom.

¹⁸ Att. 80

¹⁹ Att. 93

²⁰ Now known as [REDACTED]

²¹ Att. 83

²² Att. 90

COPA interviewed Sergeant Lucid on November 20, 2018 at COPA offices. According to Sergeant Lucid, on the date of the incident he was the sergeant on scene. Sergeant Lucid advised he was responding to a call advising of a man with a gun. When he arrived at the scene, he was approached by a 12-year old male who was in distress. The young male was crying and told him that someone was holding a gun to his mother's head. The young male ran to the rear of the apartment building and asked the sergeant to follow him. When they arrived at the rear of the building, the sergeant stated that the young male jumped over the fence and unlocked the gate for the sergeant to enter. The young male then pointed up toward ██████ apartment and the sergeant ran up the stairs to the apartment.

As the sergeant approached the apartment door, he heard banging on the door. There were two officers already at the door trying to make entry to the back door. A female – later identified as ██████ - answered the door but would not allow entry. The sergeant advised he thought she may have been coerced not to open the door because of the nature of the call, meaning the man with a gun. The initial officers on scene also advised him that they had observed an individual run into the apartment and evade a field interview. According to Sgt. Lucid, the officers at the door asked him if they could make a force entry, and he told them yes. The officers and sergeant made entry and they began to sweep the apartment looking for the person who had ran into the apartment earlier. According to the sergeant the man was located in the bathroom and secured.

According to the sergeant, he felt ██████ was not being cooperative and assumed that the ██████ was hiding because he had threatened ██████ with a weapon and that there was a weapon somewhere on the premises. The sergeant acknowledged the officers did not have a warrant to enter or search the residence. The sergeant does not recall if he participated in the search, but he does state that the officers did search the entire apartment for a weapon. The sergeant advised that because of the exigent circumstances, he never directed the officers to stop searching the apartment. According to the sergeant there was a call of a male with a gun, and the exigency involved officer safety/public safety that the existence of a gun could result in officers being shot. Sgt. Lucid stated if the officers did not search the residence, the man could use the gun and shoot the woman after the officers left. There were children living at the residence who could find the weapon at a later date and the sergeant thought they could be responsible if any of the above happened. No firearm was found on the scene.²³

B. Digital Evidence

OEMC Recording (911 Call)

A male caller, identified in the call as “█████,” called 911 and reported hearing someone in another apartment in his building screaming frantically “don't shoot, don't shoot.” He thought the call was coming from a second or third floor apartment. Later in the call he says he can still hear the woman screaming. The operator instructs the caller to wait for the officers by the front door of the building, which he agrees to do.²⁴

²³ Att. 104.

²⁴ Att. 98

Body-worn Camera Footage²⁵

Body-worn camera footage from **Officer Brink's** camera depicts him entering [REDACTED] apartment through the front door at 00:28. Another officer and a sergeant are seen already inside the apartment and the officer is seen kicking open the bathroom door at 00:34. The officer goes into the bathroom and Officer Brink goes in behind him. [REDACTED] is placed into handcuffs and escorted out of the bathroom at 01:21. Once [REDACTED] is escorted out of the bathroom, Officer Brink looks inside the back of the toilet bowl at 01:25. Officer Brink then looks outside the window in the bathroom. He also looks in the cabinet underneath the sink at 01:45. Officer Brink then leaves the bathroom and turns his camera off.²⁶

Body-worn camera footage from **Officer Lynch's** camera depicts him entering [REDACTED] apartment through the back door at 00:23. Officer Lynch entered one of the bedrooms and shined his flashlight into the closet in that bedroom at 00:38. [REDACTED] can be seen in handcuffs in the living room at 00:51. Officer Lynch then enters another bedroom and looks under a mattress that was already laying on the floor at 01:21. He then enters another room and speaks to Officer Brink. Officer Brink can be seen looking under a mattress laying on the floor at 01:39. Officer Lynch then proceeds to the bathroom. Once inside the bathroom, Officer Lynch looks in the cabinet underneath the sink at 01:50. He then looks inside the bathroom medicine cabinet at 01:58. He also looks inside the toilet bowl at 02:04. He then looks inside the back of the toilet bowl at 02:09.

Officer Lynch exits the bathroom and enters a bedroom. While in the bedroom, he opens a bookbag laying on the floor and looks inside of it at 02:29. He then picks up a laundry bag off the floor and empties the contents at 02:38. He also looks between some clothes laying on a radiator at 02:41. Officer Lynch looks inside more clothes at 02:50. Officer Lynch then went into the closet inside the bedroom and searches another bookbag at 03:07. He then searches some clothes on the floor inside the closet at 03:15. Officer Lynch then proceeds into the kitchen and looks inside the oven at 03:59. Officer Lynch then explains to [REDACTED]²⁷ why they were there inside the apartment and exits the apartment at 05:20.²⁸

Body-worn camera footage from **Officer Castellano's** camera depicts Officer Castellano getting out of the vehicle and running up the front apartment stairs to [REDACTED] apartment. Officer Rosiles is seen on camera having a conversation through the door with [REDACTED] is heard telling the officers that they cannot come in at 00:49. The video ends at 00:53.²⁹

Officer Castellano's body-worn camera is activated again. The video begins with Officer Castellano already inside [REDACTED] apartment. Officer Castellano walks around the apartment. She enters the kitchen where Officer Cinta is already speaking with [REDACTED] Officer Castellano then

²⁵ The first 30 seconds of all body-cam footage has no audio due to a buffering system. Once the officer activates his camera by tapping on it twice, the camera will then preserve the video from the previous 30 seconds but does not preserve audio from before the officer activated the camera.

²⁶ Att. 45

²⁷ Officer Lynch explained that they were there for [REDACTED] protection because somebody called in. Officer Lynch further explained that someone could have had a gun on her and told her to lie to the police, and that is why they had to take action.

²⁸ Att. 46

²⁹ Att. 48

starts to speak with ██████ regarding her son crying. Officer Castellano leaves the kitchen and enters the hallway area. While in the hallway, she looks inside a laundry bag at 04:48. In the video footage, ██████ is sitting on a chair in handcuffs at 05:07. Officer Castellano then enters the bathroom. While in the bathroom, she looks out the window. Officer Castellano then looks inside the back of the toilet bowl at 07:03. She also looks inside a bookbag at 07:49. Officer Castellano exits the apartment at 10:03.³⁰

Body-worn camera footage from **Officer Cinta's** camera depicts Officer Cinta arriving to the incident. Officer Cinta runs to the back of the apartment building. ██████ son³¹ is also seen running to the back of the apartment building with a sergeant. ██████ son jumps over the gate and opens the gate for the officers. ██████ son gives the officers a description of what ██████ is wearing.³² A second gate leading into the back courtyard is locked, Officer Cinta walks back into the alley. The 911 caller unlocks the second gate and Officer Cinta enters the back of the apartment building. ██████ can be heard in the background telling other officers that they cannot come in.

Officer Cinta enters ██████ residence and immediately assists with holding ██████ back. ██████ tells the officers that an officer threw her down to the ground and she did not call the police or give the police permission to enter her apartment. Officer Cinta tells ██████ that she is being recorded with the body-worn camera. Officer Cinta then explains to ██████ why they were at the apartment.³³ Officer Cinta leaves the kitchen area and ██████ is seen handcuffed with other officers standing over him at 05:03. Officer Brink is seen in a bedroom searching a drawer underneath the television at 05:43.

Officer Cinta enters a bedroom and looks inside a bookbag that was sitting on the floor at 05:53. She then searches some clothes laying on the floor at 06:01. Officer Cinta then re-enters the kitchen area and looks inside the refrigerator at 06:19. Officer Cinta relocated to the bathroom and she looks inside the toilet at 06:40. She then looks inside the back of the toilet bowl at 06:43. She looks out the window and then exits the bathroom. She exits ██████ apartment at 07:11.³⁴

Body-worn camera footage from **Officer Blocker's** camera depicts Officer Blocker getting out of the car and running around to the back of the apartment building. ██████ son is also seen running to the back of the apartment building with a sergeant. ██████ son jumps over the gate and opens the gate for the officers. Officer Blocker enters the back courtyard area and runs up the stairs to ██████ apartment. There are two officers and a sergeant already standing outside by the door. The two officers ask ██████ if she is okay. ██████ tells the officers that she did not call the police and that they cannot come in without a warrant. The officers tell ██████ that they do not

³⁰ Att. 47

³¹ The first 30 seconds of all body-cam footage has no audio due to a buffering system. Once the officer activates his camera by tapping on it twice, the camera will then preserve the video from the previous 30 seconds but does not preserve audio from before the officer activated the camera.

³² He described ██████ as having on jeans and a white tee shirt.

³³ Officer Cinta explained that they received a call about a person with a gun who ran into the building; she further explained that because ██████ had not initially let the officers in, the police had no way of knowing whether someone in the home was being held hostage, so it was their duty to come into the apartment and check the safety of the occupants.

³⁴ Att. 49

need a warrant. One of the officers asks the sergeant if they may enter the apartment and the sergeant tells them that they may.

The two officers and Officer Blocker enter [REDACTED] apartment at 02:46. Officer Blocker heads to a bedroom and searches under some clothes that were on a bed at 03:12. She also picks a mattress up off the floor and looks under it at 03:24. Officer Blocker also looks in a drawer underneath the television at 03:30. In the same bedroom, Officer Blocker searches a plastic container at 03:40. She also searches a bag at 03:51 and another plastic container at 03:58. Officer Blocker searches a closet at 04:23. [REDACTED] is handcuffed and sitting in a chair at 04:37. Officer Blocker searches another closet at 04:51. Officer Blocker then relocates to the bathroom. She looks outside the bathroom window, she then exits the bathroom and goes into the kitchen. Officer Blocker leaves the kitchen and goes into the living room. Officer Blocker exits [REDACTED] apartment at 10:39.³⁵

Body-worn camera footage from **Officer Rosiles'** camera depicts Officer Rosiles entering into the front of [REDACTED] apartment building and going up the stairs. [REDACTED] runs up the front stairs in front of Officer Rosiles, and [REDACTED] tells Officer Rosiles that she did not call the police and that he cannot come in. [REDACTED] enters her apartment and closes the door. Officer Rosiles tries to prevent [REDACTED] from closing the door but is unsuccessful. A female child³⁶ is heard crying "my daddy, my daddy" in the background. Officer Rosiles and Officer Castellano proceed up the stairs to the apartment above [REDACTED] apartment. A visibly shaken woman inside the apartment tells the officers that she is fine and that nobody is inside the apartment. Officer Rosiles and Officer Castellano leave the apartment and return down to [REDACTED] apartment.

[REDACTED] son comes up the stairs and Officer Rosiles asks [REDACTED] son if [REDACTED] is still in the apartment, to which [REDACTED] son responds yes. Other officers can be heard in the background already inside [REDACTED] apartment. Officer Rosiles kicks [REDACTED] front door open at 02:55 and enters the apartment. Officer Rosiles kicks open the bathroom door at 03:05. Other officers already inside the bathroom place [REDACTED] into handcuffs at 03:12. Officer Rosiles leaves the bathroom and enters the hallway of the apartment. Officer Rosiles searches inside a closet in the bedroom at 03:50. Officer Rosiles then searches inside a drawer underneath the television at 04:08. [REDACTED] is seen again at 04:20 handcuffed sitting on a chair. Officer Rosiles searches inside a purse at 04:32. Officer Rosiles then searches the couch at 04:43. He searches under the couch at 05:00. Officer Rosiles searches another purse inside the bedroom at 05:58. He also searches a plastic container at 06:14. Officer Rosiles also searches underneath a mattress on the floor at 06:30. He searches the same plastic container again at 06:55. Officer Rosiles enters the kitchen and searches inside the cabinets at 07:29. Officer Rosiles goes back inside a bedroom and searches inside some plastic drawers at 11:21. Officer Rosiles exits [REDACTED] apartment at 13:15.³⁷

Body-worn camera footage from **Officer Rangel** camera depicts Officer Rangel entering the front of [REDACTED] apartment building, where a black man³⁸ is standing in the doorway. That same black man leads Officer Rangel up the stairs of the building and into his residence. Officer

³⁵ Att. 50

³⁶ Appearing to be between 8-10 years of age.

³⁷ Att. 51

³⁸ Appearing to be [REDACTED] the 911 caller.

Rangel follows the man through the apartment to the back door. The man opens the back door and points upwards. Officer Rangel sees another black man, wearing a white t-shirt, across the courtyard and appearing to be on the second-floor stairs area. Officer Rangel asks this man “what was going on,” and the man answers “shit, he over there with it.” The man then takes off running into the apartment. Officer Rangel runs over toward where the man was just standing.

Officer Rangel knocks on [REDACTED] door, and [REDACTED] can be heard from inside the apartment telling the officers that they cannot come in and that she did not call the police. Officer Rangel knocks on [REDACTED] door again and [REDACTED] opens the door this time. Officer Rangel asks [REDACTED] if she is okay and why did the man ran in when he saw police. [REDACTED] responds that he was not there. Officer Rangel asks the sergeant on scene if they could go in and the sergeant tells them to go in at 02:48.

Officer Rangel enters the apartment and proceeds to the bathroom where he encounters [REDACTED] shirtless with his white t-shirt in the sink at 03:08. [REDACTED] was placed into handcuffs while inside the bathroom. Officer Rangel leaves the bathroom and goes to a hallway closet. He pats down two coats in the closet at 03:40. Officer Rangel then goes into the living room and starts searching the couch at 03:51. [REDACTED] enters the living room in handcuffs lead by another officer at 04:06. Another officer asks [REDACTED] at 04:33, “so it’s okay if we look then,” [REDACTED] answers “yeah ya’ll can tear this bitch up, ain’t no guns.” Officer Rangel searches another bag at 04:45. Officer Rangel searches the couch a second time at 04:53. He looks inside an opened purse at 05:22. He looks in the closet again at 05:37. Officer Rangel took a bag out of the closet and searches it at 05:42. He searches a second bag from the same closet at 06:02. Officer Rangel checks a second closet in the hallway area at 07:29. Officer Rangel exits [REDACTED] apartment at 08:25 and searches outside. Officer Rangel re-enters [REDACTED] apartment at 14:51 but does not search anything and then re-exits at 16:53.³⁹

Body-worn camera footage from **Officer Martinez’s** camera depicts Officer Martinez entering the front of [REDACTED] apartment building, where a black man⁴⁰ opens the door for him and Officer Rangel. That same black man leads Officers Rangel and Martinez up the front stairs of the building and into his residence. Officers Rangel and Martinez follow the man through the apartment to the back door. The man opens the back door and points upwards. Officer Rangel speaks with another black man across the courtyard, later determined to be [REDACTED] then immediately turns and runs into an apartment, later determined to be [REDACTED] apartment. Both Officers Rangel and Martinez run up to [REDACTED] apartment door. Officer Rangel knocks on the door, and [REDACTED] can be heard from inside the apartment stating that she did not call the police and that the officers cannot come in.

Officer Martinez is seen standing at the door with Officer Rangel. [REDACTED] opens the apartment door at 02:15 and states, “he is not here, he is gone,” and “you guys do not have a warrant and you cannot come in.” Officer Rangel asks the sergeant on scene if they could go in and the sergeant tells them to go in at 02:48. Officers Rangel and Martinez proceed to the bathroom where they encountered [REDACTED] at 03:04. [REDACTED] is seen shirtless with his white t-shirt in the bathroom sink. Officer Rangel orders [REDACTED] to get down on the ground and [REDACTED] complies.

³⁹ Att. 76

⁴⁰ Appearing to be [REDACTED] the 911 caller.

Officer Martinez places █████ into handcuffs while he was in the bathroom, and it appears that he searches █████ pockets. █████ is escorted out the bathroom and into the living room by Officer Martinez at 03:58.

Officer Rangel asks █████ what was going on and █████ responds that they were arguing. Officer Rangel also asks █████ why he was running from them and █████ responds that he ran back into his house. █████ tells the officers at 04:25 that they “could flip shit in and out, ain’t no gun in here.” █████ also tells the officers that three kids stay at the apartment. Officer Martinez can be heard at 04:30 stating to █████ that “so it’s alright that we look through then.” █████ responds “yeah ya’ll can tear this bitch up, ain’t no gun.” You can see other officers searching the couch while Officer Martinez is standing by █████ Other officers in the apartment are seen speaking with █████ at different times during the video and asking him different questions. █████ is seen telling the officers that they can search his things because there is no gun. █████ asks Officer Martinez to loosen the cuffs to which Officer Martinez complies.

C. Documentary Evidence

Case Report (JA255950)

The case report documents that the responding officers responded to a call of a person screaming, “please do not shoot me.” While at the location, Officers Rangel and Martinez observed █████ run into █████ apartment as they approached for a field interview. Responding officers knocked on the door and █████ answered the door. █████ stated that she did not call the police, that he (█████) left, and she did not want the police inside of her residence. Responding officers fearing that █████ was being coerced into giving officers false information, made entry into the residence. Responding officers also made forced entry to the front of the residence. Responding officers found █████ in the bathroom and detained him. Responding officers conducted a search of the residence for weapons. No weapons were recovered.⁴¹

VI. ANALYSIS

A. 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

⁴¹ Att. 54

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

B. Legal Findings

There are several distinct aspects to discuss in the present case: the initial entry into [REDACTED] apartment as well as the ensuing sweep and search that was carried out in [REDACTED] apartment; and whether [REDACTED] had the authority to consent to a search of [REDACTED] apartment.

1. The initial entry into [REDACTED] apartment

It is well settled that a warrantless search or seizure of a person's home is presumptively unreasonable under the Fourth Amendment, absent certain exceptions.⁴² One such exception, relevant in this case, is known as exigent circumstances.⁴³ Exigent circumstances justify a warrantless entry where police officers "reasonably fear for the safety of someone inside the premises" and taking the time to secure a warrant would be impractical.⁴⁴ In such a situation, "officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury,"⁴⁵ as the "need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."⁴⁶ The Supreme Court has provided further guidance on this particular point, noting that "the Fourth Amendment does not require police officers to delay in the course of an

⁴² *Groh v. Ramirez*, 540 U.S. 551, 559, 157 L. Ed. 2d 1068, 124 S. Ct. 1284 (2004).

⁴³ While the emergency aid doctrine is within the exigent circumstances framework, and is actually distinct from the exigent circumstances exception, given that the emergency aid doctrine does not require probable cause; for the purposes of this analysis, the two will be treated the same. *See Sutterfield v. City of Milwaukee*, 751 F.3d 542 (7th Cir. 2014); see also *U.S. v. Mallory*, 765 F.3d 373 (3rd Cir. 2014).

⁴⁴ *United States v. Collins*, 110 F. App'x 701, 703 (7th Cir. 2004), quoting *United States v. Jenkins*, 329 F.3d 579, 581 (7th Cir. 2003).

⁴⁵ *Brigham City*, 547 U.S., at 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650.

⁴⁶ *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S. Ct. 2408, 2413 (1978), citing *Wayne v. United States*, 115 U.S. App. D.C. 234, 318 F.2d 205, 212 (D.C. Cir. 1963)

investigation if to so do would gravely endanger their lives or the lives of others.”⁴⁷ Once the police are lawfully in the home, “their conduct is measured by a standard of reasonableness.”⁴⁸

In this case, the officers did not have permission or a warrant to enter or to search [REDACTED] residence. However, *United States v. Collins* makes it clear that a warrantless entry into a person’s home may be acceptable under exigent circumstances. The exigent circumstances doctrine provides that a warrantless entry may be legal when there is compelling need for official action and no time to secure a warrant. The test for exigent circumstances, as explained in *Collins*, is objective: “the government must establish that the circumstances as they appeared at the moment of entry would lead a reasonable, experienced law enforcement officer to believe that someone inside the . . . apartment . . . required immediate assistance.”⁴⁹ Additionally, *People v. Foskey* lists some non-exhaustive factors to consider when determining if exigent circumstances exist. Those factors include (1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense is involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was strong reason to believe that the suspect was on the premises; and, (8) whether the police entry, though nonconsensual, was made peaceably.⁵⁰

Applying those factors in this case yields a clear result toward determining that exigent circumstances did exist.

Factor 1, the timing of the 911 call and the arrival of the officers and statements from the neighbor and child made clear a crime may have been recently committed and could be continuing inside the apartment while the officers were outside the apartment.

Factor 2, there does not appear to be any sort of delay on the part of the officers, let alone a deliberate or unjustifiable delay, as the police began investigating immediately upon arrival and entered the apartment as soon as practicable.

Factor 3, the officers were called to the building for a call of a woman screaming “don’t shoot,” which heavily implies that she is being threatened with a firearm, which is clearly a grave offense and one of violence.

Factor 4, based upon the call to 911 supported by the testimony of the witnesses and the child, the officers had reason to believe that someone inside the apartment may have been armed with a gun.

Factor 5, the woman screaming “don’t shoot;” the crying child who let the officers in; the man running into the apartment upon seeing the police; and the woman denying that anyone was

⁴⁷ *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99, 87 S. Ct. 1642, 1646 (1967)

⁴⁸ *Maryland v. Buie*, 494 U.S. 325, 329, 110 S. Ct. 1093, 1095 (1990)

⁴⁹ *United States v. Collins*, supra at 703, quoting *United States v. Arch*, 7 F.3d 1300 (7th Cir. 1993).

⁵⁰ *People v. Foskey*, 136 Ill. 2d 66, 143 Ill. Dec. 257, 554 N.E.2d 192 (1990)

in the apartment when the officers had just seen a male enter; all combined to give the police probable cause to believe that entry may be necessary to protect the safety of the occupants inside.

Factor 6, while not as strongly weighted as the others, escape through egress points other than the front and back doors was possible.

Factor 7, the officers had just seen the subject run into the apartment immediately before they reached the door and thus knew he was inside the apartment.

Finally, Factor 8, while the entry itself was not peaceful, the law does not require that every factor be satisfied to support the exception.

In the present case, the officers' entry to [REDACTED] apartment was justified under the exigent circumstances doctrine. The officers received a call from a concerned citizen that a woman was screaming "don't shoot, don't shoot." When the officers arrived on scene they were met by [REDACTED] child crying outside. The concerned citizen also pointed out [REDACTED] apartment as the apartment where he heard the woman screaming from. Officers also observed a male subject run into the apartment and then when they approached the apartment, [REDACTED] told the officers that the male was not inside, which the officers knew to be false. The officers could also hear another child crying inside the apartment, and [REDACTED] son confirmed that "he" was still in the apartment. The officers had no way of knowing if [REDACTED] was being forced to lie to them under threat of harm from [REDACTED] so the officers made entry, over [REDACTED] objections, to ensure that [REDACTED] and any other occupants of the apartment were safe. The officers then gained access to the apartment, which was justified based on the above analysis, and then gained access to the bathroom.

An additional consideration is that a warrantless intrusion into a home must not exceed the exigency that permits it.⁵¹ In this case, the officers' mere presence after securing [REDACTED] did not exceed the exigency that permitted it. After securing [REDACTED] via handcuffs, he was removed from the bathroom and placed in the living room, and it may have appeared that the exigent circumstances had been exceeded. However, the officers were not required to leave the apartment at that time. Besides needing time to complete their investigation as to whether a crime had been committed, *Hanson v. Dane County* is persuasive as to explaining under what circumstances it would be reasonable for police to continue investigating a possible domestic violence situation in a home even after they have learned that no one is harmed.⁵² In a domestic situation, an "armed man may threaten the woman with him that, unless she 'acts natural' when the police arrive, she will be beaten or shot later."⁵³

In this case, although [REDACTED] was telling the officers that she was fine and asking that they leave, the totality of the circumstances may have still led a reasonable officer to believe that a domestic disturbance had just occurred and may not have completely dissipated. The officers heard a woman screaming "don't shoot, observed [REDACTED] son who was crying about his mother

⁵¹ *Schreiber v. Moe*, 596 F.3d 323, 331 (6th Cir. 2010), citing *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994).

⁵² *Hanson v. Dane Cty.*, 599 F. Supp. 2d 1046, 1054 (W.D. Wis. 2009), aff'd by *Hanson v. Dane County*, 2010 U.S. App. LEXIS 12163 (7th Cir. Wis., June 15, 2010).

⁵³ *Hanson, supra* at 1055, citing *United States v. Wooden*, 551 F.3d 647, 650 (7th Cir. 2008)

and father, saw a man dash into an apartment and shut the door behind him upon noticing the police arrive. Furthermore, although ██████ told the officers no one else was in the apartment, the officers could hear a child crying inside the apartment and ██████ son confirmed that “he” was still in the apartment.⁵⁴

Once the officers were inside the apartment and ██████ was insisting she was fine, the officers had ample reason to question the sincerity of her statements, perhaps the strongest of which the obvious falsity of the statement she initially made, that the male had not entered the apartment. In fact, it would be objectively reasonable for any officer to believe that it could be a grave mistake to immediately leave the apartment just because ██████ said she was fine and requested they leave.⁵⁵ Given that the standard, once the officers are in the apartment lawfully, switches to reasonableness,⁵⁶ a reasonable officer on the scene could have believed that a continued police presence was required for a time to prevent any future harm to ██████ or her children. Finally, the fact that ██████ had advised that she did not want to make a report or press charges meant that the officers would not be arresting ██████ and he would be staying in the home with ██████ and her children. Therefore, the fact that the officers did not immediately leave the apartment after ██████ asked them to leave was permissible under the Fourth Amendment.

2. The search of ██████ apartment

The analysis of the ensuing search of the apartment must be broken down into two separate components: the “protective sweep” of the apartment and the search of the apartment for the alleged weapon.

i. The protective sweep of the apartment

Under *Maryland v. Buie*, police officers are permitted, in certain situations, to conduct a protective sweep, for the safety of themselves as well as any other persons present.⁵⁷ The sweep is a quick and limited search of premises, and narrowly confined to a cursory visual inspection of those places in which a person might be hiding.⁵⁸ Given the clear and legitimate concerns facing an officer who is in the unfamiliar home of an individual, when emotions are running high and the individual may harbor ill will against the officer, the Supreme Court has recognized that there is an interest of the officers “in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack.”⁵⁹ Specifically, “there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer

⁵⁴ In this case, there were actually two entries to the apartment, almost simultaneously: while one team of the officers was at the back door, which is what is discussed primarily here, there was another team of officers at the front door. The team at the back door spoke with ██████ while the team at the front door encountered the female upstairs neighbor and the crying female child.

⁵⁵ *Hanson*, supra at 1055.

⁵⁶ *Maryland v. Buie*, supra, at 1055.

⁵⁷ Officers are also specifically permitted to conduct a search for any injured persons on the premises, when circumstances would deem appropriate, pursuant to *Collins*. The officers in this case do not articulate that they were searching for any potential injured persons, but if they had articulated such, they would have been within the scope of the Fourth Amendment.

⁵⁸ *Maryland v. Buie*, supra at 1094.

⁵⁹ *Id.* at 1098

in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.”⁶⁰ Police are permitted to conduct a protective sweep if they are not certain the person they’ve apprehended is the correct person,⁶¹ and there is no requirement that they have certain knowledge that others are present, if it is reasonable to believe that someone may be.⁶² Finally, an arrest is not per se required for a protective sweep.⁶³

In this specific case, even though the officers on scene had already seized █████ there were articulable facts which, when put together with rational inferences, could lead a reasonable officer to believe that there may be another individual in the home that could pose a danger to the officers or the civilians present. Although the officers had seen █████ run into the apartment, they had no way of knowing whether he was the individual that was the subject of the original 911 call or the “he” that █████ son referred to, and they had no way of knowing whether he was the only other person in the home. Thus, even though █████ was quickly secured in handcuffs in the living room, the officers still did not know whether anyone else was in the home that could be dangerous, especially given the high emotions that often accompany a domestic situation. Viewed within the totality of the circumstances, █████ own statements, because they were known by the officers to be false, can be used to support a protective sweep.⁶⁴

It is clear that the officers were permitted to make a protective sweep, under *Maryland v. Buie*, but that sweep was specifically and explicitly limited to a cursory inspection of spaces where a person could hide.⁶⁵ Thus, when the officers searched the closets of the apartment⁶⁶ and perhaps even under the sofa,⁶⁷ depending on how much room was under the sofa and whether a person could reasonably fit under the sofa, they were not in violation of the Fourth Amendment.

ii. The search for weapons in the apartment

While the entry to █████ apartment and the protective sweep were reasonable under the circumstances pursuant to case law, the ensuing search for a weapon, with the possible exception of the bathroom,⁶⁸ was not. As discussed above, the officers were permitted to search for potential assailants or possible injured persons, but the search must be limited to those places where a person may be found. However, in the present case, the officers each stated that they were searching for a weapon during their search of the rest of the apartment. In *Chimel v. California*, 395 U.S. 752 (1969) the court held that absent consent, a warrant, or another justification, any search in an

⁶⁰ *Id.*

⁶¹ *United States v. Bass*, 315 F.3d 561 (6th Cir. 2002)

⁶² *United States v. Maldonado*, 472 F.3d 388 (5th Cir. 2006)

⁶³ “If a suspect is dangerous, he is no less dangerous simply because he is not arrested.” *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). See also *United States v. Gould*, 364 F.3d 578 (5th Cir. 2004); *United States v. Mata*, 517 F.3d 279 (5th Cir. 2008); *United States v. Lawlor*, 406 F.3d 37 (1st Cir. 2005)

⁶⁴ *United States v. Thompson*, 842 F.3d 1002 (7th Cir. 2016)

⁶⁵ *Maryland v. Buie*, *supra* at 1099.

⁶⁶ Officers Lynch, Blocker, Rosiles and Rangel

⁶⁷ Officer Rosiles

⁶⁸ █████ was located in the bathroom and a weapon located in the bathroom would have been in his immediate vicinity at the time of his detention. The officers did not find a weapon in the bathroom or on █████ person.

arrestee's home beyond the arrestee's person and the area within his immediate control is unreasonable under the Fourth Amendment of the Constitution.⁶⁹

The officers conducted a very thorough search of [REDACTED] apartment: they looked inside a laundry bag,⁷⁰ bookbags,⁷¹ and purses;⁷² they opened the oven⁷³, the refrigerator⁷⁴, and kitchen cabinets⁷⁵; they picked clothes up off the floor⁷⁶, a radiator⁷⁷, and a bed⁷⁸; they looked inside plastic containers⁷⁹ and a drawer under a TV⁸⁰; and they lifted mattresses from the floor.⁸¹ Sergeant Lucid observed the officers searching these areas and was aware that the officers were searching the entire apartment for a firearm, but he did not direct the officers to stop searching. Almost without exception, courts have held that protective sweeps must be limited to the areas where a person could hide.⁸² While there have been some instances where courts have allowed or disallowed certain specific areas during a search for a person, such as permitting the lifting of a blanket under which a person could be hidden,⁸³ or disallowing a search of a refrigerator,⁸⁴ it is generally self-evident whether a given area or container could hold a person.⁸⁵ COPA finds that the searches of the above described places in the apartment, such as the laundry bag and the plastic container, were not plausible places where a person could hide, and as such, were not part of a permitted protective sweep under *Buie*, but instead exceeded the authority of the police officers to search the apartment without a warrant. After the sweep and perhaps a limited search of the bathroom, there was no exigency justifying an *immediate* search of the entire apartment for the firearm. The appropriate course of action was to secure the scene and petition the court for a search warrant.

3. Whether [REDACTED] could consent to search [REDACTED] apartment

The analysis of whether [REDACTED] could consent to a search of [REDACTED] apartment is comprised of two main factors: timing, and [REDACTED] objections.

⁶⁹ While the facts of *Chimel* feature an arrestee and not simply a detainer, that merely provides stronger support for COPA's finding that the search of the entire apartment for a weapon was not justified under the circumstances.

⁷⁰ Officers Castellano and Lynch

⁷¹ Officers Castellano, Lynch, Blocker and Cinta

⁷² Officers Rosiles and Rangel

⁷³ Officer Brink

⁷⁴ Officer Cinta

⁷⁵ Officer Rosiles

⁷⁶ Officer Lynch

⁷⁷ Officer Lynch

⁷⁸ Officer Blocker

⁷⁹ Officers Blocker and Rosiles

⁸⁰ Officers Brink, Blocker and Rosiles

⁸¹ Officers Brink, Lynch, Blocker, and Rosiles

⁸² *United States v. Walker*, 673 F. Supp. 292, 297 (N.D. Ill. 1987)

⁸³ *United States v. Mains*, 33 F.3d 1222 (10th Cir. 1994)

⁸⁴ *United States v. Atchley*, 474 F.3d 840 (6th Cir. 2007)

⁸⁵ There is some debate as to whether it is permissible to lift a mattress in such a sweep. *United States v. Blue*, 78 F.3d 5612 (2nd Cir. 1996) held that it was not acceptable to lift a mattress off a box spring; *Young v. US*, 982 A.2d 672 (D.C.App. 2009) allowed the lifting of a mattress from a box spring, in a situation where a police officer had testified that he had before found people in odd places such as a hollowed-out mattress; *United States v. Garcia-Lopez*, 809 F.3d 834 (5th Cir. 2016), allowed an officer to lift a mattress when that officer articulated that he has previously found people hiding between a mattress and a box spring. However, in this case, the mattresses at issue were laying directly on the floor, not on box springs, and we have no information about the officers' personal experiences in discovering people hiding inside mattresses and/or box springs.

Practically speaking, even though █████ told the officers that they could “flip shit in and out, ain’t no gun in here” and “ya’ll can tear this bitch up, ain’t no gun,” and even if it was determined that █████ could consent to a search of the apartment, the officers were already engaged in a thorough search of the apartment prior to █████ providing consent. For example, Officer Blocker can be seen searching some clothes on top of a mattress and under the mattress, as well as a drawer under the television before █████ gave permission.⁸⁶ The officers were simultaneously performing a protective sweep, by looking in closets and other areas large enough for a person to hide, as well as performing a more thorough search for a gun throughout the apartment, by looking in smaller containers like a drawer under the TV.

Furthermore, █████ could not provide valid consent to a search of the apartment under the circumstances. Under *Georgia v. Randolph*, a co-tenant who is present on the scene and consents to a search for evidence cannot prevail over the refusal of another present co-tenant.⁸⁷ In this case, although █████ ostensibly gave permission for the search (assuming he was living in the apartment at the time and was a tenant), █████ expressly refused to allow a search. She is heard on camera saying that the officers cannot come in and that they need a search warrant. Here, where one tenant consents but the other refuses, the officers were not permitted to conduct the more thorough search for weapons. As discussed above, they were still permitted to enter the home and perform a protective sweep

4. Summation

While the officers permissibly entered █████ apartment under the exigent circumstances doctrine, it is still a warrantless entry, and as such it must be narrowly tailored to the exigencies which justified its initiation;⁸⁸ once police eliminate the dangers that justify a protective sweep, they must, barring other exigencies, leave the residence.⁸⁹

In the instant case, the officers did not leave the residence and Sergeant Lucid did not direct them to leave or otherwise stop the search. The officers’ search for a weapon exceeded the scope of the original justification for their entry.

However, COPA finds that there is insufficient evidence that Officers Brink, Cinta, Blocker, Castellano, Lynch, Rosiles, and Rangel were not acting under the reasonable belief that their actions were permissible based on Sergeant Lucid expressly permitting them to enter the apartment and then not ordering them to stop the search and leave the apartment once the exigency was extinguished. However, there is also not clear and convincing evidence to demonstrate that Officers Brink, Cinta, Blocker, Castellano, Lynch, Rosiles, and Rangel complied with Department policy. Therefore, Allegation #1 against Officers Officers Brink, Cinta, Blocker, Castellano, Lynch, Rosiles, and Rangel is not sustained.

⁸⁶ Officer Brink also searched inside the back of the toilet bowl and a cabinet underneath the sink after █████ was already secured in handcuffs and escorted out of the bathroom but before █████ gave permission. Additionally, Officer Rosles searched two plastic containers in a closet.

⁸⁷ *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515 (2006)

⁸⁸ *Mincey v. Arizona*, 437 U.S. 385, 393, 98 S. Ct. 2408, 2413 (1978), quoting *Terry v. Ohio*, *supra*, at 25-26

⁸⁹ *United States v. Oguns*, 921 F.2d 442 (2nd Cir. 1990)

Sergeant Lucid, the supervisor on scene, granted permission to the officers to make forced entry and was responsible for supervising the officers and for directing them to stop the improper search. Sergeant Lucid did not order the officers to stop the search. Therefore, Allegations# 1 and #2 against Sergeant Lucid are sustained.

VII. CONCLUSION

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

Officer	Allegation	Finding
Officer Kenneth Brink	1. On May 8, 2017 at approx. 7:29P.M., Officer Brink performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Clara Cinta	1. On May 8, 2017 at approx. 7:29P.M., Officer Cinta performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Katie Blocker	1. On May 8, 2017 at approx. 7:29P.M., Officer Blocker performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Nancy Castellano	1. On May 8, 2017 at approx. 7:29P.M., Officer Castellano performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Sean Lynch	1. On May 8, 2017 at approx. 7:29P.M., Officer Lynch performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Adrian Rosiles	1. On May 8, 2017 at approx. 7:29P.M., Officer Rosiles performed an unconstitutional search of [REDACTED]	Not Sustained
Officer Albert Rangel	1. On May 8, 2017 at approx. 7:29P.M., Officer Rangel performed an unconstitutional search of [REDACTED]	Not Sustained
Sergeant John Lucid	1. On May 8, 2017 at approx. 7:29p.m., you failed to properly supervise officers under your command when they searched the premises of [REDACTED] 2. On May 8, 2017 at approx. 7:29p.m., you failed to direct officers under your command to desist searching the premises of [REDACTED]	Sustained/3-day suspension Sustained/3-day suspension

VIII. DISCIPLINE RECOMMENDATION

COPA reviewed and considered the complimentary and disciplinary for Sergeant Lucid. COPA appreciates the compelling circumstances surrounding this domestic situation and is cognizant of the inherent threat to officers in these circumstances and finds they acted with a mistaken, yet good faith belief and out of an abundance of caution for the safety of everyone. However, Sergeant Lucid had a duty, at all times to ensure the actions of his subordinates were lawful. Accordingly, given his supervisory status, COPA recommends a 3-day suspension for Sergeant Lucid's actions.

COPA also recommends that Sergeant Lucid and Officers Brink, Cinta, Blocker, Castellano, Lynch, Rosiles, and Rangel all receive additional Fourth Amendment training and should be instructed that the appropriate course of action in this case was to secure the scene and petition the court for a search warrant prior to searching the entire apartment for a weapon.

Approved:



Sydney R. Roberts
Chief Administrator

May 20, 2019

Date

APPENDIX A

Assigned Investigative Staff

Squad#:	15
Investigator:	Chenese Brown
Supervising Investigator:	Anthony Becknek
Deputy Chief Administrator:	Angela Hearts-Glass