



Log # 2022-3432

## FINAL SUMMARY REPORT<sup>1</sup>

### I. EXECUTIVE SUMMARY

On August 13, 2022, the Civilian Office of Police Accountability (COPA) received a website complaint from ██████████ (██████████ reporting alleged misconduct by a member of the Chicago Police Department (CPD). ██████████ alleged that on July 3, 2022, Sergeant Matthew Kennedy #2442 (Sgt. Kennedy) searched the residence at ██████████ without justification.<sup>2</sup> Following its investigation, COPA reached a sustained finding regarding the allegation that Sgt. Kennedy unjustifiably searched the residence.

### II. SUMMARY OF EVIDENCE<sup>3</sup>

The body-worn camera (BWC) evidence shows that on the morning of this incident, two CPD members drove their vehicle into the alley behind a condemned residence, where they spoke with a male subject who claimed to be working on the property and who said he would go inside to call out the owner.<sup>4</sup> Shortly afterward, ██████████ exited from the house's rear door, greeted the CPD members and approached them while holding a sheet of paper in his hand.<sup>5</sup> He provided the paper to the officer, explaining that it was a permit to conduct electrical repairs, and provided both his identification and an additional identification card belonging to his grandmother.<sup>6</sup> The members gave the documents back to ██████████ told him that they were checking up on the property because a neighbor had reported a break-in there, and then departed in the CPD vehicle.<sup>7</sup>

Approximately ninety minutes later, Sgt. Kennedy and eight other CPD members arrived in the alley behind the condemned house, finding the same male subject still standing outside as he had been during the previous police visit.<sup>8</sup> ██████████ briefly stepped into view at the house's rear

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<sup>1</sup> Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

<sup>2</sup> One or more of these allegations fall within COPA's jurisdiction pursuant to Chicago Municipal Code § 2-78-120. Therefore, COPA determined it would be the primary investigative agency in this matter.

<sup>3</sup> The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including BWC footage, police reports, a civilian interview, an officer interview, and municipal documents.

<sup>4</sup> Att. 6 at 3:43 to 5:16.

<sup>5</sup> Att. 6 at 5:53 to 5:57.

<sup>6</sup> Att. 6 at 5:57 to 6:54.

<sup>7</sup> Att. 6 at 6:54 to 7:12.

<sup>8</sup> Att. 7 at 2:00 to 2:14; also Att. 8 at 1:49 to 2:03, Att. 9 at 1:46 to 2:00, Att. 10 at 1:47 to 2:01, Att. 13 at 1:58 to 2:12, and Att. 14 at 1:59 to 2:13. (The concurrent BWC segments listed here are from the CPD members who were present at the scene, although the members were engaged in their own separate activities and at times were in different locations in or around the house.)

doorway, and then turned around and walked back inside.<sup>9</sup> Several members announced themselves as police officers and entered the room at the back of the house, while Sgt. Kennedy and the others remained outside in the alley/backyard area.<sup>10</sup> [REDACTED] then emerged into the room where the member had entered, provided them with a copy of the electrical work permit, and went outside through the back door.<sup>11</sup> One CPD member examined the permit while the others in the backyard area placed handcuffs on [REDACTED] and the other male subject.<sup>12</sup> [REDACTED] and the members then discussed the question of whether he and the other male subject had permission to be on the property, with [REDACTED] asserting that the signs the City of Chicago had posted on the house specifically allowed a licensed contractor to enter it for the purpose of making repairs.<sup>13</sup>

At that point, Sgt. Kennedy entered the backyard from the alley for the first time, and briefly opened and examined the interiors of what appeared to be two outdoor barbecue grills located there.<sup>14</sup> He briefly spoke with the unidentified male subject in the yard, asking him if he had come out from the open basement doorway.<sup>15</sup> Sgt. Kennedy then received a copy of the electrical work permit from another CPD member who was in the process of conversing with [REDACTED] about the Department of Building's Vacate Order.<sup>16</sup> Before reading the work permit, Sgt. Kennedy shouted to [REDACTED] that further repair work would not be allowed, and as if to support his statement, he told [REDACTED] to read the yellow condemnation notice sign posted on one of the wooden boards that had previously sealed the back door of the residence.<sup>17</sup> [REDACTED] attempted to explain his position to the members at the scene while Sgt. Kennedy began quickly reading the electrical work permit.<sup>18</sup> He then passed the permit to another member, entered the basement alone, and discovered a backpack that had been placed on the stairs leading up to the first floor.<sup>19</sup>

Sgt. Kennedy moved the backpack down to the floor and searched inside with his flashlight, first looking inside the open top flap and then unzipping the front pocket, both of which appeared to contain tools.<sup>20</sup> He continued inspecting the basement with his flashlight,<sup>21</sup> and pulled down a white plastic bag that had been tucked inside the exposed basement ceiling, dislodging a light shower of loose white dust in the process.<sup>22</sup> Sgt. Kennedy examined the remainder of the

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<sup>9</sup> Att. 7 at 2:14 to 2:17; also Att. 8 at 2:03 to 2:06, Att. 9 at 2:00 to 2:03, Att. 10 at 2:01 to 2:04, Att. 13 at 2:12 to 2:15, and Att. 14 at 2:13 to 2:16.

<sup>10</sup> Att. 7 at 2:17 to 2:44; also Att. 8 at 2:06 to 2:33, Att. 9 at 2:03 to 2:30, Att. 10 at 2:04 to 2:31, Att. 13 at 2:15 to 2:42, and Att. 14 at 2:16 to 2:43.

<sup>11</sup> Att. 7 at 2:44 to 2:52; also Att. 8 at 2:33 to 2:41, Att. 9 at 2:30 to 2:38, Att. 10 at 2:31 to 2:39, Att. 13 at 2:42 to 2:50, and Att. 14 at 2:43 to 2:51.

<sup>12</sup> Att. 7 at 2:52 to 3:16; also Att. 8 at 2:41 to 3:05, Att. 9 at 2:38 to 3:02, Att. 10 at 2:39 to 3:03, Att. 13 at 2:50 to 3:14, and Att. 14 at 2:51 to 3:15.

<sup>13</sup> Att. 7 at 3:16 to 3:35; also Att. 8 at 3:05 to 3:24, Att. 9 at 3:02 to 3:21, Att. 10 at 3:03 to 3:22, Att. 13 at 3:14 to 3:33, and Att. 14 at 3:15 to 3:34.

<sup>14</sup> Att. 7 at 3:35 to 3:47; also Att. 8 at 3:24 to 3:36, Att. 9 at 3:21 to 3:33, Att. 10 at 3:22 to 3:34, Att. 13 at 3:33 to 3:45, and Att. 14 at 3:34 to 3:46.

<sup>15</sup> Att. 8 at 3:36 to 3:40.

<sup>16</sup> Att. 8 at 3:40 to 3:42.

<sup>17</sup> Att. 8 at 3:42 to 3:45.

<sup>18</sup> Att. 8 at 3:45 to 3:50.

<sup>19</sup> Att. 8 at 3:50 to 4:20.

<sup>20</sup> Att. 8 at 4:20 to 4:52.

<sup>21</sup> Att. 8 at 4:52 to 6:00.

<sup>22</sup> Att. 8 at 6:00 to 6:52.

basement area,<sup>23</sup> went back outside to the alley, and walked from there around the block to the front of the house.<sup>24</sup> He examined the exterior of a black van he found parked in front of the condemned residence, and attempted to pull open all the vehicle's doors, finding them locked.<sup>25</sup> After spending a few minutes standing in front of the property and apparently reading the official signage posted on the building,<sup>26</sup> Sgt. Kennedy entered the house again through the front door.<sup>27</sup> Moving into a kitchenette area, he opened and looked inside the door of an oven,<sup>28</sup> and then opened and briefly searched inside a large deep freezer unit.<sup>29</sup> He then walked back through the building to the rear door, requested an Event Number by radio, and ended his BWC recording.<sup>30</sup>

During the time while Sgt. Kennedy had been searching the basement and walking around the block, the other CPD members had conducted a sweep of the house's first floor.<sup>31</sup> The members extended their brief sweep of the property to the second floor and the basement (which Sgt. Kennedy was already in the process of searching) but no additional people were discovered anywhere inside.<sup>32</sup> Everyone except Sgt. Kennedy then returned outside to the backyard, where █████ and the other male subject were being detained, and a third civilian male subject (who █████ identified as a licensed electrician working there) entered the backyard from the alley.<sup>33</sup> He was ordered to wait in the alley outside the yard.<sup>34</sup> After several more minutes had passed, Sgt. Kennedy returned to the yard area and ended the incident by calling the electrician over to the house and ordering █████ and the other male subject to be released from their handcuffs.<sup>35</sup>

The Investigatory Stop Report (ISR) created to document this incident explains that the CPD members had been notified of a potential criminal trespass in progress at a vacated building, and upon arriving at the location had observed █████ temporarily retreating into the interior of the house despite being ordered to come back out.<sup>36</sup> He eventually returned outside and provided a permit allowing repair work to be completed on the property.<sup>37</sup> The ISR further documented the

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<sup>23</sup> Att. 8 at 6:52 to 8:53.

<sup>24</sup> Att. 8 at 8:53 to 11:55.

<sup>25</sup> Att. 8 at 11:55 to 12:18.

<sup>26</sup> Att. 8 at 12:18 to 14:18.

<sup>27</sup> Att. 8 at 14:18 to 15:10.

<sup>28</sup> Att. 8 at 15:10 to 15:13.

<sup>29</sup> Att. 8 at 15:13 to 15:32.

<sup>30</sup> Att. 8 at 15:32 to 17:26.

<sup>31</sup> Att. 7 at 5:31 to 6:16; also Att. 9 at 5:17 to 6:02, Att. 10 at 5:18 to 6:03, Att. 11 at 5:43 to 6:28, Att. 12 at 5:46 to 6:31, Att. 15 at 2:39 to 3:24, and Att. 16 at 0:22 to 1:07.

<sup>32</sup> Att. 7 at 6:39 to 10:19; also Att. 9 at 6:25 to 10:05, Att. 10 at 6:26 to 10:05, Att. 11 at 6:51 to 10:31, Att. 12 at 6:54 to 10:34, Att. 15 at 3:47 to 7:27, and Att. 16 at 1:30 to 5:10.

<sup>33</sup> Att. 7 at 13:07 to 13:15; also Att. 9 at 12:53 to 13:01, Att. 10 at 12:54 to 13:02, Att. 11 at 13:19 to 13:27, Att. 12 at 13:22 to 13:30, Att. 13 at 13:05 to 13:13, Att. 14 at 13:06 to 13:14, Att. 15 at 11:15 to 11:23, and Att. 16 at 7:58 to 8:06.

<sup>34</sup> Att. 7 at 13:15 to 14:21, also Att. 9 at 13:01 to 14:07, Att. 10 at 13:02 to 14:08, Att. 11 at 13:27 to 14:33, Att. 12 at 13:30 to 14:36, Att. 13 at 13:13 to 14:19, Att. 14 at 13:14 to 14:20, Att. 15 at 11:23 to 12:29, and Att. 16 at 8:06 to 9:12.

<sup>35</sup> Att. 7 at 14:21 to 20:05; also Att. 9 at 14:07 to 19:51, Att. 10 at 14:08 to 19:52, Att. 11 at 14:33 to 20:17, Att. 12 at 14:36 to 20:20, Att. 13 at 14:19 to 20:03, Att. 14 at 14:20 to 20:04, Att. 15 at 12:29 to 18:13, and Att. 16 at 8:06 to 13:50.

<sup>36</sup> Att. 35, pg. 2.

<sup>37</sup> Att. 35, pg. 2.

fact that ██████ name was not listed on the permit, but that the members' investigation revealed ██████ was there while working for an authorized electrical repair subcontractor.<sup>38</sup>

In his recorded statement to COPA,<sup>39</sup> ██████ stated that on June 27, 2022, the City of Chicago Department of Buildings had issued a 48-hour Emergency Vacate Order on his grandmother's house at ██████ due to it having a non-specification circuit breaker box and other wiring issues.<sup>40</sup> On June 29, 2022, all residents had been required to leave the property, and on July 1, 2022, ██████ had obtained a "Permit to Do Electrical Work" from the Bureau of Electrical Inspection naming ██████ (██████ as the electrical contractor authorized to work on the house's wiring.<sup>41</sup> ██████ explained that on July 3, 2022, he had entered the house in the company of ██████ and his assistant, whose name he did not know.<sup>42</sup> While they were there, they received a visit from two CPD officers who said they were checking up on the house after having gotten a report of someone breaking and entering at the location.<sup>43</sup> ██████ showed the officers the electrical permit he had received allowing work to be done on the property, after which the officers left the scene.<sup>44</sup> Approximately an hour to an hour-and-a-half later, eight-to-ten other CPD members had returned to both the front and rear of the house.<sup>45</sup> He said had been escorted out of the house and was immediately patted-down and handcuffed, as was the electrician's assistant who was also present.<sup>46</sup> The electrician who was repairing the house (██████ had not been there while this was happening because he had gone to a store to buy supplies.<sup>47</sup> ██████ explained that he had later obtained video footage from the CPD members' relevant BWC recordings via a Freedom of Information Act (F.O.I.A.) request.<sup>48</sup> He had not been in a position to directly witness what the CPD members were doing inside the house at the time of the event, but he said based on his viewing of the BWC video he had discovered that Sgt. Kennedy had searched throughout the house, had searched inside a tool bag belonging to his electrician, had pulled down part of the ceiling in the basement, had tried to open all the doors of his vehicle parked in front of the house, and had searched inside his stove and deep freezer, all without his consent.<sup>49</sup>

During Sgt. Kennedy's COPA interview, he explained that upon learning that there was a complaint about this particular house, he had recognized the address and recalled that there had previously been numerous complaints of trespassing and narcotics sales at that location.<sup>50</sup> He said he had personally searched the basement of the house to look for anyone there because while the

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<sup>38</sup> Att. 35, pg. 2.

<sup>39</sup> ██████ provided COPA with one recorded statement that covered three separate complaints involving similar circumstances at this property: Log #2022-0003432, Log #2022-0003461, and Log #2022-0003513.

<sup>40</sup> Att. 5 at 5:02 to 5:48.

<sup>41</sup> Att. 5 at 5:48 to 7:52.

<sup>42</sup> Att. 5 at 7:52 to 8:48.

<sup>43</sup> Att. 5 at 8:48 to 9:11.

<sup>44</sup> Att. 5 at 9:11 to 9:30.

<sup>45</sup> Att. 5 at 9:30 to 9:49.

<sup>46</sup> Att. 5 at 9:49 to 11:07.

<sup>47</sup> Att. 5 at 11:07 to 12:22.

<sup>48</sup> Att. 5 at 12:22 to 12:36.

<sup>49</sup> Att. 5 at 12:36 to 14:00.

<sup>50</sup> Att. 37, pg. 9, lns. 3 to 6.

other members had searched the first floor, the basement area had not yet been explored.<sup>51</sup> Sgt. Kennedy stated that he had searched the house from the basement all the way to front of the property<sup>52</sup> and in the process had observed bags containing professional-quality electrical tools inside the house.<sup>53</sup> He had not found anyone in the basement,<sup>54</sup> and had then walked outside, through the alley, and to the front of the house, where he saw ██████ van, which he referred to as an abandoned vehicle.<sup>55</sup> Sgt. Kennedy stated that he decided to examine the exterior of the van to see if there was anyone concealed inside it because he remembered having discovered a person in that vehicle during a previous call to this location.<sup>56</sup> He said he had read the condemnation notices posted on the house, and had recognized the name of the City of Chicago official listed on the documents as a high-ranking person, possibly the second-in-command for the Department of Buildings.<sup>57</sup> He further explained that due to his belief that the local Alderman's office had been involved in the past complaints about activities in this house, he was particularly concerned about making sure his presence was visible outside so that the residents in the area and the Alderman would find out that CPD was actively dealing with the situation there.<sup>58</sup> Sgt. Kennedy stated that he determined that ██████ was not committing any criminal activity at the house after he realized that an electrician was working there, and said he believed at that point that the scene was safe.<sup>59</sup>

Sgt. Kennedy denied having had any previous interactions with ██████ saying that in the past he had only observed him near the front of the house while he was driving by it.<sup>60</sup> When asked what he had heard about ██████ he answered that he had learned from a narcotics team that there had been multiple complaints from the neighbors alleging that narcotics sales had taken place at ██████ house.<sup>61</sup> COPA directly asked Sgt. Kennedy why he had searched inside the electrician's tool bag, to which he responded that he wanted to see if there were clothes inside it, which would have indicated that someone was living inside the house in violation of the vacate order.<sup>62</sup> When asked why he had conducted other searches throughout the property, Sgt. Kennedy answered that as he did not yet know for certain that a professional electrician had been hired for repair work, he was searching as a matter of due diligence because he did not know if there were other people inside the house or if there was any "nefarious" activity occurring there.<sup>63</sup> COPA asked Sgt. Kennedy to further explain what he had meant when he used the word "nefarious," to which he replied that he had been looking for evidence of narcotics in the house, but added that in addition to this he had primarily been looking for other people concealed inside the property.<sup>64</sup>

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<sup>51</sup> Att. 37, pg. 10, lns. 6 to 13.

<sup>52</sup> Att. 37, pg. 10, lns. 16 to 18.

<sup>53</sup> Att. 37, pg. 10, lns. 23 to 24.

<sup>54</sup> Att. 37, pg. 11, ln.6.

<sup>55</sup> Att. 37, pg. 11, lns. 11 to 16.

<sup>56</sup> Att. 37, pg. 11, lns. 19 to 21.

<sup>57</sup> Att. 37, pg. 12, lns. 3 to 6.

<sup>58</sup> Att. 37, pg. 12, lns. 7 to 16.

<sup>59</sup> Att. 37, pgs. 13 to 14.

<sup>60</sup> Att. 37, pg. 17, lns. 9 to 10.

<sup>61</sup> Att. 37, pg. 17, lns. 14 to 16.

<sup>62</sup> Att. 37, pg. 18, lns. 4 to 8.

<sup>63</sup> Att. 37, pg. 18, lns. 14 to 17.

<sup>64</sup> Att. 37, pg. 18, lns. 21 to 23.

When Sgt. Kennedy was asked for the reason why he had opened the deep freezer box and put his hand inside it, he answered that based on his knowledge that the electricity in the house had been turned off earlier he had wanted to learn whether the food inside it was still cold, which would suggest that someone had illicitly reconnected the electricity before the electrician had been hired.<sup>65</sup> He said he had only found food inside the freezer, and noted that the food had been cold to the touch.<sup>66</sup>

Sgt. Kennedy said he did not personally know anyone from the City of Chicago administration who was involved in the condemnation of this property, denied that he had any repeated interactions with any City of Chicago supervisors connected to buildings, and further asserted that he did not have any personal connections at all within the Department of Buildings.<sup>67</sup> When COPA asked Sgt. Kennedy if it was part of his role to look for narcotics or contraband, he answered yes, and explained that this was because he was always looking for potential criminal activity wherever he went.<sup>68</sup> When asked again about his reason for searching in the deep freezer box, he stated that he had not been searching for narcotics there but had only wanted to check whether the electricity in the house had been turned on long enough to freeze the items inside.<sup>69</sup>

Among other evidence that COPA examined during this investigation were two Event Query Reports from Office of Emergency Management and Communication (OEMC).<sup>70</sup> The first of these detailed a called-in complaint from 9:41 a.m. on July 3, 2022, which stated that someone had entered the boarded-up property at [REDACTED].<sup>71</sup> This report appears to agree with the details of the first encounter between [REDACTED] and the two CPD members who visited the house on the morning of this incident. The second report is from 11:20 a.m. on the same date and appears to document the communications that occurred between OEMC and the CPD members who arrived for the second visit at the house.<sup>72</sup> COPA also examined photos of the Emergency Vacate Order, the Do Not Enter Notice, the electrical repair permit, the plumbing repair permit, and a list of the property's violations, all of which were provided by [REDACTED].<sup>73</sup>

### III. ALLEGATIONS

#### **Sgt. Matthew Kennedy:**

- Searching the residence at [REDACTED], without justification.
  - Sustained, Violation of Rules 2, 3, and 6.

### IV. CREDIBILITY ASSESSMENT

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<sup>65</sup> Att. 37, pg. 19, lns. 7 to 17.

<sup>66</sup> Att. 37, pg. 19, lns. 18 to 22.

<sup>67</sup> Att. 37, pgs. 20 to 21.

<sup>68</sup> Att. 37, pgs. 21 to 22.

<sup>69</sup> Att. 37, pg. 22, lns. 5 to 11.

<sup>70</sup> Att. 23 and Att. 24. (Event Query Reports.)

<sup>71</sup> Att. 23, pg. 1.

<sup>72</sup> Att. 24, pgs. 1 to 2.

<sup>73</sup> Att. 17, Att. 18, Att. 19, Att. 20, and Att. 21.

This investigation did not reveal any evidence that caused COPA to doubt the credibility of any of the individuals who provided statements.

## V. ANALYSIS<sup>74</sup>

COPA finds that the allegation against Sgt. Kennedy, that he searched within the condemned residence without justification, is **sustained**. CPD members are required to maintain a commitment to “observing, upholding, and enforcing all laws relating to individual rights”<sup>75</sup> and must ensure that all their “...interactions with members of the public will be conducted with the utmost respect and courtesy and be based on the concepts of Procedural Justice and Legitimacy. During each interaction, Department members will strive to attain the highest degree of ethical behavior and professional conduct at all times.”<sup>76</sup> Additionally, CPD’s Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 6, which states that members may not disobey an order or directive, whether written or oral.<sup>77</sup>

Warrantless searches of citizens and their property have been strictly limited by the Fourth Amendment of the United States Constitution and the Illinois Constitution, which established “the right of individuals to be free from unreasonable searches and seizures.”<sup>78</sup> The protection of the Fourth Amendment against warrantless searches is activated whenever 1) a situation arises in which a person has a subjective expectation of privacy and, 2) that person’s expectation is one that society is prepared to recognize as “reasonable.”<sup>79</sup> Consequently, law enforcement officers are generally prohibited from entering or searching within a citizen’s residence, whether it be to search for specific items of evidence or to make an arrest, without first obtaining a lawful warrant based upon probable cause.<sup>80</sup>

However, some exceptions to the rule against warrantless searches have been recognized by the United States Supreme Court. For example, exigent circumstances, such as the hot pursuit of a fleeing felon, preventing the destruction of evidence, or preventing a suspect’s escape, may justify entering or searching inside a residence without a warrant.<sup>81</sup> In order for this exception to be allowed, the particular details of the situation must indicate that “immediate and serious consequences” would result if police activities were to be postponed for the length of time it would take to first obtain a warrant, as the justification for the exigent circumstances exception depends “upon the gravity of the offense thought to be in progress....”<sup>82</sup> Another warrantless residential search exception permits law enforcement officers who are performing an in-house arrest to conduct a limited protective sweep over an area of the premises as long as the searching officer

<sup>74</sup> For a definition of COPA’s findings and standards of proof, *see* Appendix B.

<sup>75</sup> Att. 38, G02-01(III)(A), Protection of Human Rights (effective June 30, 2022 to present).

<sup>76</sup> Att. 38, G02-01(II)(E)(3).

<sup>77</sup> Att. 39, Rules and Regulations of the Chicago Police Department, Rules of Conduct, Rule 6, pg. 7 (effective April 16, 2015 to present).

<sup>78</sup> *People v. Colyar*, 2013 IL 111835, ¶ 31 (citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). Also see Att. 38, G02-01(IV)(B): “The Fourth Amendment to the Constitution of the United States guarantees protection from unlawful arrest and unreasonable search and seizure to all persons in this country.”

<sup>79</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>80</sup> *Payton v. New York*, 445 U.S. 573, 586 (1980). See G02-01(IV)A.

<sup>81</sup> *Minnesota v. Olson*, 493 U.S. 955, 1000 (1990).

<sup>82</sup> *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984).

possesses a reasonable belief (based on articulable facts) that the area to be swept harbors an individual who poses a danger to those present.<sup>83</sup> Additionally, a law enforcement officer is permitted the limited authority to seize evidence of a crime discovered in plain view as long as the officer is lawfully present at the place where the evidence can be plainly viewed, the officer has a lawful right of access to the object, and the incriminating character of the object is immediately apparent.<sup>84</sup>

In the case of this incident, the fact that the house in question was subject to a lawful Vacate Order issued by the City of Chicago suggests the possibility that some of the Fourth Amendment protections specifically relating to a residence might not be applicable, as no one was legally allowed to maintain residency there while the Order remained in effect. Additionally, with regard to the protective sweep that CPD members conducted there, in COPA's assessment the exigent circumstances exception to the Fourth Amendment may be considered to have been in effect as the CPD members had a duty to enforce the Vacate Order and to ensure that no one was being endangered within the condemned building. If a person was potentially at hazard due to remaining inside it, there would necessarily be an urgent need for the CPD to sweep the property to prevent loss of life. Thus, no violation can be attributed to the members who simply conducted the basic protective sweep throughout the house.

However, putting aside that specific sweep, in COPA's view it is evident that Sgt. Kennedy overstepped the boundaries of personal privacy rights when he conducted the invasive searches inside the electrician's tool bag, inside the oven, and inside the deep freezer box. For example, Sgt. Kennedy searched inside the tool bag in the basement even after he had learned from ██████ that repair efforts were underway, and after he had read the electrical work permit showing that a professional electrician was allowed to enter the property. Sgt. Kennedy also mentioned during his statement that when he discovered the tool bag containing what appeared to be high-quality tools, he had believed it supported ██████'s assertion that there truly was a professional electrician performing repairs there. Nevertheless, Sgt. Kennedy searched inside first the main pouch and then the smaller front pouch of the tool bag despite having already determined that it was almost certainly the electrician's property. COPA observes that the electrician likely possessed a reasonable expectation of privacy with regard to the items he kept inside his tool bag, and the fact that the bag was temporarily placed in the basement of a building under repair would not have altered that expectation. There was no indication that he had intended to abandon ownership of his bag, and he most likely would not have believed that briefly leaving it at his work site would result in a situation in which law enforcement officers would search inside it to examine his tools or other personal effects. The same holds true for any items that may have been contained within the oven or the deep freezer box. The Vacate Order prevented the former residents from continuing to live in the condemned house but did not necessarily nullify their rights to maintain privacy with regard to whatever personal possessions they had left stored within it. The building entrances were boarded up and were only supposed to be opened while repairs were being performed, so it would be reasonable for the former residents to believe that their remaining possessions would remain secure and private. During his interview with COPA, Sgt. Kennedy indicated that during this encounter with ██████ he was primarily concerned with putting on a show of efficient police activity

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<sup>83</sup> *Maryland v. Buie*, 494 U.S. 325 (1990).

<sup>84</sup> *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).



to impress the neighbors, the Alderman, and other City of Chicago officials. He also stated several times that he had been aware of a past connection between the condemned house and illegal narcotic sales, suggesting that his mind was already primed to believe he was likely to find narcotics there. Unfortunately, it would seem that in the course of pursuing these narrow objectives he became oblivious to the repeated Fourth Amendment violations he was committing through his unreasonable property searches. Of particular note is the fact that even after Sgt. Kennedy had found a backpack containing electrician’s tools in the main pouch, which, as he said in his interview, had informed him of the fact that a professional electrician was truly working on the property and relieved his suspicions, he nevertheless unzipped the smaller front pouch of the backpack to search inside there as well. Furthermore, he went on to conduct warrantless searches inside the oven and the deep freezer even after he no longer had any reason to believe that any criminal activity was underway. Consequently, COPA finds the allegation that Sgt. Kennedy unjustifiably searched the residence at [REDACTED], is sustained, in violation of Rules 1, 2, 3, and 6.

**VI. DISCIPLINARY RECOMMENDATION**

**a. Sgt. Matthew Kennedy**

**i. Complimentary and Disciplinary History<sup>85</sup>**

Sgt. Kennedy’s complimentary history is comprised of 82 awards, the highlights of which include one Annual Bureau Award of Recognition, three Department Commendations, one Honorable Mention Ribbon Award, one Special Commendation, and one Unit Meritorious Performance Award. He has no disciplinary history.

**ii. Recommended Discipline**

COPA has found that Sgt. Kennedy violated Rules 1, 2, 3, and 6 when he searched [REDACTED] home without justification. While COPA understands that Sgt. Kennedy wished to demonstrate to the community that CPD was actively addressing a potentially problematic property, these good intentions did not permit him to conduct an unjustifiable search. In light of Sgt. Kennedy’s complimentary history, as well as his lack of disciplinary history, COPA recommends a penalty of a **3-day suspension and retraining** on CPD’s home search policy.

Approved:

[REDACTED]

January 8, 2024

\_\_\_\_\_  
Steffany Hreno  
*Director of Investigations*

\_\_\_\_\_  
Date

<sup>85</sup> Atts. 40 and 41.

**Appendix A**

**Case Details**

Date/Time/Location of Incident:	July 3, 2022 / 11:15 AM / [REDACTED] [REDACTED]
Date/Time of COPA Notification:	August 13, 2022 / 2:23 PM
Involved Sergeant #1:	Matthew Kennedy / Star #2442 / Employee # [REDACTED] / Date of Appointment: December 16, 2009 / Unit of Assignment: 002 / Male / Hispanic
Involved Individual #1:	[REDACTED] / Male / Black

**Applicable Rules**

- 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 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to 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 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.

**Applicable Policies and Laws**

- G02-01, Protection of Human Rights (effective June 30, 2022 to present).

## Appendix B

### **Definition of COPA’s Findings and Standards of Proof**

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 a proposition is proved.<sup>86</sup> For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, 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. 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.”<sup>87</sup>

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<sup>86</sup> See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it is found to be more probably true than not).

<sup>87</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4<sup>th</sup> ed. 2000)).

**Appendix C**

**Transparency and Publication Categories**

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation