



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

February 4, 2021

Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL 60622

RE: **Superintendent's Non-Concurrence with COPA's Findings and Proposed Penalty**

Complaint Register Number: 2019-0000246

Police Officer Eric Acevedo, Star #13560

Police Officer Michael Donnelly, Star #13784

Police Officer Cody Maloney, Star #13032

Dear Chief Administrator:

The undersigned has reviewed the summary digest, reports, and recommendations relative to the above-referenced log number. The Chicago Police Department (CPD) does not concur with the sustained findings of Allegation #1 that officers stopped Mr. [REDACTED] without justification or Allegation #2 that the officers searched Mr. [REDACTED]'s vehicle without justification. According to the Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and penalty recommendation.

The facts of the log number are essentially undisputed: on February 25, 2019, Officer Eric Acevedo, Officer Michael Donnelly, and Officer Cody Maloney attempted to conduct an investigatory stop on [REDACTED] as he exited and walked away from a vehicle. Mr. [REDACTED] then fled from the officers and was apprehended after a foot pursuit. Officers recovered illegal narcotics from the vehicle that Mr. [REDACTED] exited.

In the processing and arrest reports, and in interviews with COPA, the officers explained that they were on patrol in an unmarked vehicle in civilian dress in an area known for high levels of gang and illegal narcotics activity. The officers' civilian dress included body armor inside a vest cover that contained the word "Police" and the Chicago Police Star as well as a name tag, unit designation, police radio, duty belt containing flashlight, handcuffs, OC Spray, etc.

The officers observed the following:

1. Mr. [REDACTED] exited the vehicle and looked at the officers;
2. Mr. [REDACTED] then reached down on the driver's side of the vehicle;
3. Mr. [REDACTED] made a dropping motion where it appeared Mr. [REDACTED] let something go from his hand;
4. Mr. [REDACTED] next quickly closed the door;
5. Mr. [REDACTED] began walking away from the officers;

6. Mr. [REDACTED] quickened his pace, walking away from the officers rapidly as the officers exited the vehicle; and
7. Mr. [REDACTED] then fled from the officers.

After a short foot pursuit, Mr. [REDACTED] was apprehended and brought back to the scene. Officers searched the area of the driver's side door where they observed Mr. [REDACTED] make the dropping motion and recovered a plastic bag containing fifteen (15) smaller, multicolored Ziploc bags containing a hard white rock-like substance, suspected to be crack cocaine. During his COPA interview, Mr. [REDACTED] admitted that he put drugs in the driver's side door and usually kept them in plain view so he could discard them if stopped by the police. While handcuffed and sitting on the curb, Mr. [REDACTED] said after he noticed the officers recovered the drugs from where he put them, he began resisting the lawful arrest efforts.

Department directive, Special Order S04-13-09, Investigatory Stop System, provides officers with a written order as to when they have the authority to stop a person for questioning.

S04-13-09, Investigatory Stop System, citing 725 ILCS 5/107-14, provides:

A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense

Order S04-13-09, Investigatory Stop System, further provides:

Pursuant to Illinois statutory law and U.S. Supreme Court rulings:

An officer may conduct an Investigatory Stop if it is based on specific and articulable facts which, combined with rational inferences from these facts, give rise to Reasonable Articulable Suspicion that criminal activity is afoot. The sole purpose of the temporary detention is to prove or disprove those suspicions.

In the case of *Illinois v. Wardlow*, 528 U.S. 119 (2000), the United States Supreme Court held that the police officers did not violate the Fourth Amendment when they stopped Mr. Wardlow because the officer was justified in suspecting that the accused was involved in criminal activity and, therefore, in investigating further. In *Wardlow*, Chicago Police Officers were on patrol in a caravan of four marked vehicles and in uniform in an area known for high narcotics traffic; officers saw Mr. Wardlow, who did not appear to be violating any laws, look in the police officers' direction and begin running. The officers drove around the block, observed Mr. Wardlow running through the gangway, and stopped him. One officer conducted a protective search for his safety and squeezed a white opaque bag under Mr. Wardlow's arm, feeling a hard object that had a shape similar to a revolver or a gun. The officer then looked into the bag, found a .38 caliber handgun, and placed Mr. Wardlow under arrest. The Court concluded that "[n]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion" to justify a stop and that "flight is the consummate act of evasion." Further, in *Terry v. Ohio*, the Court not only recognized that officers may detain individuals to resolve ambiguities in their conduct but also accepted the risk that officers, in so doing, may stop innocent people.

In the instant case, the officers articulated more factors in support of their reasonable suspicion to perform an investigatory stop of [REDACTED] than did the officers in *Wardlow*. [REDACTED]'s suspicious activity as described in the above list of officers' observations, coupled with the fact that the interaction took place in an area known for narcotic sales, support the valid, legal conclusion that there was sufficient reasonable suspicion to temporarily seize [REDACTED] for the purpose of conducting an investigatory stop.

In regard to the Allegation #2 that the officers searched Mr. [REDACTED]'s vehicle without justification, officers stated that they were on patrol in an area known for high levels of gang and illegal narcotics activity when they observed Mr. [REDACTED]'s suspicious behaviors, including making a dropping motion into the vehicle, which led them to reasonably believe Mr. [REDACTED] was committing a crime. At that moment, officers did not know whether or not Mr. [REDACTED] possessed a weapon. Then, Mr. [REDACTED] fled. While vehicle searches based on investigatory stops are limited, courts have found that the level of such searches is allowed to be more invasive if further information comes to light during the course of the stop. In this case, Mr. [REDACTED]'s activities, including fleeing from the vehicle and resisting from officers, and when the key to the vehicle is later tossed to an unknown subject who made good of his escape, clearly elevated the officers' mounting suspicion regarding the vehicle.

In reaching the conclusion to sustain Allegation #2 that the vehicle was searched without justification, COPA did not provide proof of ownership or an interest in the vehicle for Mr. [REDACTED]. In order to determine whether the search of this vehicle was without justification, Mr. [REDACTED] must have a legitimate interest in the vehicle. Mr. [REDACTED] admittedly told COPA during his interview that the vehicle had no license plates on it. It is briefly mentioned that the vehicle was impounded for illegal narcotics. Moreover, Mr. [REDACTED] fled from the vehicle, and as Mr. [REDACTED] began to resist the lawful arrest efforts by the officers, [REDACTED], an individual not interviewed by COPA, grabbed the key to the Jaguar. [REDACTED] resisted and struggled as officers attempted to retrieve the key, then tossed the key to an unknown bystander who made good of his escape. Mr. [REDACTED] never voiced concern when the key to the Jaguar was taken. Based on these actions by Mr. [REDACTED] it may be reasonably believed by the officers that Mr. [REDACTED] had no interest in or abandoned the vehicle. In *People v. Arnett*, 577 NE2d 773 (1991), the court noted, "An automobile is deemed to be abandoned if the possessor makes a hurried departure on foot leaving it behind," thereby losing the Fourth Amendment protection in the vehicle. Also, in *People v. Childs*, 589 NE2d 819 (1992), the Illinois Court of Appeals ruled a vehicle was abandoned and could be searched after officers stopped the vehicle and the individual got out of his car and fled, leaving the keys in the ignition.

Based on the foregoing, the undersigned respectfully requests the investigative findings for Allegation #1 and Allegation #2 be classed as Exonerated.

CPD looks forward to discussing these concerns with COPA.

Sincerely,

[REDACTED]
David O. Brown
Superintendent of Police
Chicago Police Department