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Mayor

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

David O. Brown  
Superintendent of Police

September 10, 2021

Andrea Kersten  
Interim Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4th Floor  
Chicago, IL 60622

RE: Superintendent's Partial Concurrence with COPA's proposed penalties  
Complaint Register Number: #2020-0005126  
Sergeant Juan Perez #902 and Officer Jaime Acosta #16462

Dear Interim Chief Administrator:

After a careful review of the recommendation made by the Investigator in this matter the Chicago Police Department (CPD) concurs with the findings of COPA but does not concur with the penalty recommendation of separation for Sergeant Juan Perez #902 (Sergeant Perez).

### Facts

On October 8, 2019 at 8:55 a.m., fourteen tactical officers executed a search warrant, for guns and drugs, at Keith [REDACTED] ([REDACTED]) apartment. The officers discovered large quantities of methamphetamine, ecstasy, a pill press and additional paraphernalia evidencing a large-scale manufacture and delivery operation. At 8:59 a.m. to 9:01 a.m., Lieutenant Jeffrey Schaaf #516 (Lieutenant Schaaf) left the apartment to go to his squad car to take off his jacket. During that time, Lieutenant Schaaf spoke with an "unknown, concerned" citizen who told Lieutenant Schaaf that [REDACTED] is a "killer" as well as that [REDACTED] stores "guns and drugs in his black Infiniti bearing license plate ZU62736." After Lieutenant Schaaf's conversation with the "unknown, concerned citizen," Lieutenant Schaaf continued searching [REDACTED] apartment. Meanwhile at 9:03 a.m., Officer Kenneth Moranz #5687 (Officer Moranz), the evidence officer, photographed the keys to the Infiniti in [REDACTED] bedroom. At 9:21 a.m., Lieutenant Schaaf discovered and retrieved those same keys from [REDACTED] bedroom. At 9:24 a.m., Lieutenant Schaaf opened the Infiniti's trunk and discovered two high powered automatic weapons. At 9:25 a.m., Officer Moranz, Officer Jacob Garza #9349 (Officer Garza) and Officer Brian Collins #16773 (Officer Collins), while in [REDACTED] bedroom, remark that the keys are no longer on the night stand.

At 9:26 a.m., Lieutenant Schaaf asks Officer Collins to inform Sergeant Perez that he needs to speak with him. Sergeant Perez approaches Lieutenant Schaaf who gestures to Sergeant Perez to deactivate his BWC. Sergeant Perez obliges. After this at 9:31 a.m., Lieutenant Schaaf leads Sergeant Perez to [REDACTED] Infiniti, opens the trunk and shows Sergeant Perez the two machine guns. Shortly after this, Sergeant Perez summons Officer Collins to assist him in the parking lot as well as directs the Officers on the upper rear porch to reenter [REDACTED] apartment. Rather than reenter [REDACTED] apartment, Officer Jaime Acosta #16462 (Officer Acosta) by his own volition descends the stairs and enters the parking lot to assist Sergeant Perez and Officer Collins.

From, 9:44 a.m. – 9:50 a.m., Lieutenant Schaaf's, Sergeant Perez's, Officers Collins' and Acosta's cameras are deactivated. At, 9:50 a.m., Sergeant Perez reactivates his BWC. At 9:51 a.m., Sergeant Perez tells the on-scene Officers that "We need his keys for the Infiniti in the back." Lieutenant Schaaf, Sergeant Perez and Officer Moranz enter [REDACTED] bedroom as Officer Moranz proclaims, "Who took the keys out of here?" At which time, Lieutenant Schaaf says, "They're right here." Lieutenant Schaaf directs Officer Moranz to photograph the keys and Officer Moranz tells Lieutenant Schaaf that he already photographed the keys.

At 10:35 a.m., Lieutenant Schaaf recovers two high-powered machine guns from the trunk of [REDACTED] Infiniti in the presence of Sergeant Perez, Officer Carrera, Officer Garcia and Officer Adam Bourdosis #12015 (Officer Bourdosis). At the direction of Lieutenant Schaaf, the Officers did not charge [REDACTED] with the weapons inside [REDACTED] Infiniti.

In their interviews with COPA both Lieutenant Schaaf and Sergeant Perez, not verbatim, tell COPA that they wouldn't be able to live with themselves if they left two loaded, high powered machine guns in the hands of a felon whose criminal history includes being charged with attempt murder with intent to kill and firing from a vehicle (drive-by)<sup>1</sup>. Lieutenant Schaaf and Sergeant Perez reiterated to COPA that they wouldn't be able to sleep at night if they left those high powered weapons on the streets because of the likelihood that they could be used to maim or kill a citizen.

[REDACTED] is currently in the custody of the Cook County Sheriff by way of their electronic monitoring program for possessing, manufacturing and trafficking over 900 grams of ecstasy<sup>2</sup>.

Lieutenant Schaaf retired on May 26, 2021 with 27 years of service. If Lieutenant Schaaf had not retired CPD would've agreed with the charges and penalty that COPA levied against him, Sergeant Schaaf illegally searched and seized weapons from [REDACTED] vehicle and then piloted a scheme to cover-up that same conduct.

### **Superintendent's Penalty Analysis**

CPD concurs with the sustained finding that Sergeant Perez: (1) searched and (2) seized weapons from [REDACTED] vehicle without justification and (3) misused body worn camera (BWC), but disagrees with the proposed penalty of separation. It is important to note that Sergeant Perez never opened the trunk of the vehicle and did not remove the weapons from the vehicle, rather he was present when Lt. Schaaf did these things.

### **Allegations 1 and 2**

CPD concurs with the sustained finding that Sergeant Perez was present for the search of [REDACTED] vehicle and seizure of the weapons therefrom without justification, however the penalty of separation is far too severe and is not supported by recommendations made by COPA in other cases and in precedent before the police board. In fact, COPA has never issued such a severe penalty for an illegal vehicle search standing on its own. Below is a summary of precedential disciplinary recommendations for an illegal vehicle search:

1. In COPA's Summary Report of Investigation for Log No. 2019-0004600, COPA recommended a 15-day suspension for Officer Michael Donnelly for #13784 for searching a vehicle without justification, failure to submit an ISR and failure to timely activate BWC.

<sup>1</sup> In the end [REDACTED] was charged with Aggravated Battery with a Firearm against a person and sentenced to 7 years.

<sup>2</sup> [REDACTED] in-custody status stems from arrest that took place after this incident.

2. In Police Board Case 12 PB 2802, Police Officers Alejandro De La Cruz #18959, Daniel Gomez #19539, Marvin Bonds #14798, Gonzalo Escobar #15824 and Christopher Moore #14830 were suspended for one year for violating a citizen's fourth amendment rights by conducting an illegal search as well as for false official statements to the Independent Police Review Authority and/or false statements under oath at the Police Board hearing in an attempt to cover up their misconduct.
3. In COPA's Summary Report of Investigation for Log No. 1090662 COPA recommended a 45-day suspension for Police Officers Kristian Nikolic #19041 and Jordan Smith #17346 for illegally searching a vehicle, excessive force and maltreatment

Additionally, it must be noted that Sergeant Perez never actually opened the trunk and searched anything. That conduct is only attributed to Lieutenant Schaaf. Sergeant Perez was simply present on the occasions Lieutenant Schaaf opened the trunk and revealed/seized the automatic weapons.

### **Allegation 3**

Likewise CPD concurs with the sustained finding that Sergeant Perez misused his BWC but disagrees with the proposed penalty.

While it's true Sergeant Perez misused body worn camera, it was not in furtherance of a scheme to search [REDACTED] vehicle and seize the contents without justification. Misuse of body worn camera in furtherance of a scheme is an allegation that is more appropriate for Lieutenant Schaaf. Lieutenant Schaaf directed Sergeant Perez to turn his camera off, not the other way around. Sergeant Perez was following superior orders.

Sergeants should not be held accountable for the mistakes or misdeeds of their Lieutenants. *See Chicago Sergeants' Association, Policemen's Benevolent and Protective Association (Union) v. City of Chicago, Chicago Police Department (Employer) CR# 2019-0004556 and Grievance #545-20-003 Sgt. Shauntai Gracia.* In *Gracia*, Sergeant Gracia grieved her five-day suspension, from the Office of the Inspector General, for mishandling the investigation into the 2016 death of Sergeant Donald Markham who was found dead in his bed at 3 a.m. from a gunshot wound. His wife, also a Chicago Police Officer, was present at the time. Sergeant Gracia argued that it was her Lieutenant that was responsible for the investigation's shortcomings. Sergeant Gracia specifically argued that her suspension was out of turn because it was the Lieutenant in charge of the scene that: 1) directed no gunshot residue tests were to be conducted on the wife's hands or clothing; 2) directed subordinates to remove the bloody mattress upon which the deceased was found lying at the time of his death and dispose of it in the trash; and 3) directed subordinates to prematurely remove the body from the scene.

In *Gracia*, the arbitrator held that Sergeant Gracia cannot be held accountable for the mistakes or misdeeds of her Lieutenant. The arbitrator reasoned:

*One might contend as a sergeant Gracia had an obligation to make certain a proper investigation was conducted. That sounds good in the classroom or the comforting environs of an external agency's office, but to suggest she somehow could have derailed her Lieutenant's efforts is to ignore the realities of authority and command within a police department – any – police department – or any other governmental agency with a hierarchy of command. When one's boss gives direction, that direction is to be followed. The notion of Sergeant Gracia openly calling into question her Lieutenant's direction at the crime scene perhaps fits neatly into the latest turn in TV police dramas but falls well short of reality. Employees who do not follow*

*orders find themselves embroiled in disciplinary proceedings or worse.*

Just as in *Gracia*, in the present case Sergeant Perez had no involvement in Lieutenant Schaaf's decisions to illegally search and seize weapons from [REDACTED] vehicle or any other mistakes, omissions and commissions made during the search warrant at [REDACTED] apartment. Lieutenant Schaaf was the ranking officers on scene that day, giving orders directly to Sergeant Perez without regard for the fourth amendment or bothering to include Sergeant Perez in his decision-making. Accordingly, the Police Board or even a Circuit Court will probably hold that separating Sergeant Perez for conduct wholly undertaken by Lieutenant Schaaf is unconscionable.

### **Conclusion**

For the foregoing reasons CPD recommends that Sergeant Perez be suspended for 180 days. CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

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