



Lori E. Lightfoot
Mayor

Department of Police • City of Chicago
3510 South Michigan Avenue • Chicago, Illinois 60653

David O. Brown
Superintendent of Police

December 2, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Superintendent's Partial Non-Concurrence with Recommended Findings and Non-Concurrence with Recommended Penalties, Complaint Log No. 2021-0001091
Sergeant Guy Habiak, Jr., Star No. 1493
Police Officer Sergio Martinez, Star No. 19512

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with all of the recommended findings nor with the recommended penalties. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a penalty of a 90 day suspension for Sergeant Guy Habiak after concluding that he:

1. Submitted the Complaint for Search Warrant and the Search Warrant to the Cook County State's Attorney's Office before obtaining the signature of the designated unit supervisor the rank of Lieutenant or above;
2. Failed to ensure that Department members executing the Search Warrant waited a reasonable amount of time before making or attempting to make forcible entry;
3. Failed to notify the Office of Emergency Management and Communications (OEMC) and failed to obtain an event number after a consent to search was given beyond the scope of the Search Warrant;
4. Inappropriately accepted the detained person's offer to search beyond the scope of the Search Warrant when the offer was made under duress;
5. Failed to ensure a Consent to Search Form was completed;
6. Searched beyond the scope of the Search Warrant;
7. Failed to adequately supervise officers under his supervision in that he permitted them to search beyond the scope of the Search Warrant.

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The Department concurs with the recommended findings for Allegation # 1, Allegation #3 and Allegation #5. However, the Department does not concur with the recommended findings for Allegation #2, Allegation #4, Allegation #6 and Allegation #7 nor does the Department concur with the recommended penalty. The reason for each non-concurrence will be addressed separately.

Allegation #2:

The policy states that the members executing the search warrant adhere to the Knock and Announce rule and announce their presence and provide the residents a reasonable opportunity to allow entry. But courts have repeatedly ruled that there is no bright-line rule for determining how much time is enough or is insufficient. "The determination of whether an officer was justified in forcing entry after announcing his presence and purpose does not turn on any hard and fast time limit, but depends upon the circumstances confronting the officer serving the warrant." United States v. Spikes, 158 F.3d 913, 926 (6th Cir.1998), cert. denied, 119 S.Ct. 836, 142 L.Ed.2d 692 (1999) (declining to create bright-line rule regarding amount of time officers must wait after knocking and announcing). Instead, the amount of time that officers must wait after knocking and announcing depends on the particular facts and circumstances of each case. In Wilson v. Arkansas, the U.S Supreme Court stated that the "Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests."

In this case, the officers knocked and announced and waited approximately seven (7) seconds before striking the door. The Officers were aware that they had to get to the second floor and that the security door and the main door had to be breached quickly. It required three officers striking the door with the ram approximately seventy (70) times over two minutes before the door gave. And even when there was a voice from within and the officers briefly stopped ramming the door, the door did not open and the officers were required to continue attempting to breach the door. This allegation should be Not Sustained.

Allegation #4:

The subject of the warrant, [REDACTED] was not under duress when he made the offer to the officers that they can search beyond the scope of the search warrant. [REDACTED] has experience with the criminal justice system and [REDACTED] was very calm during the entire search warrant execution as evidenced by the BWC's. [REDACTED] repeatedly stated that the officers could search if they wanted to search. This offer was probably made due to the fact that [REDACTED] knew there was no contraband so he had nothing to hide. COPA's reliance and citation to the U.S. Supreme Court case Bumper v. North Carolina is not accurate. In Bumper, the officers did not have a search warrant but simply stated that they had a search warrant. The court ruled that the consent was not valid because the consent was given with the person believing they had a search warrant. In this case, the officers did in fact have a search warrant and the consent was not for the subject of the search warrant but for a search beyond the scope of the search warrant. This allegation should be Not Sustained.

Allegation #6:

The search was conducted beyond the scope of the search warrant because the subject, [REDACTED] consented to the expanded scope of the search. As such, this allegation should be Exonerated.

Allegation #7:

The Sergeant performed his duty as the Supervisor on this search warrant because the Consent given by the subject [REDACTED] allowed them to expand their scope. As such, this allegation should be Unfounded.

Based on the violations that were concurred with by the Department, it is recommended that Sgt. Habiak receive a 30 day suspension and additional training on the preparation and execution of Search Warrants.

The COPA investigation also recommended a penalty of a twenty (20) day suspension for Officer Sergio Martinez after concluding that he:

1. Submitted the Complaint for Search Warrant and the Search Warrant to the Cook County State's Attorney's Office before obtaining the signature of the designated unit supervisor the rank of Lieutenant or above;
2. Failed to notify the Office of Emergency Management and Communications (OEMC) and failed to obtain an event number after a consent to search was given beyond the scope of the Search Warrant;
3. Questioned [REDACTED] about his involvement with guns and drugs in the presence of his minor children;
4. Failed to allow [REDACTED]'s father to retrieve [REDACTED]'s children while the Search Warrant was being executed.

The Department does concur with the recommended findings for Allegation #1 and Allegation #2 but does not concur with the recommended findings for Allegation #3 and Allegation #4 nor does the Department concur with the recommended penalty. The reason for each non-concurrence will be addressed separately.

Allegation #3:

There are only three instances of Officer Martinez discussing drugs and guns with the subject [REDACTED]. The first instance is when [REDACTED] asked them why they were there and Martinez stated pursuant to a search warrant for narcotics. The children were not present for this conversation. The second instance is when Martinez stated that fortified doors were illegal and [REDACTED] stated they sell them at Home Depot. Martinez replied that stores also sell guns but they are illegal too. The third instance was a brief question to [REDACTED] if he "messed around with drugs." [REDACTED] replied not since he was younger and Martinez then asked about guns and [REDACTED] replied no. The conversation did not go any further. The children were present for this but a viewing of the BWC shows that the younger child was not even paying attention to the conversation and the older child was not upset nor did he show any emotion at the question and for the answer given. This allegation should be Not Sustained.

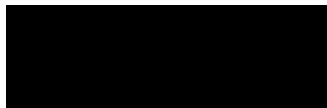
Allegation #4:

The subject of the search warrant, [REDACTED] only asked one time about his father picking up the children to which Officer Martinez replied "not right now." [REDACTED]'s father was not on scene at any point nor did [REDACTED] bring up the question a second time. The directive states that "If children are present, the Department members will maintain a sensitive approach and use due care to safeguard the emotional and physical well-being to minimize trauma following the execution of a search warrant." S-04-19-VIII-E-3. At no time does the investigator state how Allegation #1 and Allegation #2, if sustained, would be a violation of this policy. It is the opinion of the Department that the accused member complied with the policy. As such, this allegation should be Not Sustained.

Based on the violations that were concurred with by the Department, it is recommended that Officer Martinez receive a 10 day suspension and additional training on the preparation and execution of Search Warrants.

The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(1)(iii).

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department