



Rahm Emanuel
Mayor

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

Eddie T. Johnson
Superintendent of Police

11 October 2018

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

Re: Log #1087123

**Non- Concurrence with COPA findings for:
Police Officer Michael Hughes #2957, Allegation #3
Police Officer Jeremy Rice #15844, Allegations #1 and #3**

Dear Chief Administrator:

In reviewing the above mentioned CR:

The Department does not concur with the sustained finding against Officer Michael Hughes for Allegation #3 that the officer's search of Tristan Brown's residence without a search warrant violated the Fourth Amendment. The Department believes this allegation should be *Exonerated*.

The Department also does not concur with the sustained finding against Officer Jeremy Rice for Allegation #1 that the officer kicked in Tristan Brown's front door without justification. The Department also does not concur with the sustained finding against Officer Rice for Allegation #3 that the officer's search of the residence violated the Fourth Amendment. The Department instead believes both Allegations against Officers Rice should be classified as *Exonerated*.

The Department, therefore, also does not concur with COPA's penalty recommendation of a twenty (20) day suspension for Officer Rice and a fifteen (15) day suspension for Officer Hughes.

Pursuant to MCC 2-57-060(b), the Superintendent provides comments on the following when there is a disagreement to a penalty and finding.

Case Summary:

On October 14, 2017 Officers Jeremy Rice and Michael Hughes were on patrol when they heard one gunshot. Shortly after, the officers received an OEMC dispatch that the Shot Spotter technology detected a gunshot coming from inside 6420 S. Peoria Street, a two story apartment building. Officers Rice and Hughes responded in less than one minute. The officers observed a male run from the front lawn into the residence and closed the door.

Officer Rice and Hughes approached the door. The officers response was recorded on the officers' body worn cameras. The video captures a conversation between Officer Rice and Hughes in which Officer Rice



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said the man ran inside and Officer Hughes responded that the man was "hiding right there" [behind the door]. Officer Rice and Hughes stated they were concerned someone inside was hurt or shot. Officer Rice knocked on the exterior door several times with no response. Officer Rice stated that he used the bottom of his foot to lightly kick on the bottom of the door which came open. Tristan Brown was behind the door. The officers asked Mr. Brown to get down and Mr. Brown complied. Mr. Brown yelled, "What are you doing in my mother's house?" The officers explained to Mr. Brown that a gun shot just went off in the residence. Officer Hughes told Mr. Brown, "We're making sure everyone is good here." Mr. Brown yelled, "We just walked through the door, literally!" Officer Hughes then stated to Mr. Brown, "Is that blood on the floor?" The officers asked Mr. Brown who else was there and Mr. Brown stated his little brothers and cousins were upstairs. Mr. Brown told the officers, "You do not have permission to enter my house."

The officers believed the red substance on the floor was blood. Officers Hughes and Rice both told COPA's investigators that they went to the second floor apartment to make sure no one was injured. The officers walked up the stairs to the second floor and through an open door to the apartment. Three males were sitting on the sofa. Officer Rice asked the men, "Everyone alright here?" All three males replied, "Yes." Officer Rice then asked, "One of you shot off a gun up in here?" The three men replied, "No." Officer Hughes conducted a brief protective pat down. The officers then left the scene after verifying no one was injured.

Mr. Brown's mother, Felicia Snell-Ervin, reported this incident that night to Sergeant Timothy Fenton at the 7th District. During COPA's investigation, Tristan Brown and the homeowners for both apartments refused to cooperate with COPA's investigation. Due to their refusal to cooperate, COPA was prepared to close the investigation in November 2017 under "no affidavit," as noted on the Investigator's Log (Attachment #5). COPA requested and received an affidavit override based upon the Body Worn Camera footage the officers recorded during this incident.

Superintendent's Professional Opinion:

The Department does not concur that Officers Rice and Hughes's entry into the building or Mr. Brown's apartment was a violation of the Fourth Amendment. COPA's investigation correctly noted that Special Order 03-19-01-IV-D prohibits officers from entering private property based on a ShotSpotter Alert *by itself*. However, in this case, the officers were not acting on the ShotSpotter by itself. In this case, the officers heard the gunshot themselves, which was then confirmed by the ShotSpotter dispatch. The officers immediately responded and observed a man run into the residence where the ShotSpotter indicated the shot had come from. The officers were aware that the man who ran into the building was right by the door. The officers knocked and received no response despite the fact that the man who ran into the residence was right near the door. Officer Rice stated he lightly kicked the bottom of the door and the door opened immediately.

Prior to the officers entry to the second floor apartment, the officers reasonably believed that 1) a shot was fired inside a residence, 2) a person involved ran into this residence, 3) the person was hiding from the



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officers behind the door, 4) the person was angry and hostile toward the officers, 5) there were possible blood drops on the floor; and, 6) there were other people in the second floor apartment.

In *People v. Lomax*, the Illinois Appellate Court reversed the trial court's suppression of evidence related to the search of an apartment. Here, two Chicago Police Officers responded to multiple calls of shots fired "in or around the 'first floor rear' unit" of a residence.¹ The officers arrived two to three minutes after these calls. The officers knocked and a child aged two to four answered. The officers ordered five people to exit the apartment. The officers then entered the apartment and searched multiple rooms for additional people. The officers recovered a firearm and body armor from a bedroom, and arrested the defendant. The appellate court found that "in light of the totality of circumstances," the officers commanding occupants to exit a residence was not a Fourth Amendment violation.² The court held that "factual differences" between this case and other Fourth Amendment cases "did not undermine the police officers' reasonable belief that an emergency was in progress."³ "The officers were directed to a specific unit, from which, according to multiple calls to 911, gunshots had been heard. Therefore, it was reasonable to believe that the person responsible for firing a gun was located inside the apartment."⁴ The court held the search was lawful under the emergency aid doctrine:

"The purpose of the 911 call system is to alert police to emergencies in progress. In the case at bar, the police received numerous calls informing them that shots had been fired inside a residential structure. The purpose of the emergency aid exception is to ensure that police can quickly respond to situations in which someone may be in need of immediate aid. To hold that the police were not authorized to enter into a home in which multiple people had said shots had been fired would upset the purpose of the emergency aid exception. If 911 calls about shots being fired did not qualify as a trigger for the emergency aid exception and police did not enter defendant's apartment until they obtained a warrant, a potential victim of the gunshots complained of would not receive the emergency aid he or she required. **We can think of no greater need for immediate police action than to investigate claims of shots fired and uncover any potential victims in need of immediate attention.**"⁵

The case involving Officers Rice and Hughes involved even greater urgency than *Lomax*. Officers Rice and Hughes were not relying on second hand information from multiple calls about a shot fired. The officers heard the shot. Officers Rice and Hughes did not receive information that the shot was fired "in or around" an apartment. Officers Rice and Hughes received specific information from the ShotSpotter Alert that the shot was fired inside the building. Officers Rice and Hughes did not respond in two to three minutes, they responded in less than one minute; and, upon their arrival Officers Rice and Hughes faced an additional emergency the officers in *Lomax* did not face. The officers saw a man run into the residence, hide behind the door of the residence, and refuse to open the door when the officers knocked. In response

¹ *People v. Lomax*, 2012 Ill. App (1st) 103016, 975 N.E.2d 115,135.

² *Id.* at 133.

³ *Id.*

⁴ *Id.* at 135. The court distinguished *Lomax* from *People v. Garvin*, 219 Ill.2d 104, 301 (2006) because in *Lomax* the officers were responding to an emergency.

⁵ *Id.* (emphasis added)



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to all of these facts, Officer Rice used minimal force to open the door, and faced yet another emergency the officers in *Lomax* did not face. Officers Rice and Hughes observed possible blood droplets on the floor and discovered there were more people on the second floor. Certainly at this point, Officer Rice and Hughes had an immediate need to take police action to investigate and uncover any potential victims.

The Department recognized that unlike *Lomax*, Officer Rice forced open the door by lightly kicking the bottom of the door. However, even COPA's investigator recognized that Officer Rice used minimal force to open the door. COPA's investigator noted the same in the report to the Chief Administrator dated November 30, 2017, stating, "*There is no visual or sound to suggest that the door is kicked in or damaged.*"⁶ In light of the increased danger Officer Rice was facing, there is insufficient reason to believe that lightly forcing open a door is substantially different than the officers in *Lomax* ordering everyone outside. In fact, Officers Rice and Hughes's entry and search was substantially less invasive than the search conducted by the officers in *Lomax*. Officers Rice and Hughes did not order people out of the residence. Officer Rice and Hughes did not search every room in the apartment after they found three men calmly sitting. After Officer Rice and Hughes realized there was no one injured and obtained no information or evidence that a shot had been fired in the building, the officers left. Officer Rice and Hughes's entry and search was minimally intrusive for the purpose of resolving whether or not there was an injured victim.

COPA's investigation repeatedly attempted to use facts to guess at the officers' subjective motivations.⁷ The U.S. Supreme Court has repeatedly held that the officer's subjective motivations are irrelevant in a Fourth Amendment analysis.⁸ The standard for a Fourth Amendment analysis is whether the officers' actions were objectively reasonable. In *Brigham City v. Stuart*, the Court specifically rejected the same analysis COPA provided in this case. In *Brigham City*, officers observed a person get punched in a home causing him to spit blood into a sink.⁹ The officers announced their office and entered the home. The Court rejected the state court ruling that the officers' entry was for the intent to arrest and seize evidence and not for the purpose of rendering aid.¹⁰ The Court held that the officers' entry was objectively reasonable and, therefore, not a violation of the Fourth Amendment¹¹:

"The Utah Supreme Court also considered the officers' subjective motivations relevant. (search under the 'emergency aid doctrine' may not be 'primarily motivated by intent to arrest and seize evidence'). Our cases have repeatedly rejected this approach. An action is 'reasonable' under

⁶ COPA Attachment 31

⁷ "...Officer Rice and Hughes' actions demonstrate that their primary focus was the investigation of a crime and not rendering aid. For example, Officer Hughes stated that he picked up a pillow to search for a gun and Officer Rice and Hughes did not even check most of the rooms in the property for an injured person." COPA Summary Report pg. 16, note 29. "Officer Rice and Hughes had not even attempted to detain Brown at the time he purportedly ran inside the property." Summary pg. 15

⁸ *Whren v. United States*, 517 U.S. 806, 813 (1996); *Graham v. Connor*, 490 U.S. 386, 397 (1989)

⁹ *Brigham City, Utah v. Stuart*, 547 U.S.398, 401 (2006)

¹⁰ *Id.* at 401-402.

¹¹ "...the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning." *Id.* at 406.



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the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify the action."¹²

The issue is not what COPA's investigator believed the officers were thinking at the time the officers entered the home. The issue is whether the officers' actions were objectively reasonable based on the totality of circumstances. Officer Rice and Hughes's entry into a residence in response to these circumstances was objectively reasonable under the emergency aid doctrine. The Department respectfully does not concur with COPA's findings and believes the allegations that Officers Rice and Hughes's entry and search violated the Fourth Amendment should be *Exonerated*.

A handwritten signature in blue ink that reads "Eddie T. Johnson".

Eddie T. Johnson
Superintendent of Police
Chicago Police Department

ETJ/lpc/rdr/mco

¹² Id. at 404. (internal citations omitted)