



Rahm Emanuel
Mayor

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

Eddie T. Johnson
Superintendent of Police

18 December 2018

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

Re: Log # 1088870
Non-Concurrence with COPA findings for Allegation #2 for
Police Officer Matthew Skalski #16752

Dear Chief Administrator:

In reviewing the above mentioned Log Investigation:

The Department does not concur with the sustained finding for Allegation #2 against Officer Matthew Skalski:

Allegation #2: Officer Skalski unlawfully searched [REDACTED] in violation of Rule 6.

The Department concurred with COPA that Officer Skalski had reasonable suspicion to stop [REDACTED] and conduct a protective pat down. The Department, however, believes that once Officer Skalski recovered two knives during the course of the protective pat down, Officer Skalski was authorized to arrest [REDACTED] and conduct a custodial search because Officer Skalski had probable cause to believe that [REDACTED] had violated the City of Chicago Ordinance prohibiting the possession of a dangerous weapon.¹ The Department believes that Allegation #2 has been *Unfounded*.

Summary

On 21 March 2018 at 1800 hours, Officers Skalski and Kelly were on-duty and observed [REDACTED], a 59 year old man, sitting on the porch of a boarded building. The entire incident was captured on the officers' body worn cameras. The officers approached and asked [REDACTED] to step off of the porch. [REDACTED] told the officers that the stop was harassment. The officers escorted [REDACTED] to their patrol car. Officer Skalski immediately recovered a folded knife from [REDACTED]

¹ Chicago Ordinance 8-24-020(f), "Possession of Deadly Weapons: No person shall carry concealed on or about his person a dagger, any knife with a blade more than two and one-half inches in length, or other dangerous weapon." A violation is subject to a fine and/or imprisonment up to six months.



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██████████ rear pocket. ██████████ then reached into his coat pocket. The officers told him to stop. ██████████ again stated that the stop was harassment. The officers handcuffed ██████████ and Officer Skalski asked ██████████ if he had any additional weapons. ██████████ stated he had another knife in his side pants pocket.

Officer Skalski searched ██████████ coat pockets and removed miscellaneous items from his pockets, including identification cards. Officer Skalski asked ██████████ if there was anything that might poke or stick him. ██████████ did not answer. ██████████ then repeatedly told the officers they were breaking the law and harassing him. Officer Skalski checked ██████████ winter hat and patted the bottom part of his pants.

Officer Skalski continued to speak with ██████████ while Officer Kelly looked at the area where ██████████ was sitting. Officer Skalski then looked around and on the porch where ██████████ had been seated, while Officer Kelly spoke with ██████████. Officer Skalski returned and put items back into ██████████ pockets. Officer Skalski told ██████████ that his knives were on the curb and he could get them after the stop ended.

Officer Skalski told COPA investigators that he and Officer Kelly were patrolling with attention to narcotics sales. Officer Skalski stated (and COPA agreed) that a person sitting on the porch of an abandoned building was reasonable suspicion the person was trespassing on the property. Officer Skalski's Investigatory Stop Report described his search as a pat down. Officer Skalski admitted this was an error and in hindsight would have described the search as a custodial search. COPA investigators *repeatedly* asked Officer Skalski to describe the difference between a custodial search and protective pat down. However, COPA Investigators did not ask Officer Skalski why he believed a custodial search was justified or if he believed that ██████████ was lawfully arrested at the time the custodial search was conducted.

Superintendent's Professional Opinion

The concealed possession of a dangerous weapon is prohibited in the City of Chicago. When Officers Skalski and Kelly recovered two knives from a protective pat down, Mr. Matthews was not free to leave. The officers were authorized under Department Orders to restrain him and search his person.² The fact that Officer Skalski did not process ██████████ for this ordinance violation, did not make his custodial search unlawful. Officer Skalski lawfully stopped ██████████ for trespassing on abandoned property. When Officer Skalski became aware that ██████████ was armed with two knives, he properly handcuffed ██████████ and searched him. Officer Skalski was authorized to conduct a custodial search because ██████████ was lawfully in custody.

² General Order G06-01-02, "Restraining Arrestees"



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The U.S. Supreme Court has recognized that searches of people in custody are lawful under the Fourth Amendment regardless of the crime for which they are under arrest:

A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based upon probable cause is a reasonable intrusion under the Fourth Amendment..."³

The Department believes that looking at all of the circumstances in their totality, Officer Skalski was authorized to conduct a custodial search of [REDACTED] and Allegation #2 should be classified as *Unfounded*.

[REDACTED]
Eddie T. Johnson
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Chicago Police Department

³ **United States v. Robinson**, 414 U.S. 218, 235 (1973)