



Lori E. Lightfoot
Mayor

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

Eddie T. Johnson
Superintendent of Police

16 September 2019

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

Re: Log # 1077954

**Non-Concurrence with COPA's disciplinary basis for Allegations #1 and #2 for:
Police Sergeant (now Lieutenant) James Cascone #560**

Dear Chief Administrator:

In reviewing the above mentioned Log Investigation:

COPA's investigation sustained these two allegations against Lt. Cascone:

- Allegation #1 – Entered a residence without a warrant or permission, and
- Allegation #2 – Searched a residence without a warrant or permission.

The Department does not agree with COPA's finding that the pursuit of a person with a gun into a residence is unjustified based on the case law cited by COPA.¹ In this case, a person's flight from an officer would indicate his possession of a gun was unlawful and COPA's legal conclusion would not provide a sound basis for disciplining Lt. Cascone. Instead, the Department believes Lt. Cascone would be more appropriately disciplined for violations of Department Orders.

Pursuant to MCC 2-57-060(b), the undersigned provides comment when there is a disagreement to a finding and penalty.

¹ COPA Summary pg. 14, in support of this conclusion, COPA cited the Third Circuit 2002 opinion in United States v. Myers, 308 F.3d 251,263 (2002), involving the application of Pennsylvania law.



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Case Summary

On 06 November 2015, Lt. Cascone (then Sergeant Cascone) and other officers were executing a search warrant. Lt. Cascone was the team supervisor for this search warrant.

During the execution of the warrant and while officers were still inside the residence, Lt. Cascone observed two men on the porch next door run into the house. Without notifying the officers or OEMC, Lt. Cascone went to the porch to conduct a preliminary investigation. While speaking with Mr. Friend on the porch, Lt. Cascone saw a man with a gun inside the residence. Lt. Cascone entered and pursued the man without notifying OEMC or any of the other officers on the scene. The other officers left the search warrant and followed Lt. Cascone into the residence without knowing there was a man with a gun on the scene. Lt. Cascone went into the basement and saw two men, but did not see the person with the gun. Lt. Cascone returned upstairs and saw officers struggling to arrest Mr. Friend. Mr. Friend was ultimately arrested for resisting the officers.

Basis for Discipline

In this case, COPA cited the Third Circuit's decision in *United States v. Meyers* as the basis for disciplining Lt. Cascone.² *Meyers* involved a federal conviction for an arrest in Philadelphia. The Department believes this case does not provide a sound basis for discipline. First, the Department believes it is inappropriate to cite a federal circuit court decision on the application of Pennsylvania Law as a basis to discipline Lt. Cascone for a *Terry Stop* in Chicago. Second, other court decisions in Illinois conflict with this decision and the use of conflicting court decisions does not provide a sound basis for disciplining Lt. Cascone.

In *People v. Norals*, the Illinois Appellate Court recently held that an officer had reasonable suspicion to conduct a *Terry Stop* on a person the officer believed was armed based only on the following factors: 1) a "rash of shootings" in the area, 2) intelligence reports of gang involvement, 3) the defendant was seen with a gang leader, 4) the defendant "double backed" when the officer approached, and 5) the officer observed the outline of a gun under the defendant's shirt.³

Also this year in *People v. Thomas*, the Illinois Appellate Court held that an officer's pursuit of an armed person into a building was not a violation of the 4th Amendment.⁴ Here, an officer observed

² COPA Summary pg. 14, *United States v. Myers*, 308 F.3d 251,263 (2002): "Mere possession of a gun on a public street cannot supply necessary suspicion to support even a *Terry Stop* absent reasonable suspicion that the possession itself is unlawful."

³ *People v. Norals*, 2019 IL App (1st) 173010-U

⁴ *People v. Thomas*, 2019 IL App (1st) 170474.



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four to five men loitering on the sidewalk in front of an apartment building. When the officer approached, two men fled into the building. The officer pursued the men into the building and, once inside, observed the defendant with a firearm. The defendant handed the firearm to the other man who threw the firearm down. The officer recovered the gun and went to the defendant's girlfriend's apartment. The officer arrested the defendant inside the apartment. The court held the defendant's flight and transfer of the gun to another person were facts "indicating a probability that the defendant did not have the necessary gun licenses" and "the existence of a possible innocent explanation, like defendant's possession of the required gun licenses, did not necessarily negate probable cause."⁵

While the Department does not believe that discipline is appropriate based on COPA's legal conclusion, the Department does believe that discipline is appropriate in this case and should be imposed for Lt. Cascone's clear violations of Department Orders.

Special Order 04-19 details the responsibilities of supervisors during search warrants and Lt. Cascone's decision to leave a search warrant prior to completion was a clear violation.⁶ This order also assigns to team supervisors the responsibility to consult with SWAT before entry into a residence, if the offender is known to keep firearms readily available, if there are a large number of offenders present, or if there are any other circumstances that indicate a consultation with SWAT is appropriate.⁷ Lt. Cascone had a responsibility to coordinate with his officers and coordinate with SWAT before entry into a residence under these conditions. Special Order 03-03-06 informs all sergeants that they must coordinate field activities; and, guide and direct officers.⁸ Lt. Cascone's decision to leave the search warrant to conduct an investigation by himself was a violation of this order.

Superintendent's Professional Opinion

The Department believes that officers and supervisors are appropriately disciplined for their failure to follow Department Orders and established policies. Officers are also expected to know and follow established law governing search, seizure, and arrest. The Department notifies officers of changes in the law through Legal Bulletins and regularly makes changes to Department Orders to comply with changes in the law.

The Department does not believe that officers should be disciplined for their failure to follow court decisions outside the jurisdiction of Illinois.

⁵ Thomas, citing *People v. Grier*, 407 Ill.App.3d 553,557 (2011)

⁶ S.O. 04-19-II-A-2, Supervisor will be present and remain the on-scene during the execution of a search warrant.

⁷ S.O. 04-19-VIII-4-c, d, and h

⁸ S.O. 03-03-06-II-A and B

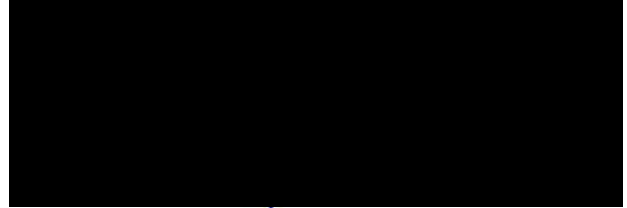


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The Department looks forward to discussing this case with COPA to find an appropriate resolution.



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