



Lori E. Lightfoot
Mayor

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

Charlie Beck
Interim Superintendent of Police

13 February 2020

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

Re: Log # 1077954

**Non-Concurrence with findings and penalty for:
Police Sergeant (now Lieutenant) James Cascone #560**

Dear Chief Administrator:

The Department does concur with the following allegation sustained against Lt. Cascone:

Allegation #4 – Violated Department Orders when he left a search warrant he was supervising

The Department does not concur with the following sustained 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 that this investigation provided any basis to conclude that Lt. Cascone did not see a person with a gun.¹ The Department believes that Lt. Cascone's observation of a person with a gun running into a home, while officers are executing a search warrant next door, provided the exigent circumstances justifying his pursuit into a residence without a warrant. The Department, therefore, believes that Allegations #1 and #2 should be classified as *Exonerated*. The Department also does not concur with the recommendation for a fifteen (15) day suspension and believes a **Reprimand** is a more appropriate penalty.

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. 16



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Officer's History

Lieutenant Cascone has received one hundred fifty-nine (159) awards in his 25 year career, including two (2) Superintendent's Award of Valor, one (1) Blue Star Award, nine (9) Complimentary Letters, twelve (12) Department Commendations, one (1) Life Saving Award, one (1) Problem Solving Award, and one hundred two (102) honorable mentions.

Lieutenant Cascone has had no sustained complaints in the last five years.

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. [REDACTED] 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. [REDACTED]. Mr. [REDACTED] was ultimately arrested for resisting the officers.

Basis for Discipline

COPA sustained allegations that Lt. Cascone's entry and search were unjustified based on two independent conclusions. First, COPA concluded that Lt. Cascone never saw a person with a gun inside the residence. Second, COPA concluded that even if Lt. Cascone saw a person with a gun, his warrantless entry into the residence to pursue this person was unjustified. The Department does not concur with either conclusion.

There is no evidence, only conjecture, that Lt. Cascone did not see a person with a gun.

COPA concluded that Lt. Cascone did not see a person with a gun based on the following factors:

1. Lt. Cascone's recollection of the incident was inconsistent.
2. Lt. Cascone was not tall enough to see a person with a gun over the shoulder of the person on the porch.



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3. Lt. Cascone did not draw his weapon while inside the home because he believed it was unsafe.
4. The person and the gun were never located.

There is no basis in this case to conclude that Lt. Cascone did not see a person with a gun. Lt. Cascone was involved in a search warrant, saw two men run into a home next door, and left the search warrant to investigate. Upon going to the porch, Lt. Cascone saw a man with a gun inside the home and entered. COPA's conclusion that Lt. Cascone saw nothing cannot explain why Lt. Cascone would enter the home if he did not see a person with a gun in the home. The Department agrees that Lt. Cascone was required to provide clear notification to the officers he was supervising before he left to conduct this preliminary investigation, but the fact that he did leave, and then did enter the home, is the clearest evidence that Officer Cascone saw someone with a gun.

There were exigent circumstances justifying Lt. Cascone's warrantless entry.

In this case, the Department believes that COPA has not correctly applied the law articulated in *People v. Thomas*. In *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.² Here, an officer observed 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 court found that the officers did not violate the Fourth Amendment when they pursued the men into the common area of the apartment building, holding that unprovoked flight from the police is suggestive of wrongdoing and warrants further investigation.

Once the officers were inside the building in *Thomas*, 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."³

COPA cited dicta from *Thomas* that the Department believes misapplied the court's ruling.⁴ The *Thomas* court ruled that an officer's pursuit of a man into a building common area was not unreasonable; and, the pursuit of an armed man into an apartment was also not unreasonable, when there were facts indicating a probability the defendant's possession of the gun was unlawful. Based on

² *People v. Thomas*, 2019 IL App (1st) 170474.

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

⁴ COPA Summary pg. 16 note 60



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this ruling, COPA appears to conclude that Lt. Cascone had to see something similar to the officers in *Thomas* in order to justify his entry. Lt. Cascone saw unprovoked flight from the police into a building and then upon investigating from the front porch, saw the man armed with a gun again flee further into the building. COPA's Summary Report failed to cite any case factually similar to the situation Lt. Cascone was facing where a court ruled Lt. Cascone's actions were clearly in violation of the Fourth Amendment.

The Department also believes there were sufficient exigent circumstances for Lt. Cascone's entry into the building. In *People v. Garcia*, the Illinois Appellate Court held that officers' entry into a residence to arrest a person they observed with narcotics and a handgun did not violate the Fourth Amendment.⁵ Here, officers were on a porch making an arrest when they looked through the glass storm door and observed the defendant at the kitchen table with white powder, a scale, and a gun on the table. The officers entered. The defendant fled, escaped, and was arrested several days later. The court found the entry lawful because an offense was taking place in the officer's presence, there was no unjustified delay, the defendant was armed, and the officers entered through an unlocked door.⁶

Lt. Cascone had reason to believe that a person fleeing the police was committing a crime warranting further investigation. Upon reaching the porch, Lt. Cascone observed one of these men armed with a gun, who fled further into the residence. Like *Garcia*, Lt. Cascone had exigent circumstances to enter the residence because the offense was taking place in his presence, there was no unjustified delay, the offender was armed, and Lt. Cascone did not force entry. In fact, in Lt. Cascone's case, an additional exigent circumstance was present not present in *Garcia* because Lt. Cascone could not know if the armed person fleeing into the home posed a danger to the people in the home or to officers executing a search warrant next door. Like *Thomas*, the possible innocent explanation that the gun was legally possessed, did not negate probable cause.

Superintendent's Professional Opinion

The Department believes that officers and supervisors are appropriately disciplined for their failure to follow Department Orders. Lt. Cascone should have notified his officers that he was leaving the execution of a search warrant to conduct an investigation next door. The Department believes that Allegation #4 has been properly sustained and the appropriate penalty would be a **Reprimand**.

The Department does not believe that COPA has provided any court decisions with any factual similarity to this incident that would provide notice to any police officer that Lt. Cascone's actions were a clear violation of the Fourth Amendment. The Department therefore believes that Allegations

⁵ People v. Garcia, 296 Ill. App. 3d 769, 786 (1st Dist. 1998)

⁶ Id. at 777.



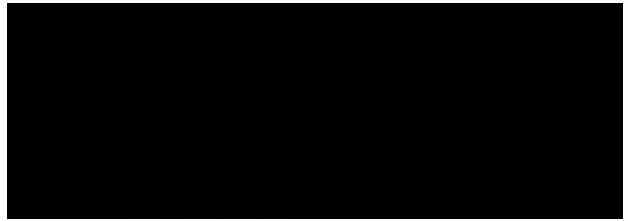
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#1 and #2 should be classified as *Exonerated*.

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



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