



Rahm Emanuel
Mayor

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

Eddie T. Johnson
Superintendent of Police

22 July 2019

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

Re: Log # 1078451

**Non-Concurrence with COPA's finding and penalty recommendations for Allegation #1-3 for:
Police Officer Michael Wagner #14637
Police Officer Michael Shields #5951**

Dear Chief Administrator:

In reviewing the above mentioned Log Investigation:

COPA's investigation has sustained three allegations against each accused officer. The Department does not concur with COPA's legal conclusions for sustaining Allegations #1-3 and recommending a five (5) day suspension for Officers Wagner and Shields. The Department believes the following findings are more appropriately applied to the allegations against both officers:

Allegation #1	Stopped complainant without justification	<i>Unfounded</i>
Allegation #2	Pointed gun at complainant	<i>Exonerated</i>
Allegation #3	Searched complainant without justification	<i>Unfounded</i>

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

The facts are not in dispute. On 09 December 2015 during a Black Lives Matter demonstration in downtown Chicago, a large contingency of police were patrolling and monitoring video cameras in the area. At 5:20pm, Officers Wagner and Shields were on patrol when they heard the following OEMC message:

"The State Police just called the station and at 700 North Michigan, there's a male white, 6 feet tall, early 20's, green hat with a spade on it, read beard, red hair, he supposedly has a pistol on him, they can see him on the camera."

At 31 W. Kinzie Street (approximately ½ mile from 700 N. Michigan), Officers Wagner and Shields saw the complainant, a 36 year-old, white male, 6'1" with red hair and a red beard. The officers did

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not recall pointing their guns, but Officer Shields stated he would have had his gun out. The complainant stated at least one officer pointed his gun at him.

The officers handcuffed complainant, conducted a pat down, and searched a bag complainant was carrying. The officers did not find a weapon. The officers conducted a name check, completed a Contact Card, and released complainant.

COPA based its findings on the following conclusions:

1. The officers stopped complainant without justification because the officers did not have reasonable, articulable suspicion that complainant was involved in criminal activity.
2. The officers' actions were objectively unreasonable when they pointed a firearm at complainant because complainant did not have a weapon in his hands; did not take an aggressive stance; did not reach into his pockets; and, the officers did not have information complainant was dangerous.
3. The officers were not authorized to search complainant's bag because the officers were not authorized to conduct a full custodial search.

The officers had reasonable, articulable suspicion to stop the complainant.

The Department does not agree with COPA's conclusion that this *Terry Stop* was not justified because there was a potential innocent explanation for a person in a crowd with a gun.¹ A *Terry Stop* requires reasonable suspicion the person is involved in criminal activity given all of the circumstances facing the officers. The Supreme Court has held that acts with possible innocent explanations may still give rise to reasonable suspicion given the totality of circumstances.² Here, Officers Wagner and Shields, the Chicago Police Department, the Illinois State Police, and other law enforcement agencies were on alert in response to a large demonstration on a Wednesday afternoon in downtown Chicago. An officer observed a man on camera with a handgun. Officers Wagner and Shields had reasonable suspicion to believe this person was involved in criminal activity.

COPA cited *U.S. v. Watson* as a basis for finding that officers cannot conduct a *Terry Stop* when the only information the officers have is that the offender is armed. COPA's reading of *Watson* is incorrect. In *Watson*, the stop was based solely on an anonymous 911 call from a 14 year-old, who borrowed a stranger's phone to report boys playing with guns.³ *Watson's* holding was based on long standing precedent prohibiting *Terry Stops* based only on anonymous information.⁴ Officers Wagner and Shields relied on the observations of another officer, not anonymous information.

¹ COPA Summary Report pg 12: "Officers Shields and Wagner were not permitted to stop and detain the armed subject...to check to see if he possessed a concealed carry license...without reasonable, articulable suspicion of a crime..."

² *U.S. v. Sokolow*, 490 U.S. 1, 9 (1989)

³ *U.S. v. Watson*, 900 F.3d 892 (2018)

⁴ *Florida v. J.L.*, 529 U.S. 266 (2000)



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The Illinois Supreme Court has held that officers can rely on the knowledge of other officers during police investigations for the purpose of conducting searches and making arrests.⁵ The officers were acting as part of a large contingency of officers who were all patrolling or monitoring video to make sure citizens were safe during a large demonstration in downtown Chicago. Officers Wagner and Shields did not need to develop their own independent reasonable suspicion.

The officers' display of a handgun was objectively reasonable.

When an officer's actions are objectively reasonable in light of the facts and circumstances confronting him, the officer's actions do not constitute excessive force.⁶ An officer pointing a gun at a person during a *Terry Stop* is not *per se* unreasonable.⁷ Officers Wagner and Shields were patrolling an area with tens of thousands of people during a large demonstration. The officers received notice that a man matching the complainant's description was seen on video with a gun. Given all of these circumstances, a large demonstration, tens of thousands of people in the area, numerous police agencies on alert to prevent violence, the officers' display of handguns to stop a person they were told was armed, was not unreasonable. "It is well established...when officers are presented with serious danger in the course of carrying out an investigative detention, they may brandish weapons or even constrain the suspect with handcuffs in order to control the scene and protect their safety."⁸

The officers were authorized to search complainant's bag.

When an officer can articulate reasonable suspicion that a person is armed, the officer may conduct a weapons search. COPA is mistaken that the scope of a *Terry* search is always limited to a pat-down of a person's outer clothing.⁹ In upholding an officer's right to search a person's boot during a *Terry Stop*, the Illinois Supreme Court held that a weapons search must be strictly circumscribed by the exigencies which justify its initiation.¹⁰ The scope of the search must be confined to an intrusion reasonably designed to discover weapons.¹¹

Officers Wagner and Shields located a person they reasonably believed was armed with a gun in a large crowd at a time of high tension and potential violence. COPA's conclusion that "no exigent

⁵ People v. Peak, 29 Ill.2d 343, 349 (Ill. 1963): "When the officers are working together...the knowledge of each is the knowledge of all and the arresting officer had the right to rely on the knowledge of the officer giving the command together with his own personal knowledge."

⁶ Howard v. Ealing, 876 F.Supp.2d 1056, 1065 (ND Indiana 2012); citing Graham v. Connor, 490 U.S. 386, 397 (1989)

⁷ Id. at 1066.

⁸ United States v. Fisher, 364 F.3d 970, 973 (2004)

⁹ People v. Sorenson, 752 N.E.2d 1078, 1088 (2001)

¹⁰ Id. (internal quotations omitted)

¹¹ Id.



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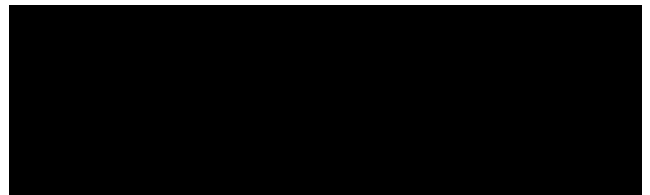
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circumstances existed" is incorrect.¹² The Supreme Court has held:

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response.¹³

The Fourth Amendment did not require Officers Wagner and Shields to simply shrug their shoulders and allow a person they reasonably believed was armed with a gun back into a crowd of thousands of people without looking in the bag he was holding. Officers Wagner and Shields were operating on information coming from a direct observation from another police officer, who saw that the person they believed they had stopped was armed with a gun. Given all of the circumstances the officers were facing, the search of the bag this person was holding was not unreasonable.



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¹² COPA Summary Report pg. 15.

¹³ Adams v. Williams, 407 U.S. 143, 145 (1972)