



Rahm Emanuel  
Mayor

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

Eddie T. Johnson  
Superintendent of Police

19 August 2019

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

**Re: Log # 1080695**

**Non-Concurrence with COPA's finding and penalty recommendations for Allegation #3 for:  
Police Officer Bernardo Rodarte #19762  
Police Officer (now Sergeant) Phillip Hooper #899**

Dear Chief Administrator:

In reviewing the above mentioned Log Investigation:

COPA's investigation sustained one allegation against each accused officer, alleging the officers stopped Mr. [REDACTED] an autistic 32 year-old man, without justification. The Department does not concur with COPA's legal conclusions and the recommendation for a ten (10) day suspensions for each officer. The Department believes the allegation should be classified as *Unfounded* based upon the facts in the investigation.

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

**Case Summary**

On 26 May 2016, Officers Rodarte and Hooper were on-duty driving a marked police car conducting a post shooting mission following a recent shooting near 5300 S. Lowe.<sup>1</sup>

Both officers observed Mr. [REDACTED] skating on roller blades on the street with a bulge underneath his shirt. Officer Rodarte stated that he told Officer Hooper, "Does that look like a handgun to you?" Officer Hooper replied, "Yea, it does. Let's go back around and take another look."<sup>2</sup> The officers drove around the block, saw the bulge, and believed it was a handgun. The officers pulled over to the side of the road and called over to Mr. [REDACTED] saying something to the effect, "Hey, Chicago Police

<sup>1</sup> Witness Melvin Coleman stated a shooting occurred the prior day near this location. Officer Rodarte stated he was working a post shooting mission, which includes the saturation of an area near a shooting that occurred sometime within the past week.

<sup>2</sup> Attachment #28 at 7:10-23



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can we talk to you?" The man immediately skated away from the officers. Officer Rodarte pursued Mr. [REDACTED] on foot while Officer Hooper pursued in the squad car. Officer Rodarte stated he yelled to Mr. [REDACTED] to stop and put his hands up during the pursuit, but he did not comply. Officer Rodarte stated that after a short pursuit, Mr. [REDACTED] grabbed a fence, turned around, and reached toward his waistband. Officer Rodarte stated he believed Mr. [REDACTED] was reaching for a gun, so he pointed his firearm at Mr. [REDACTED]. Officer Rodarte stated that he saw Mr. [REDACTED] face and believed he was mentally challenged. Officer Rodarte holstered his gun, pulled up Mr. [REDACTED] shirt, and saw that the bulge was a large rectangular cell phone case and there was a rubber ball in Mr. [REDACTED] pocket near the cell phone case.<sup>3</sup> Officer Rodarte stated that he asked Mr. [REDACTED] "Hey, do you understand what is going on? Are you all right?"<sup>4</sup> Officer Rodarte stated that a large group exited and began yelling obscenities at the officers. Members of the crowd brought Mr. [REDACTED] into a home. The officers stated they attempted to de-escalate the hostile crowd.

The officers completed a Contact Card, which identified Mr. [REDACTED] as an unknown person. The officers noted a prior shooting on the same block, which involved multiple guns. The officers' Contact Card detailed all of the facts in COPA's investigation.<sup>5</sup>

COPA investigated allegations that Officer Rodarte put his gun to Mr. [REDACTED] head and verbally abused members in the crowd. On 16 August 2017, COPA interviewed Officer Rodarte for these allegations. On 18 July 2018, COPA then served Officer Rodarte with an additional allegation that he stopped Mr. [REDACTED] without justification and re-interviewed Officer Rodarte. COPA ultimately sustained the unjustified stop allegation and found the other original allegations were not sustained.

COPA initially investigated Officer Hooper for failing to report Officer Rodarte's misconduct. On 25 August 2017, COPA served Officer Hooper with this allegation and interviewed him. It should be noted that although COPA sustained an allegation that Officer Hooper stopped Mr. [REDACTED] without justification, COPA never served Officer Hooper with this allegation. While COPA did re-interview Officer Hooper on 10 July 2018 for the original allegation of failure to report misconduct, COPA did not serve Officer Hooper with the allegation that was ultimately sustained in the Summary Report.

COPA sustained the allegation of an unjustified stop against both officers for the following reasons:

1. "The mere possession of a concealed weapon on the street is not a crime in Illinois considering the Firearm Concealed Carry Act."<sup>6</sup>
2. The officers did not have "a reasonable articulable suspicion that Mr. [REDACTED] lacked

<sup>3</sup> Attachment #28 at 8:40-9:10

<sup>4</sup> Attachment #28 at 9:20

<sup>5</sup> Attachment #22

<sup>6</sup> COPA Summary pg. 9 (quote)



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a concealed carry permit or was otherwise committing a crime simply by carrying what they believed was a gun."<sup>7</sup>

3. "The action that [the officers] are labeling as flight does not match the description of headlong flight or evasive behavior that could justify the stop of [REDACTED] [under the *Wardlow* standard.]"<sup>8</sup>

### Superintendent's Professional Opinion

The Department does not agree with COPA's conclusion that the Firearm Concealed Carry Act now prevents officers from stopping people armed with handguns on the streets of Chicago.<sup>9</sup> COPA incorrectly described the stop of a person with a gun on the street as an investigation into a possible *misdemeanor* violation of the Concealed Carry Act for possession of a gun without a permit.<sup>10</sup> In Illinois, Unlawful Use of Weapons, or U UW, is a serious crime.<sup>11</sup> Possession of a loaded handgun by any person with a felony conviction carries a minimum non-probationable two year prison sentence and a second violation is a Class 2 felony punishable from 3-14 years in prison.<sup>12</sup> U UW offenders who have violent criminal convictions can be sentenced up to 30 years in prison.<sup>13</sup>

COPA incorrectly assumed that because Illinois now authorizes licensed citizens to lawfully carry concealed firearms; Officers Rodarte and Hooper were prohibited from investigating a U UW violation without "a reasonable articulable suspicion that [REDACTED] lacked a concealed carry permit."<sup>14</sup> COPA not only failed to accurately describe the seriousness of the crime; COPA also failed to properly apply the standards for a *Terry Stop*. **By definition, a *Terry Stop* includes the observation of "a series of acts, each of them perhaps innocent in itself, but which taken together warrant further investigation."**<sup>15</sup> Officers Rodarte and Hooper did not lack reasonable suspicion that Mr. [REDACTED] was a U UW offender because there was a possible innocent explanation for Mr. [REDACTED] possession of a gun. Officers are trained to make observations and when those observations, taken in totality, give reasonable suspicion that a person is committing a crime, stop that person. COPA's standard

<sup>7</sup> COPA Summary pg. 9 (quote)

<sup>8</sup> COPA Summary pg. 9 (quote)

<sup>9</sup> See also COPA Request for Police Board Review for Log 1078451

<sup>10</sup> COPA Summary pg. 9 note 11, "Certainly, possessing a concealed weapon could be a crime if, for example, the possessor did not have a concealed carry permit."

<sup>11</sup> "Chicago has a public database of alleged gun offenders, and we're fine with that," Editorial, Chicago Sun-Times, August 13, 2019: "Let's note, too, that illegal gun possession, in and of itself, is no minor offense. A big part of Chicago's scourge of gun violence stems from too many people walking around with weapons. Sooner or later, all too often, those guns get used for no defensible reason."

<sup>12</sup> 720 ILCS 5/24-1.1

<sup>13</sup> Armed Habitual Criminal Statute, 720 ILCS 5/24-1.7 Class X (6-30 year sentencing guidelines)

<sup>14</sup> COPA Summary pg. 9 note 11.

<sup>15</sup> *Terry v. Ohio*, 392 U.S. 1, 22 (1968)



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would instruct officers to find possible innocent explanations for each observation and then remove that observation from their reasonable suspicion calculation, if there was even a remote, possible innocent explanation. The Court in *Terry* explicitly rejected COPA's analysis. Reasonable suspicion must judge all observations in totality and, even if there could be an innocent explanation for each observation, all of those observations taken together may still give officers reasonable suspicion that a crime is occurring.

COPA applied the same incorrect analysis to Mr. █████ flight from the officers. Mr. █████ flight in this case was clearly sudden and unprovoked. COPA's analysis would require the officers to assume that Mr. █████ unprovoked flight was possibly an innocent exercise of his right to ignore the officers and, therefore, this observation could not be considered in the development of reasonable suspicion. In *Wardlow*, the Supreme Court explained that flight is, in fact, the exact opposite of going about one's business.<sup>16</sup> COPA's description of Mr. █████ as "going about his business," when he suddenly rollerbladed away from an officer, who was chasing him and yelling at him to stop, is specious.

A proper analysis must consider all of the information, experience, and observations collectively, and when viewed collectively, evaluate if the officers had reasonable suspicion. Here, Officers Rodarte and Hooper had the following information and made the following observations:

1. The officers were given a mission to patrol a specific area where a shooting occurred the prior day.
2. The officers' mission was to look for people with guns who would continue the violence or act in retaliation.
3. The officers saw Mr. █████ on roller skates with a bulge under his shirt on his waistband, which both officers' experience led them to suspect Mr. █████ was carrying a gun.
4. The officers had experience stopping and arresting people on the street who were carrying concealed firearms.
5. When the officers called to Mr. █████ he suddenly fled on his roller skates with Officer Rodarte in pursuit yelling to Mr. █████ to stop.
6. When Mr. █████ finally stopped at a fence, he reached to his waist and Officer Rodarte drew his firearm.
7. Officer Rodarte looked at Mr. █████ and realized Mr. █████ was mentally challenged. The officer holstered his firearm, lifted Mr. █████ shirt, and saw that the bulge was not a gun.
8. The officers completed a Contact Card clearly explaining the reasons they stopped Mr. █████

<sup>16</sup> *Illinois v. Wardlow*, 528 U.S.119, 125 (2000)

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All of these observations gave the officers reasonable suspicion that Mr. [REDACTED] was illegally carrying a firearm. Whether Mr. [REDACTED] had a Concealed Carry license, or whether he was in violation of the Concealed Carry Act, or whether he was in violation of UUW, were considerations that warranted further investigation. The officers had reasonable articulable suspicion that Mr. [REDACTED] was committing the crime of Unlawful Use of Weapons.<sup>17</sup> COPA's proclamation that officers require certain proof to conduct an investigatory stop is not consistent with the standards set forth in *Terry*.

The Department believes that these facts, as reported by the officers on the Contact Card, gave the officers reasonable suspicion that Mr. [REDACTED] was committing a crime. The Department, therefore, does not concur with COPA's findings and believes the allegation against both officers should be classified as *Unfounded*.

[REDACTED]

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<sup>17</sup> Unlawful Use of Weapons, 720 ILCS 5/24-1.