



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY
INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

April 29, 2019

Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

VIA Email and U.S. mail

RE: Request for Review, Log No. 1088996

Dear Executive Director Caproni:

Pursuant to Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedures Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent in the above captioned investigation.¹

The factual dispute and legal analysis are set forth below. The Department bears the affirmative burden of proof in overcoming COPA’s recommendation. In this case, the Department fails to meet its burden. COPA therefore respectfully requests the Chicago Police Board reject the Department’s non-concurrence and accept COPA’s recommendation.

I. BACKGROUND

A. Relevant Factual Background

On December 3, 2016, Officer (now Sergeant) Ramos was conducting surveillance for narcotics activity at 4700 W. Van Buren in response to citizen complaints of narcotics dealing in the area. While conducting surveillance, Sergeant Ramos observed a person, now identified as complainant ██████████ hand another unidentified person money and in return receive a “softball sized item.” Shortly thereafter, Sergeant Ramos conducted a traffic stop of Mr. ██████████ vehicle and ordered Mr. ██████████ to exit the vehicle. A supervisor arrived at the scene and convinced Mr. ██████████ to exit his vehicle. Sergeant Ramos searched Mr. ██████████ vehicle and discovered a gun and narcotics. Sergeant Ramos arrested Mr. ██████████ and Mr. ██████████ was subsequently charged with multiple felonies. On July 9, 2018, Judge Thomas Byrne granted a motion to suppress evidence. On August 1, 2018, a judgment of nolle prosequi was entered and the case was dismissed.

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA’s Final Summary Report, the Department’s April 8, 2019, non-concurrence letter, and a certificate that the parties met and conferred.

B. Disputed Findings & Recommendation

COPA sustained one allegation against Sergeant Ramos, that on December 3, 2016, he searched [REDACTED] vehicle without justification in violation of Rule 6 (Allegation #2). COPA recommended a penalty of “Reprimand.”

The Department does not concur with COPA’s sustained finding for Allegation #2 and believes it should be classified as “Unfounded.”

II. LEGAL BACKGROUND

1. Applicable Rules and Directives

Rule 6 prohibits disobedience of an order or directive, whether written or oral.

2. Legal Standard

The applicable legal standard is a **preponderance of evidence**, which can be described as evidence indicating that it is **more likely than not** that the conduct reviewed violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

Generally, the Fourth Amendment to the United States Constitutions requires officers obtain a search warrant to search areas where citizens have a reasonable expectation of privacy. However, under the “automobile exception” to the search warrant requirement, “law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize.” *People v. James*, 163 Ill. 2d 302, 312 (Ill. 1994) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). “Probable cause is a nontechnical concept, not readily reduced to a neat set of legal rules; rather, it is a fluid construct dependent upon the assessment of probabilities in a particular factual context” but the “underlying principle of probable cause is the reasonable belief of guilt” from the “the standpoint of an objectively reasonable law enforcement officer. *People v. Contreras*, 2014 IL App (1st) 131889, ¶ 29.

“When officers have such probable cause, the search may extend to ‘all parts of the vehicle in which contraband or evidence could be concealed, including closed compartments, containers, packages, and trunks.’” *United States v. Richards*, 719 F.3d 746, 754 (7th Cir. 2013) (citing *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010)). Officers are not limited to searching the driver’s possessions; “police officers with probable cause to search a car may [also] inspect passengers’ belongings found in the car that are capable of concealing the object of the search.” *Wyoming v. Houghton*, 526 U.S. 295, 307 (1999).

II. ANALYSIS

Sergeant Ramos did not have probable cause to search [REDACTED] vehicle and no other exception to the Fourth Amendment’s warrant requirement is applicable in this case. As outlined in COPA’s summary report, *People v. Trisby* is the controlling precedent. *See* 2013 IL App (1st)

112552, ¶ 17 (“probable cause is not established by a single hand-to-hand transaction involving an unidentified object together with a few furtive hand movements toward a pants pocket”).

The Department asserts that this incident is distinguishable from *Trisby* because Sergeant Ramos was responding to citizen complaints of narcotics activity in the area, and specifically set up surveillance to watch for narcotics transactions. The Department attempts to further distinguish this incident from *Trisby* by noting that after Sergeant Ramos initiated the traffic stop, Mr. ██████ initially locked the doors and refused to exit. The Department’s position is without merit. This incident is not materially distinguishable from *Trisby* and *Trisby* is the controlling precedent.

First, like the officer in *Trisby*, Sergeant Ramos witnessed only a single hand-to-hand transaction and could not identify the object as narcotics.² The observation of a *single* hand-to-hand transaction of an *unidentified* object was the basis for the *Trisby*’s holding that probable cause was not established. There is no additional evidence cited to by the Department nor uncovered during the course of COPA’s investigation that Sergeant Ramos witnessed anything beyond this single hand-to-hand transaction that would distinguish it from *Trisby*.

Second, like the officer in *Trisby*, Sergeant Ramos did not have any information whatsoever about the about the individuals involved prior to the incident. Sergeant Ramos admitted he did not have any information about Mr. ██████ prior to the incident. Sergeant Ramos stated that he received a general tip of narcotics activity on the 4700 block of West Van Buren street, but did not provide any specifics such as who provided the tip(s), what exactly the tips said, and how old the tip(s) were. Without specifics, the reliability of the tip(s) cannot be properly assessed. The tip(s) also did not relate specifically to Mr. ██████ but instead to an “area.” A generalized tip about narcotics activity with no specificity is equivalent to the officer in *Trisby* who testified that he observed a single-hand-to-hand transaction in a “high narcotics area.” While COPA commends the Department for initiating this narcotics interdiction in response to citizen complaints, it does not justify an infringement upon the rights of others.

Third, Mr. ██████ locking his vehicle door and refusing to exit the vehicle did not otherwise establish probable cause to believe evidence of a crime was in Mr. ██████ vehicle. The officer in *Trisby* similarly referenced the suspect’s furtive movements towards his pants pocket as additional justification for the search. Neither purported observation is sufficiently connected to narcotics activity to establish probable cause of illegal narcotics activity within Mr. Henderson’s vehicle. It is not lost on COPA that the search of this vehicle uncovered contraband and a weapon, however the fruits of an improper search cannot – and do not – make an otherwise impermissible search permissible.

Fourth, a Circuit Court of Cook Judge, the Honorable Thomas Byrne, granted a motion to suppress the evidence obtained as a result of Sergeant Ramos’ search of Mr. ██████ backpack located in Mr. ██████ vehicle.³ After entering a judgment of nolle prosequi and dismissing the criminal case, Judge Byrne stated that Mr. ██████ “should not have been subject to a search based on a suspicion that there were [in the backpack]”⁴ and noted that “the police did

² Sergeant Ramos described the item as a “softball sized item.”

³ Att. 28; Att. 31.

⁴ The backpack was located in Mr. ██████ vehicle.

not have the authority [to conduct the search] based on the suspicion and the hunch they had that the drugs were inside [the backpack].”⁵ While COPA recognizes that Judge Byrne’s ruling does control this administrative finding, it is persuasive evidence that COPA’s interpretation of Illinois case-law is correct.

III. CONCLUSION

For the reasons stated above, COPA concludes Sergeant Ramos’ searched [REDACTED] vehicle without justification. Accordingly, COPA respectfully requests that the Police Board reject the Department’s non-concurrence and accept COPA’s recommendations.

Respectfully,

[REDACTED]

Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability

⁵ Att. 31