



Rahm Emanuel
Mayor

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

Eddie T. Johnson
Superintendent of Police

08 April 2019

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

Re: Log # 1089206
Non-concurrence with finding and penalty for:
Police Officer Steven Nisivaco #18344
Police Officer Leon Howard #17741

Dear Chief Administrator Roberts:

The Department concurs with COPA's sustained findings for the following allegations against Officers Nisivaco and Howard:

Allegation #9: Failed to complete ISRs for all three civilians stopped in violation of Rule 6.

Allegation #10: Failed to give all passengers ISR receipts in violation of Rule 6.

Allegation #11: Allowed driver to drive on a suspended license in violation of Rule 2.

It should be noted that the officers did complete ISR reports and did offer ISR receipts to the complainant, Mr. [REDACTED] and one passenger. The officers failed to complete an ISR for the second passenger and also failed to provide this person with an ISR receipt.

The Department does not concur with COPA's sustained findings for the following allegation against Officers Nisivaco and Howard:

Allegation #3: Detained vehicle passengers in handcuffs without justification in violation of Rule 6.

The Department believes Allegation #3 should be classified as *Unfounded*. The Department does not concur with the recommended penalty of a three (3) day suspension. The Department believes a *Violation Noted* is more appropriate and consistent with disciplinary recommendations for other officers for similar sustained allegations.

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



Officer's History

Officer Nisivaco has received three (3) Complimentary Letters, one (1) Unit Meritorious Performance Award and thirteen (13) honorable mentions in his three year career. Officer Nisivaco has had no sustained complaints in his career.

Officer Howard has received three (3) Complimentary Letters, one (1) Unit Meritorious Performance Award, one (1) Department Commendation, and eleven (11) honorable mentions in his three year career. Officer Howard has had no sustained complaints in his career.

Background

This investigation is one of two COPA Log investigations into Mr. [REDACTED] multiple allegations of police misconduct which occurred during three separate police encounters between 20 March 2018 and 7 May 2018. Mr. [REDACTED] allegations related to his arrest on 20 March were investigated under Log 1088836.

This non-concurrence addresses Mr. [REDACTED] allegations during a traffic stop on 23 April 2018 conducted by Officers Nisivaco and Howard. Mr. [REDACTED] made eleven allegations of misconduct for illegal stop, false reports, illegal search, and excessive detention. Four allegations were sustained against Officers Nisivaco and Howard and the remaining seven allegations were unfounded. During his COPA interview, Mr. [REDACTED] alleged a third incident of police misconduct which occurred right before he came to COPA on 7 May 2018.¹ Mr. [REDACTED] alleged that on 7 May, Officers Rodriguez and Alvarado illegally stopped him for a traffic violation and falsely ticketed him for no insurance. The allegations against Officers Rodriguez and Alvarado were unfounded under this Log investigation after COPA investigators reviewed the officers' body worn camera (BWC) videos. The Department concurs with COPA's findings for the 7 May 2018 allegations.

It should be noted that BWC video is available in all of three incidents (20 March, 23 April, and 7 May).

Superintendent's Professional Opinion

The Department recognizes that every complaint must be investigated and evaluated individually. Officers are expected to follow the law and Department Orders during all encounters. Mr. [REDACTED] prior incidents are relevant only to the extent that these incidents show a pattern that Mr.

¹ Attachment #3 at approximately 36 minutes



██████████ is hostile and uncooperative when stopped by officers.

The Department agrees with COPA that Officers Nisivaco and Howard lawfully stopped Mr. ██████████ lawfully removed him from the vehicle, lawfully placed him in handcuffs, and lawfully searched his vehicle. The Department also agrees that Officers Nisivaco and Howard failed to complete an ISR for one passenger and also failed to provide this passenger with a receipt. In disagreement with COPA, the Department believes the officers' decision to secure the two adult passengers in handcuffs was objectively reasonable given all of the circumstances the officers were facing:

1. Upon Officer Howard's approach for a routine traffic stop, Mr. ██████████ immediately claimed the stop was harassment.
2. Mr. ██████████ told Officer Howard that he was recently stopped by police and that stop resulted in a seizure of his vehicle.
3. Mr. ██████████ vehicle had an out of state temporary license plate.
4. Mr. ██████████ was driving on a suspended license.
5. Mr. ██████████ had cannabis in his possession.
6. The officers were aware that the area where Mr. ██████████ was stopped was an area where the officers had knowledge of gang and narcotics activity.
7. Officer Howard searched the vehicle, leaving Officer Nisivaco responsible for watching the three adult occupants.
8. The officers' BWC video showed that the officers anticipated a sergeant would soon respond with a citation for Mr. ██████████ cannabis possession.
9. When the officers realized the detention could no longer wait for the sergeant's response, the officers wrote Mr. ██████████ his traffic citation and released him.

The Illinois Supreme Court has held that during a lawful traffic stop, all occupants in a vehicle are lawfully seized for the duration of the stop and the passengers are not free to terminate the encounter.² The court compared the detention of vehicle occupants during a traffic stop with the detention of home occupants during a search warrant.³ Upon arresting Mr. ██████████ and searching his vehicle, the officers were authorized to handcuff the passengers. During this traffic stop, handcuffing was necessary because Officer Nisivaco was left alone with three detained adults as Officer Howard searched the vehicle. The Department believes the allegation that the officers were not justified in handcuffing the passengers should be classified as *Unfounded*.

The Department believes the three allegations for violation of the Department's ISR procedures and allowing a driver to continue to drive on a suspended license should remain sustained

² *People v. Harris*, 228 Ill.2d 222, 248 (2008)

³ *Id.* at 243.



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and, taking into consideration the officers' complimentary and disciplinary histories, the officers should each receive a *Violation Noted*.



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