



Rahm Emanuel
Mayor

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

Eddie T. Johnson
Superintendent of Police

16 April 2019

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

Re: Log # 1090066
Non-concurrence with finding and penalty for:
Police Officer Andrew Gorlewski #7804

Dear Chief Administrator Roberts:

The Department concurs with COPA's sustained findings for the following allegations against Officer Gorlewski:

- Allegation #5: Was rude and unprofessional when he threw complainant's bag out of the squad car window and onto the ground in violation of Rule 2.
- Allegation #6: Failed to document his contact with complainant on an Investigatory Stop Report (ISR) in violation of Rule 6.

The Department does not concur with COPA's sustained findings for the following allegations against Officers Gorlewski:

- Allegation #3: Detained complainant without justification in violation of Rules 1 and 6.
- Allegation #4: Took complainant's bag without justification in violation of Rules 1 and 6.

The Department believes Allegations #3 and #4 should be classified as *Unfounded*.

The Department does not concur with the recommended penalty of a fifteen (15) day suspension and believes a Reprimand is more appropriate, given Officer Gorlewski's outstanding complimentary history and his lack of any disciplinary history.

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



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Officer's History

Officer Gorlewski has received one (1) Superintendent's Award of Valor, five (5) Complimentary Letters, four (4) Department Commendations, and twenty-eight (28) honorable mentions in his twelve (12) year career. Officer Gorlewski has had no sustained complaints in his career.

It should be noted that COPA's Summary Report stated that Officer Gorlewski had no complimentary history.¹ COPA investigators should be aware Department Orders require that discipline recommendations for sustained allegations must take into account a member's complimentary and disciplinary history.² In this case, COPA's disciplinary recommendation failed to consider that Officer Gorlewski was awarded one of the Department's highest awards, the Superintendent's Award of Valor.

Superintendent's Professional Opinion

On 30 June 2018, Officer Gorlewski was working with Officer Johnny Brown in a marked vehicle as part of the Department's Saturation Team. The officers saw [REDACTED] drinking beer while at a CTA bus stop. Officer Gorlewski approached and asked Mrs. [REDACTED] for her identification. Mrs. [REDACTED] refused and loudly called Officer Gorlewski a "motherfucker." Officer Gorlewski took Mrs. [REDACTED] purse, searched it, and obtained her identification card. Officer Gorlewski entered his patrol car and wrote Mrs. [REDACTED] an ANOV citation for drinking on the public way. Officer Gorlewski admitted that Mrs. [REDACTED] "got under his skin" and he threw her purse out of his patrol car onto the ground. Video evidence from a witness and a CPD Pod showed Officer Gorlewski throwing Mrs. [REDACTED] purse out of his patrol car.

COPA sustained allegations that Officer Gorlewski was not authorized to conduct a search of Mrs. [REDACTED] purse because there was no probable cause to believe Mrs. [REDACTED] was armed. COPA cited multiple court cases that ruled on the permissibility of vehicle searches under the Fourth Amendment.³ COPA cited an additional case that ruled on the permissibility of conducting a pat down during an Investigatory Stop.⁴ None of these cases are factually comparable to Officer Gorlewski's search of Mrs. [REDACTED] purse.

¹ COPA Summary Report pg. 7 (Complimentary: None)

² Department Special Order 08-01-01-II-F-18

³ COPA cited United States v. Robinson, 414 US 218 (1973) (search of driver during traffic stop); People v. Tyler, 210 Ill.App. 3d 833 (1991) (search of vehicle involved in traffic crash); Knowles v. Iowa, 525 US 113 (1998)(search of vehicle incident to arrest).

⁴ People v. Sorenson, 196 Ill.2d 425 (2001)(Illinois Supreme Court ruled a protective pat down could extend to a person's boot when officers had articulable reasonable suspicion the person was armed.)

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Officer Gorlewski had probable cause to arrest Mrs. [REDACTED] for violation of the city ordinance which prohibits drinking alcohol while on the public way and was, therefore, authorized to search Mrs. [REDACTED] purse incident to this arrest. In *People v. Kolichman*, the Illinois Appellate Court held that when there was probable cause to arrest, officers were authorized to search the defendant *before* defendant was arrested, even if the officers did not intend to make a physical arrest.⁵ Here, the court found officers had probable cause to arrest the defendant for disorderly conduct when officers observed the defendant intoxicated and staggering inside a store.⁶ The court noted, "...if the officer is entitled to make an arrest on the basis of information available to him before he searches ...there is nothing unreasonable in his conduct if he makes the search before instead of after the arrest."⁷ The court also noted the defendant "need not be subsequently charged with or convicted of the offense that gave the police probable cause to arrest."⁸ Finally, the court held the search valid even if the officer did not intend to physically arrest the defendant. The court cited long standing precedent that the subjective intent of the officer was irrelevant in a Fourth Amendment analysis.⁹

The Department does not agree with COPA's conclusion that Officer Gorlewski violated the Department Order governing Investigatory Stops because he did not limit his search to Mrs. [REDACTED] outer clothing. Officer Gorlewski was legally authorized to conduct a search incident to an arrest when he observed Mrs. [REDACTED] violating the law. Officer Gorlewski cited Mrs. [REDACTED] with an ANOV in lieu of a physical arrest. It should be noted that the Department order governing the issuance of ANOV's would have allowed for a physical arrest when Mrs. [REDACTED] refused to provide her identification.¹⁰

The Department agrees with COPA that Officer Gorlewski was required to complete an Investigatory Stop Report to document the search and allegation #6 was properly sustained.¹¹ The Department also concurs that Officer Gorlewski was rude and unprofessional when he threw Mrs. [REDACTED] purse onto the ground. The Department, however, does not concur that Officer Gorlewski's search of Mrs. [REDACTED] bag was a violation of the Fourth Amendment or Department Orders.

The Chicago Police Board recently resolved a similar non-concurrence concerning the authority of an officer to conduct a search incident to arrest when there was probable cause to arrest. In Police Board Request for Review 19-RR-01 for CR Number 1088870, the designated member found the Department met the burden of overcoming COPA's discipline recommendation for Officer Matthew Skalski. The Department argued that Officer Skalski was authorized to conduct a custodial search

⁵ *People v. Kolichman*, 218 Ill.App.3d 132, 141 (1991).

⁶ *Id.* at 134.

⁷ *Id.* at 140. (citing the California Supreme Court in *People v. Simon*, 45 Cal.2d 645, 648 (1955))

⁸ *Id.* at 141.

⁹ *Id.* at 139.

¹⁰ Department Special Order 04-22-01-II-D-2

¹¹ Department Special Order 04-13-09-VIII-3, 4-b



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upon recovering two knives from a person lawfully stopped, even though Officer Skalski ultimately decided not to make a physical arrest. Like Officer Skalski, Officer Gorlewski was authorized to conduct a custodial search because he had probable cause to arrest Mrs. [REDACTED] for an ordinance violation and his issuance of an ANOV in lieu of a physical arrest did not make his search unlawful under the Fourth Amendment.

Based on Officer Gorlewski's complimentary and disciplinary history, the Department believes that an appropriate penalty for sustained allegations #5 and #6 is a Reprimand.



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Superintendent of Police
Chicago Police Department

**BEFORE A MEMBER OF THE POLICE BOARD
OF THE CITY OF CHICAGO**

IN THE MATTER OF THE)	
RECOMMENDATION FOR DISCIPLINE OF)	No. 19 RR 01
POLICE OFFICER MATTHEW SKALSKI,)	
STAR No. 16752, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO)	(CR No. 1088870)

REQUEST FOR REVIEW

On January 11, 2019, the Office of the Police Board of the City of Chicago received from the Chief Administrator of the Civilian Office of Police Accountability (“COPA”) a request for review of the Chief Administrator’s recommendation for discipline of Police Officer Matthew Skalski, Star No. 16752, arising out of the investigation of Complaint Register No. 1088870 (“Request for Review”).

The Chief Administrator recommended that the following allegation against Officer Skalski be *Sustained*:

Allegation No. 2: On March 21, 2018, at approximately 1800 hours, in the vicinity of 5531 South Elizabeth Street, Chicago, Officer Skalski unlawfully searched [REDACTED] in violation of Chicago Police Department Special Order S04-13-09, Section II.B., thereby violating Rule 6, which prohibits “Disobedience of an order or directive, whether written or oral.”

The Chief Administrator recommended that Officer Skalski be suspended for a period of two days.

The Superintendent objected to the Chief Administrator’s recommendation. The Superintendent recommended that the above allegation be classified as *Unfounded*.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on October 29, 2018; (2) the Chief Administrator received the Superintendent’s written response on December 18, 2018; (3) the

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Chief Administrator's designees met with the Superintendent's designees via telephone and discussed this matter on January 3, 2019; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on January 10, 2019.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Steve Flores, the member of the Police Board who was selected on a random basis, pursuant to Article VI of the Police Board's Rules of Procedure ("Reviewing Member"). The Reviewing Member considered the Request for Review pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board's Rules of Procedure. On January 14, 2019, the Reviewing Member reviewed the Request for Review file. Upon completion of this review, he requested (1) a reply from the Superintendent to the Chief Administrator's January 10, 2019, letter requesting the review, and (2) a copy of Officer Skalski's statement to COPA. The Executive Director received this material by February 6, 2019, and forwarded it to the Reviewing Member.

OPINION

It is my opinion that the Superintendent has met his burden of overcoming the Chief Administrator's recommendation for discipline.

Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response—that Allegation No. 2 be classified as *Unfounded*—shall be implemented.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21st DAY OF FEBRUARY, 2019.


STEVE FLORES

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Attested by:



MAX A. CAPRONI
Executive Director
Police Board