



Lori E. Lightfoot
Mayor

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

Charlie Beck
Interim Superintendent of Police

28 January 2020

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

Re: Log # 1092455.
Non-concurrence with finding and penalty for:
Police Officer Roger Farias #9942
Police Officer Shahrukh Ali #14112

Dear Chief Administrator Roberts:

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

- Allegation #2: Threatened to arrest [REDACTED] if he did not provide identification (Rules 2 and 8)
- Allegation #9/8: Failed to complete an ISR for [REDACTED] (Rule 6)
- Allegation #12/11: Failed to record the incident on ICC (Rule 6)

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

- Allegation #5: Performed a pat down on [REDACTED] without justification (Rules 2 and 6)
- Allegation #6: Performed a pat down on [REDACTED] without justification (Rules 2 and 6)
- Allegation #8: Terminated [REDACTED] phone call without permission (Rules 2, 6 and 8)

The Department believes Allegation #5 and 6 should be classified as *Unfounded* and Allegation #8 should be classified as *Exonerated*.

The Department does not concur with the recommended penalty of a ten (10) day suspension for each officer. The Department believes a *Reprimand* is more appropriate for allegations sustained against Officer Ali. The Department believes a three (3) day suspension would be more appropriate for the allegations the Department believes were properly sustained against Officer Farias, based on



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Officer Farias' prior complimentary and disciplinary history. The Department will ensure both officers receive additional training to specifically address Allegation #2.

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 Farias has received ninety-nine (99) awards in his 10 year career, including four (4) Complimentary Letters, two (2) Department Commendations, one (1) Unit Meritorious Performance Award, and eighty-one (81) honorable mentions.

Officer Farias has had two prior sustained complaints. The first was related to the continuation of a vehicle pursuit in violation of Department Orders (CR 1082382). Officer Farias received a one (1) day suspension. The second was related to an improper and inadequately documented arrest in violation of Department Orders (CR 1088236). Officer Farias received a one (1) day suspension.

Officer Ali has received forty (40) awards in his 4 year career, including one (1) Department Commendation, one (1) Unit Meritorious Performance Award, and thirty-five (35) honorable mentions. Officer Ali has had no sustained complaints in his career.

Background

On 23 January 2019 at 0539 hours, Officers Farias and Ali were on patrol in the 7th District at 6100 S. Carpenter. The officers told COPA that they were patrolling in a high crime area for gun violence and narcotics dealing. The officers drove past and saw a parked car with its lights on. Later, the officers drove past again and saw the car still parked. The officers pulled in front of the parked car. The car was parked in violation of city ordinance 9-76-090 (parked on lighted streets with lights on). The officers did not active their in-car camera, but did activate their body worn cameras.

The car had tinted front and rear windows. Inside the car was the driver, [REDACTED] and front seat passenger, [REDACTED]. Officer Farias approached [REDACTED] and [REDACTED] immediately provided his driver's license. Officer Ali stated that as he approached [REDACTED] he saw [REDACTED] make a "quick movement" by lowering "his left shoulder in an up and down movement real quick." Officer Ali told [REDACTED] to show his hands and [REDACTED] complied.

[REDACTED] cell phone was on speaker phone and Officer Farias told him to turn it off. [REDACTED] refused and put the phone on [REDACTED] lap. In the officer's BWC video, a voice on the phone can be heard



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speaking to [REDACTED] and [REDACTED] about the traffic stop and at times, the voice responds to the officers.¹ Officer Ali asked [REDACTED] for identification. [REDACTED] asked why he needed to provide it. Officer Ali responded it was because [REDACTED] was not wearing his seatbelt. Officer Farias told [REDACTED] that he would arrest [REDACTED] for obstruction, if [REDACTED] did not provide identification. [REDACTED] provided his identification.

Officer Farias ran both [REDACTED] and [REDACTED] names on the PDT in his patrol car. Assist units and a supervisor responded to the scene. Officer Farias told [REDACTED] and [REDACTED] to exit the vehicle to "make sure there are no guns in the car." The voice on the phone stated, "Why do they need to get out of the car?"² Both [REDACTED] and [REDACTED] responded, "Exactly." Officer Farias stated, "Because I told you." [REDACTED] then turned to the supervisor on the scene and asked if this was "legal" and again asked, "Why?" The voice on the phone asked [REDACTED] "Does he have a white shirt on?" [REDACTED] and [REDACTED] wait a few seconds and exited the vehicle.

Officer Farias performed a protective pat down and handcuffed [REDACTED]. Officer Farias stated he saw a bulge in [REDACTED] jacket that he suspected could be a gun. Officer Ali performed a protective pat down and handcuffed [REDACTED]. Officer Farias searched the vehicle and turned off the phone. After the search, Officer Farias returned to the rear of the car where [REDACTED] and [REDACTED] were handcuffed. Officer Farias conducted a pat down of both [REDACTED] and [REDACTED].

The officers released [REDACTED] and [REDACTED] without issuing citations. Only [REDACTED] was provided an ISR receipt. The officers did not complete an ISR for [REDACTED].

COPA found the traffic stop and search of the vehicle were lawful. COPA found that Officer Farias' first pat down of [REDACTED] and Officer Ali's pat down of [REDACTED] were reasonable. COPA found that Officer Farias' second pat down of [REDACTED] was unreasonable because Officer Farias' first pat down already determined or should have determined the bulge was not a gun. COPA found that Officer Farias' pat down of [REDACTED] was unreasonable because Officer Ali had already conducted a pat down.

Superintendent's Professional Opinion

The Department recognizes that officers are expected to follow the law and Department Orders during all encounters. While mistakes were made during this stop, the most significant were the failures to complete an ISR for Mr. [REDACTED] and activate the ICC. The recordings of the officers' conduct during this stop did not show mistreatment of Mr. [REDACTED] or Mr. [REDACTED].

¹ COPA's Summary Report does not clearly show that [REDACTED] or [REDACTED] complained to COPA about Officer Farias turning off [REDACTED] phone while searching the car, but COPA identified [REDACTED] and [REDACTED] as the complainants for Allegation #8 against Officer Farias (terminated the phone call without permission).

² Farias BWC at 9:59



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As to Allegation #2, the Department agrees that officers cannot charge a person with obstruction for refusing to provide identification during an investigatory stop. However, even the *Fernandez* court noted the confusion offered by Illinois Criminal Procedural Code 107-14 authorizing an officer to "demand the name and address" of a person during an investigatory stop.³ The Department, however, does agree that a person should not be threatened with an arrest for refusal to provide identification during an investigatory stop and the allegation was properly sustained.

As to Allegation #8 against Officer Farias, the Department does not agree that Officer Farias failed to treat Mr. [REDACTED] with "courtesy and dignity" when Officer Farias hung up Mr. [REDACTED] cell phone as he was searching the vehicle. The BWC video does not support COPA's conclusion that the voice on the line did not "hinder the traffic stop" and "was not disruptive or intrusive."⁴ The voice was clearly communicating with the officers during the stop and was also instructing [REDACTED] and [REDACTED] as to what they should do in response to the officers' commands. 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.⁵ The court has compared the detention of vehicle occupants during a traffic stop with the detention of home occupants during a search warrant.⁶ Officer Farias was authorized to order Mr. [REDACTED] to end the phone call during the traffic stop and was authorized to hang up the phone when Mr. [REDACTED] left the phone in the car during the vehicle search.

As to Allegation #5 against Officer Farias, the Department does not agree with COPA's conclusion that once Officer Farias no longer believed that the bulge in Mr. [REDACTED] jacket was a gun, he was restricted from any additional pat down. The proper question is whether or not Officer Farias reasonably suspected that Mr. [REDACTED] may be armed. The bulge was one factor, but there were others. Mr. [REDACTED] was in an area where the officers were patrolling to prevent gun violence. Mr. [REDACTED] was in a vehicle that was parked and remained parked, running with the lights on for some period of time. Mr. [REDACTED] vehicle windows were completely tinted, making it almost impossible to see inside the vehicle at night. When the officers approached, the passenger, Mr. [REDACTED] made a sudden movement. The officers discovered Mr. [REDACTED] was a convicted gun offender. Both Mr. [REDACTED] and Mr. [REDACTED] were reluctant to exit the car and finally exited when a supervisor ordered them.

The reasonableness of the officers' suspicions are properly judged by taking all of these observations into account collectively. Officer Farias had reasonable suspicion to believe both Mr. [REDACTED] and Mr. [REDACTED] may be armed. The Illinois Supreme Court has held that if an officer has a reasonable belief a person is armed, the officer may conduct a pat down limited to areas where weapons could reasonably

³ *People v. Fernandez*, 2011 IL App (2d) 100473.

⁴ COPA Summary pg. 15

⁵ *People v. Harris*, 228 Ill.2d 222, 248 (2008)

⁶ *Id.* at 243.



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be concealed.⁷ Officer Farias conducted a quick pat down of Mr. [REDACTED] when Mr. [REDACTED] exited the vehicle and later conducted a pat down from his shoulders to his feet while Mr. [REDACTED] was handcuffed at the rear of the vehicle. The Department believes Officer Farias acted reasonably because Officer Farias reasonably believed Mr. [REDACTED] was armed and conducted a pat down limited to areas where a weapon could be concealed.

As to Allegation #6 against Officer Farias, the Department does not agree with COPA's conclusion that once Officer Ali properly conducted a pat down of Mr. [REDACTED] Officer Farias was prohibited from conducting a pat down. Protective pat downs are conducted for officer safety and it is not uncommon for officers to conduct these limited pat downs more than once. Officer Farias reasonably believed Mr. [REDACTED] was armed and conducted a pat down limited to areas where a weapon could be concealed. The Department believes that Officer Farias' actions complied with the Fourth Amendment.

The Department believes that Allegations #2, 8, and 11 for Officer Ali have been properly sustained and, based on Officer Ali's complimentary and disciplinary history, an appropriate penalty for Officer Ali would be a **Reprimand**. The Department believes that Allegations #2, 9, and 12 for Officer Farias have been properly sustained and, based on Officer Farias' complimentary and disciplinary history, an appropriate penalty for Officer Farias would be a **three (3) day suspension**.

The Department will ensure both officers receive additional training to specifically address Allegation #2.

A handwritten signature in blue ink, appearing to read "CB", located below the typed name and title.

Charlie Beck
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⁷ People v. Sorenson, 196 Ill.2d 425, 444 (IL 2001)