



Lori E. Lightfoot
Mayor

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

David O. Brown
Superintendent of Police

November 28, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

Re: Superintendent's Non-Concurrence with Recommended Findings and Non-Concurrence with Recommended Penalties, Complaint Log No. 1092508
Sergeant Lawrence Darko, Star No. 1772
Sergeant Melissa Malm, Star No. 1490
Police Officer Jeremiah Pentek, Star No. 16474
Police Officer Albert Rangel, Star No. 5339
Police Officer Randy McCraney, Star No. 13257

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with all of the recommended findings nor with all of the recommended penalties. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a penalty of a Violation Noted for Sergeant Lawrence Darko after concluding that he:

1. Failed to properly record the strip search in the Watch Incident Log.

The Department concurs with this recommended penalty and this penalty will be implemented.

The COPA investigation also recommended a penalty of a written reprimand for Sergeant Melissa Malm after concluding that she:

1. Violated policy when she approved the strip search to be performed on the street;
2. Violated policy when she allowed the strip search to be performed in view of persons not physically conducting the search;
3. Violated policy when she allowed the strip search to be conducted on scene while the arrestee had taser barbs embedded in his skin;
4. Violated policy when she failed to provide the arrestee with a copy of the Report of Strip Search form.

Emergency: 9-1-1 • Non-Emergency: (Within City limits) 3-1-1 • Non-Emergency and TTY: (Outside City limits) 312-746-6000

E-mail: clearpath@cityofchicago.org • Website: www.chicagopolice.org

The Department concurs with this recommended penalty but does not concur with the findings. All four allegations listed in the Summary are from the same continuous action and reference the same Department directive. Therefore, only one allegation regarding the violation of G06-01-03 should have been sustained. The Department believes that these violations were not done with malice nor with any improper motives and, as such, the Sergeant would benefit with additional training on this subject matter.

The COPA investigation also recommended a penalty of a ten (10) day suspension for Officer Jeremiah Pentek after concluding that he:

1. Violated policy when he improperly strip searched the arrestee on the street;
2. Violated policy when he improperly strip searched the arrestee in view of persons not physically conducting the search;
3. Violated policy when he improperly strip searched the arrestee when he had taser barbs embedded in his skin;
4. Violated policy when he improperly strip searched the arrestee while his body worn camera was activated;
5. Violated policy when he improperly strip searched the arrestee when he removed his clothing without supervisor approval;
6. Violated policy when he failed to properly record the strip search in the Arrest Report.

The Department does not concur with these recommended findings and penalty.

Allegation #1:

The Department policy expressly anticipates and authorizes strip searches in the field. "When it is imperative that a strip search be conducted in the field, a field supervisor must be contacted for approval" (G06-01-03(I)(V)(F)). The circumstances of this incident meet the "imperative" condition. The arrestee's persistent attempts to free himself from the officers' control and repeated attempts to access the contraband secreted in the rear of his pants while repeatedly denying he was in possession of contraband is indicative of behavior to lead a reasonable officer to reasonably believe that the arrestee was intent on destroying or discarding the narcotics he illegally possessed to avoid the associated criminal charges. This allegation should be exonerated.

Allegation #2:

Officer Pentek along with three other male officers conducted the strip search. The positioning of the officers between the open door and the back seat obstructed any public view of the strip search. The officers exercised due care to shield the search from public view. The unintended exposure of the arrestee's buttocks was due to the arrestee's failure to follow lawful orders and due to the arrestees continued physical resistance. This allegation should be Not Sustained.

Allegation #3:

Officer Pentek did not violate Department policy by conducting the strip search while the arrestee had taser barbs embedded in his skin. There is no Department directive that expressly prohibits or even addresses conducting strip searches of persons who have embedded Taser probes. Department policy is clear that members are to immediately request medical assistance and not remove the taser barbs and the accused member did this. Nor was there any delay in the arrestee receiving medical attention due to the strip search. This allegation should be exonerated.

Allegation #4:

Officer Pentek did not violate policy by not deactivating his BWC when conducting a strip search of arrestee. S03-14 "Body Worn Cameras" establishes Department policy with regard to the use of BWCs. A review of this order offers the following direction which, under most circumstances, is

fairly straightforward. However, when applied to the circumstances of a dynamic incident such as the instant case, the direction provided in various provisions of S03-14 appear contradictory and require that members exercise sound judgment in attempting to adhere to the directive's guidance. The following four provisions are quoted directly from S03-14:

- (1) "The Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities" (S03-14(III)(A)(2)).
- (2) "The Department member will not deactivate event mode unless the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity" (S03-14(III)(B)(1)(a)).
- (3) "A Department member may utilize discretion to activate the BWC for non-law-enforcement-related activities in the following circumstances: (a) in situations that the member, through training and experience, believes will serve a proper police purpose, for example, recording the processing of an uncooperative arrestee [or] (b) in situations that may help document, enhance, and support the following: written reports, evidence collection, investigations, and court testimony" (S03-14(III)(A)(3)(a)&(b)).
- (4) "The BWC will not be activated to record [...] (4) in connection with strip searches" (S03-14(IV)(A)(4)).

In adherence to S03-14(III)(A)(2) and S03-14(III)(B)(1)(a), Officer Pentek properly activated his BWC upon initiation of the traffic stop and did not deactivate until the arrestee was loaded into the ambulance for transport to the hospital for medical attention (Officer Pentek BWC video). The strip search, however, took place in the field prior to the arrestee's transport to the hospital. Thus, the provisions of S03-14 that require members to record law enforcement activity and, simultaneously not record strip searches seem to be at odds when applied to the circumstances of this incident. COPA chose to focus its analysis and recommendation for Allegation No. 3 on provision S03-14(IV)(A)(4) that prohibits activation of BWC to record strip searches. However, this focus fails to give due weight to the stated policy underlying S03-14, "The Department is committed to protecting the safety and welfare of the public as well as its members. Audio and visual recordings from the body-worn camera (BWC) can improve the quality and reliability of investigations and increase transparency" (S03-12(II)(A)). Further, in the Law Enforcement Officer-Worn Body Camera Act, the Illinois General Assembly clearly state the purpose of requiring members of law enforcement to be equipped with BWCs: "Officer-worn body cameras will provide state-of-the-art evidence collection and additional opportunities for training and instruction. Further, officer-worn body cameras may provide impartial evidence and documentation to settle disputes and allegations of officer misconduct. Ultimately, the uses of officer-worn body cameras will help collect evidence while improving transparency and accountability and strengthening public trust" (50 ILCS 706/10-5).

It is important to note that without Officers Pentek and Rangel recording the recovery of crack cocaine from the arrestee, the allegations and subsequent investigation related to this incident would have never come to light. If the officers elected to deactivate their BWC just prior to the search, the Department's Force Review Unit would not have possessed video to refer this matter up the chain of command and ultimately to COPA for initiation of this investigation. The public policy objectives of transparency and accountability were well-served by the decisions of Officers Pentek and Rangel to keep their BWCs activated during their encounter with the arrestee. Competing with the objectives of evidence documentation, improved investigations, transparency, and accountability, however, is the privacy interest of the arrestee. The Illinois General Assembly addresses privacy interests in its statement, "The General Assembly creates these standardized protocols and procedures for the use of officer-worn body cameras to ensure that this

technology is used in furtherance of these goals while protecting individual privacy and providing consistency in its use across this State" (50 ILCS 706/10-5). This raises the question of whether the privacy interests of the arrestee that may have been impinged upon by Officer Pentek's and Officer Rangel's BWC recording of the strip search outweigh the public policy objectives of evidence documentation, improved investigations, transparency, and accountability. Certainly, based on their decisions to keep their respective BWCs recording, Officers Pentek and Rangel believed that the objectives of evidence documentation, improved investigations, transparency, and accountability were paramount in this case. Furthermore, even though they elected to keep their BWCs recording during the search, Officers Pentek and Rangel took reasonable measures to secure the privacy of the arrestee. As discussed above, they shielded the arrestee from public view by positioning him between the open squad car door, back seat, and the searching officers. Prior to the arrestee resisting the search, only Officer Rangel's BWC was in position to record the arrestee's torso and it only recorded the top of his underwear protruding from above the beltline of his pants (Officer Rangel 2 of 2 BWC at 0.50). The arrestee's actions in resisting the officers' lawful direction and search attempt is what caused him to be placed on the ground and ultimately led to a breach of his privacy interests. Perhaps the arrestee himself was the ultimate arbiter of how to balance the public policy objectives of evidence documentation, improved investigations, transparency, and accountability and his own privacy interest. Upon being placed on the ground by officers during the course of the search, the arrestee exclaimed, "Somebody record this! This shit ain't cool, man!" (Pentek BWC at 13.32). This statement indicates that even the arrestee prioritized officer transparency and accountability over his own privacy interest. Given that the officers had already been involved in a use of force incident with the arrestee, were still in the process of recovering evidence, were concerned with further acts of resistance by the arrestee and exercised reasonable measures to protect the arrestee's privacy interests, the Department finds that Officers Pentek and Rangel did not violate the spirit or underlying intent of S03-14. To the extent that there is a violation of this policy, the penalty should be a reprimand.

Allegation#5:

Officer Pentek and Rangel did not violate Department policy by conducting the strip search without supervisor approval. Sergeant Malm responded to the scene and approved the request to perform the strip search of the arrestee in the field due to the exigent circumstances. This allegation should be unfounded.

Allegation #6:

The directive identifies eight facts that must be documented on the arrest report. A review of the arrest report shows that all eight facts were listed, although not enumerated. This allegation should be unfounded.

The COPA investigation also recommended a penalty of a twelve (12) day suspension for Officer Albert Rangel after concluding that he:

1. Violated policy when he improperly strip searched the arrestee on the street;
2. Violated policy when he improperly strip searched the arrestee in view of persons not physically conducting the search;
3. Violated policy when he improperly strip searched the arrestee when he had taser barbs embedded in his skin;
4. Violated policy when he improperly strip searched the arrestee while his body worn camera was activated;
5. Violated policy when he stripped searched the arrestee when he removed his clothing without supervisor approval;
6. Violated policy when he touched the arrestee's buttocks during the strip search;
7. Violated policy when he exposed the arrestee's buttocks to individuals not conducting the search;

8. Violated policy when he failed to properly record the strip search in the Arrest Report.

The Department does not concur with these recommended findings and penalty.

For allegations number 1-5 the Department repeats and applies the explanations provided for the Pentek allegations number 1-5.

For Allegations number 6 and 7, the Department repeats and applies the explanations for the Pentek allegations number 1 and 2.

For allegation number 8, the Department repeats and applies the explanation for the Pentek allegation number 6.

The COPA investigation also recommended a penalty of a ten (10) day suspension for Officer Randy McCraney after concluding that he:

1. Violated policy when he improperly strip searched the arrestee on the street;
2. Violated policy when he improperly strip searched the arrestee in view of persons not physically conducting the search;
3. Violated policy when he improperly strip searched the arrestee when he had taser barbs embedded in his skin;
4. Violated policy when he improperly strip searched the arrestee while his body worn camera was activated;
5. Violated policy when he stripped searched the arrestee when he removed his clothing without supervisor approval;
6. Violated policy when he exposed the arrestee's buttocks to individuals not conducting the search;
7. Violated policy when he failed to adhere to the directive regarding strip searches

The Department does not concur with these recommended findings and penalty.

For allegations number 1-5 the Department repeats and applies the explanations provided for the Pentek allegations number 1-5.

For Allegations number 6, the Department repeats and applies the explanations for the Pentek allegations number 1.

For allegation number 7, the Department repeats and applies the explanation for the Pentek allegation number 1 as this allegation is duplicative of allegation number 1.

The Department further states that each member would benefit from additional training on conducting strip searches. The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(1)(iii).

Sincerely,

A large black rectangular redaction box covering the signature of David O. Brown.

David O. Brown
Superintendent of Police
Chicago Police Department