



Brandon Johnson
Mayor

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

Fred L. Waller
Interim Superintendent

May 26, 2023

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

Re: Superintendent's Non-Concurrence with both Finding and Penalty Recommendation
Complaint Log No. 1092533

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with the recommended finding nor with the recommended penalty as they pertain to Officer Emile Domer, Star No. 17294. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a penalty of a significant suspension up to 365 days for Officer Domer after concluding that he:

1. Threatened his [REDACTED] via telephone in that he stated words to the effect of that he was going to "shoot up the residence;"
2. Threatened his [REDACTED] via telephone in that he stated words to the effect of "I'm going to kill you."

Factual Summary

The [REDACTED] of Officer Domer (hereinafter [REDACTED]) is a [REDACTED] Police Officer and was working on 29 January 2019 when she had a telephone conversation with the accused member (hereinafter Domer). According to [REDACTED] supervisor, Sergeant Carlton Hughes, after that phone conversation, [REDACTED] approached Hughes and stated that she needed to leave because Domer had threatened her life and the lives of their children. [REDACTED] stated that Domer stated that he was going to come to her workplace at the [REDACTED] and then go to [REDACTED] mother's residence near Elgin where their children were located and "possibly shoot up the house." Hughes then drove [REDACTED] to her mother's residence after contacting the Campton Hills Police Department. Hughes stated he did not hear Domer make any threats but that [REDACTED] was visibly upset as she spoke with Domer. Upon arrival at the mother's residence, Hughes stated that [REDACTED] called her father on the telephone and Hughes heard [REDACTED] state that Domer had threatened her life.

At a later time, ██████ told Hughes that she took the incident out of context due to her heightened emotional state and ██████ said Domer had never threatened to kill her or the kids and that Domer never threatened to shoot up the house.

The Campton Hills Police Chief Millar stated he heard the radio call of a female who called "in hysterics" and said her Chicago Police Officer ██████ was possibly armed and on his way to her parent's home. Millar stated that ██████ was concerned that Domer would harm her and her children and he described her as "pretty excited." Millar stated that ██████ told him that Domer did not use words to say he was going to harm her and the kids but that in her mind, she "felt that she heard what sounded like the racking of a weapon." When Millar interviewed ██████ on the night of the incident, ██████ never stated to Millar that Domer verbally threatened to kill her.

Campton Hills Police Officer Daniel Hatt stated that ██████ said that Domer actually stated that he would kill her and the kids. Campton Hills Police Officer Matt Stastny did not recall if ██████ stated to him directly that Domer had threatened to kill her. The next day, Stastny said ██████ stated she wanted to change the police report because ██████ said she did not really know if Domer had threatened to kill the kids or do damage.

██████ refused to cooperate in this investigation and Domer denied all allegations regarding making threats to ██████ the children and the damage to the house.

COPA's Sustained Findings

In reaching its sustained findings, COPA's summary report states that ██████ initial account to Hughes and the Campton Hills Officers is credible and that ██████ subsequent statements stating she over-reacted were not reliable or credible. COPA's basis is that ██████ account remained consistent in her reporting to Hughes, the Kane County Emergency Call-taker and the Campton Hills officers. Further, COPA states that ██████ subsequent recantation of the allegations is typical of domestic violence victims but not credible. "COPA recognizes that domestic violence victims often recant their accounts to minimize potential financial, professional and social damage to the perpetrator, victim and their family unit. This incident is not different. COPA also recognizes that a domestic violence victim's failure to cooperate with COPA by giving a statement is not indicative that an incident did not occur." SRI at page 11.

Regarding Domer, COPA found that he was not credible in his denials to the allegations because COPA determined that even though the interview of Domer occurred 31 months after the date of incident, it was "not plausible that an incident of this magnitude that involved two other police departments would leave Domer's memory blank with no recollection." SRI at page 12.

CPD's Non-Concurrence

It is the position of the Chicago Police Department that both allegations should be Not Sustained and therefore no penalty should be imposed. Neither sustained finding is supported by the preponderance of the evidence. The investigation does not contain any statements of an occurrence witnesses to support the sustained findings and relies on the estrange wife's statements to third parties. As such, these third party statements regarding statements made by the ██████ are

hearsay as they are out of court statements offered to prove the truth of the matter asserted. In this case, COPA believes they are reliable because they are "outcry" statements of the type often relied upon in cases of domestic violence. Therefore, an exception to the hearsay rule must be applicable. But this would only support a sustained finding if the original declarant were available as "outcry" statements are double hearsay. This is because the "outcry" statements are the statements of the persons to whom the [REDACTED] made her declarations. And they are being used to prove the truth of the matter asserted, namely that Domer made these threats. There is no exception to the hearsay rule that would give double-hearsay the reliability, accuracy, and trustworthiness necessary to support a finding that the burden of proof has been met that Domer made these verbal threats.

There is a significant authority that when an employer relies solely on hearsay evidence to prove an employee's misconduct, it has not met its burden of proof. See *In the Matter of an Arbitration between City of Chicago Police Department and Fraternal Order of Police, Lodge 7, 193-21-004/258 regarding Log Number 1088378 and accused CPD member Chike Brown*. In *Brown*, the accused member grieved his thirty (30) day suspension for a sustained finding that he abused [REDACTED]. The finding relied on the child's outcry statements to school staff and later conversations between the child and DCFS and his Guardian Ad-Litem. The child was never interviewed in this investigation as the mother of the child did not give permission. The Arbitrator determined that an employer cannot rely on hearsay alone to prove just cause.

The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,

[REDACTED]

Fred L. Waller
Interim Superintendent
Chicago Police Department