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Mayor

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Larry Snelling
Superintendent of Police

April 4, 2024

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability ("COPA")
1615 W. Chicago Ave., 4th Floor

Re: Complaint Register Number: 2021-0003841
Superintendent's Partial Non-Concurrence with COPA's findings and proposed penalties:
Police Officer Alejandro Moreno #13379

Dear Chief Administrator Kersten:

COPA sustained four allegations from a total of five made against Chicago Police Department ("CPD") Police Officer ("P.O.") Alejandro Moreno. The allegations relate to an on-duty arrest referenced under JC337264 and JC375391¹. Allegations 2-3 and 5 are not legally sufficient. The Department concurs with COPA's finding of not sustained for allegation 1 and sustained for allegation 4.

In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalties.

ALLEGATIONS

It is alleged by COPA that on or about 2 Aug 2019, at approximately 13:16, at or near 1026 S. Damen Avenue, P.O. Moreno committed misconduct through the following acts or omissions:

Allegation #1 – Arresting [REDACTED] without justification. - Not Sustained.

Allegation #2 – Searching [REDACTED] vehicle without justification. - Sustained, violation of Rules 1, 2, 3, and 6.

Allegation #3 – Seizing [REDACTED] vehicle without justification. - Sustained, violation of Rules 1, 2, 3, and 6.

Allegation #4 – Failing to timely activate and/or prematurely deactivating his body-worn camera. - Sustained, violation of Rules 2, 3, 5, 6, and 10.

¹ Civilian Office of Police Accountability ("COPA"), *Summary Report of Investigation CR# 2021-0003841*.

Allegation #5 – Aiding in the improper re-enactment of the recovery of a firearm. - Sustained, violation of Rules 2, 3, 5, and 6.

FACTS:

This case review is to be read in conjunction with all other reports generated under the COPA investigation for CR #2021-0003841. This case review is a summarization of all reported information. All statements are also in summary format and are not to be considered verbatim.

On 27 Sep 2021, COPA initiated a complaint based on a Federal civil lawsuit (case number 1:21-cv-04097) brought by ██████████ ("██████████" which alleged misconduct by a member of the CPD. Based on this lawsuit, COPA served allegations that on 2 Aug 2019, P.O. Moreno arrested ██████████ searched his vehicle, and seized his vehicle, all without justification. Upon review of the evidence, COPA served additional allegations that P.O. Moreno failed to timely activate and/or prematurely deactivated his body-worn camera ("BWC"), and that he aided in the improper re-enactment of the recovery of a firearm. Following its investigation, COPA reached sustained findings for all of the allegations against Officer Moreno, with the exception of the allegation that he arrested ██████████ without justification, which COPA found to be not sustained.

This complaint also involves P.O. Michael Silius, a former CPD member who was Officer Moreno's partner at the time of the events under investigation. Due to Officer Silius' resignation from CPD, no allegations related to this complaint were served against him.

The relevant BWC evidence from this incident shows that on the afternoon of 2 Aug 2019, P.O.s Moreno and Silius ("the Officers") arrived at the offices of Illinois Department of Children and Family Services (DCFS) in their CPD SUV. P.O. Silius received information that ██████████ was in the lobby of the facility. Moreover, P.O. Silius had knowledge that ██████████ was a named offender in a General Offense Case Report ("GOCR") for domestic battery, and the complainant, ██████████ ("██████████" wished to pursue criminal charges against her ex-boyfried, ██████████ was then placed into custody and a custodial search of his person revealed a set of keys, including a vehicle key. ██████████ was then transported to the 014th District station by two supporting officers while the Officers attempted to locate ██████████ vehicle. Shortly after ██████████ was placed into custody, P.O. Silius' next BWC video began in the video-only buffer mode as the officer exited the front passenger seat of an unmarked gray CPD SUV, then walked across a street to a black Toyota Corolla ("Corolla"), which was parked within two blocks and identified as ██████████ vehicle after a license plate inquiry was conducted. The vehicle came back to CJM Logistics, which is ██████████ company. The Corolla was parked in a metered zone, but it is unclear if the meter expired. However, the Officers decided to relocate the Corolla to the 014th District station.

P.O. Silius entered the vehicle through the driver-side door, sat in the driver's seat, looked briefly inside the center console, opened the glove compartment, and quickly closed the compartment again after apparently taking a very brief look inside it. He then exited the vehicle and, leaving the driver-side door still ajar, turned left and walked to the rear of the Corolla. At this time, his BWC captured the CPD SUV, showing that it had made a U-turn and was positioned about fifty feet behind the Corolla. P.O. Silius stood near the side of the CPD SUV where P.O. Moreno was waiting in the driver's seat, and the Officers appeared to have a brief verbal exchange through the window. P.O. Silius then turned and walked back to the Corolla, made a movement that appeared to indicate he closed the driver-side door out of the camera's view, and began walking back to the

CPD SUV. As he returned, P.O. Moreno got out of the CPD SUV, and both officers stood together and appeared to speak with each other for a short time. P.O. Silius then walked around to the passenger side of the CPD SUV and got into the front passenger seat.

At this point, P.O. Moreno's BWC began its footage in buffer-mode. The view through the top of the windshield showed that he began slowly reversing the CPD vehicle. P.O. Moreno put the CPD SUV into drive and slowly drove forward, finally activating his BWC with his left hand at virtually the same moment that P.O. Silius activated his BWC. P.O. Moreno stopped the CPD SUV behind the Corolla, and as P.O. Silius began exiting the police vehicle, one of the Officers' voices was captured saying, "30 seconds."

P.O. Silius walked to the Corolla, unlocked it, and entered through the driver's door for the second time. As he sat in the driver's seat, he sent a radio message to OEMC stating that he was driving an offender's vehicle to the 014th District Station. P.O. Silius quickly opened and closed the center console, then opened the glove compartment, at which point he discovered a handgun. In route to the 014th District station, he reopened the center console and discovered a yellow pill bottle inside. Upon conducting a custodial search of the vehicle in the station, P.O. Silius discovered an AR-15 rifle, rifle magazines, ammunition, and narcotics in the trunk of the Corolla.

ANALYSIS

Allegation #1 - Arresting [REDACTED] without justification.

The Department agrees with COPA's finding of not sustained.

Allegation #2 - Searching [REDACTED] vehicle without justification.

This allegation should not be sustained. Even in the absence of either the automobile or *Gant*² exception, the inevitable discovery doctrine applies in the instant case. The inevitable discovery doctrine instructs that illegally seized evidence need not be suppressed if the government can prove by a preponderance of the evidence that the evidence inevitably would have been discovered by lawful means³. It is the government's burden to demonstrate (1) that it had, or would have obtained, an independent, legal justification for conducting a search that would have led to the discovery of the evidence; and (2) that it would have conducted a lawful search absent the challenged conduct⁴.

The evidence in the Corolla would have been discovered during a lawful inventory search of the vehicle. Warrantless inventory searches of cars in police custody are also proper as long as the police lawfully have custody of the vehicles⁵. Therefore, recovery of the firearms and narcotics is lawful so long as the police had lawful custody of the Corolla at the time they conducted the inventory search. In the instant case, the Corolla was lawfully seized and impounded for purposes of public safety and community care. Similar to the circumstances in *South Dakota v. Opperman*, where the defendant's vehicle was illegally parked and subjected to impoundment, the Corolla was parked in metered parking zone and subject to being towed⁶. The

² *Arizona v. Gant*, 556 U.S. 332 (2009).

³ *U.S. v. Pelletier*, 700 F.3d 1109, 1116 (7th Cir. 2012).

⁴ *Id.*

⁵ *U.S. v. Cherry*, 436 F.3d 769 (7th Cir. 2006).

⁶ *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976).

impoundment of the Corolla matches the list of justifications the *Opperman* Court found to be beyond challenge. The *Opperman* Court held that seizure of vehicles impeding traffic, threatening public safety, violating parking ordinances, and jeopardizing public safety are all sufficient justifications for police to seize and remove a vehicle from the streets⁷. An impoundment is permissible so long as it is supported by probable cause or is consistent with the police role as caretakers of the streets⁸.

It is more likely than not that ██████ drove to the DCFS building where he was arrested at, since his vehicle key was discovered on his person. Furthermore, the Corolla was within close proximity to the DCFS building and his parking meter was either expired or about to be expired and was subject to being towed. CPD is authorized to issue a notice of parking violation and may authorize the removal of a vehicle from any public way to a City vehicle pound or authorized garage or other legal parking space in the public way when a vehicle illegally occupies a parking meter space for more than 24 hours⁹. COPA has not provided evidence that ██████ had more than one vehicle key that would have allowed an associate to relocate his vehicle for him while he was in custody. Additionally, ██████ was being investigated for felony domestic battery offenses, and it is highly unlikely that he would have removed his vehicle from the parking meter space within the 24-hour period that is required by the aforementioned ordinance. By relocating the Corolla, the officers were merely exercising their community caretaking responsibility.

Warrantless inventory searches of vehicles are lawful if conducted pursuant to standard police procedures aimed at protecting the owner's property—and protecting the police from the owner's charging them with having stolen, lost, or damaged his property¹⁰. CPD General Order G07-01 and Special Order S07-01 set forth the process for conducting an inventory of property taken into police custody. The inventory process is meant to document anything that may be of value or personal property that is in the vehicle. Furthermore, the procedure protects the officers and the City of Chicago from any claims when the owner gets their vehicle back. Once the vehicle was brought back to the 014th District station, P.O. Silius conducted the vehicle inventory consistent with department policy. This was documented in the GOCR¹¹. Even if P.O. Silius did not conduct a formal inventory search at the place of recovery, the inevitable discovery doctrine considers a hypothetical situation of whether the evidence would have been found had an inventory search been conducted and not necessarily whether it was actually discovered through that method¹². The Court in *U.S. v. Cartwright* held that minor deviations from department policy do not render an inventory search unreasonable. In the instant case, there is little question that it would have.

The facts in the instant case are also comparable to those in *United States v. Foston*. In *Foston*, the CPD had probable cause to arrest a burglary suspect who was in close proximity to his vehicle. Prior to relocating the suspect's vehicle to Area Central for an inventory search, the officers discovered a firearm and narcotics within it¹³. Like the Courts in *Pelletier* and *Pittman*, the *Foston* Court held that the search and seizure of the suspect's vehicle were reasonable, due to the inevitable discovery and the inventory search exception.

Additionally, P.O. Silius was in communication with ██████ prior to ██████ arrest. ██████ advised P.O. Silius that ██████ always drives around with a loaded pistol in the glove compartment of his vehicle and

⁷ *Id.*

⁸ *Holm v. Village of Coal City*, 345 Fed.Appx. 187 (7th Cir. 2009).

⁹ Municipal Code of Chicago, 9-92-030 - Authority to Impound or Otherwise Relocate Vehicle. Accessed on Mar. 11, 2024.

¹⁰ *U.S. v. Pittman*, 411 F.3d 813, 817 (7th Cir. 2005).

¹¹ Att. 12.

¹² *U.S. v. Cartwright*, 630 F.3d 610, 616 (7th Cir. 2010).

¹³ *United States v. Foston*, No. 17 CR 758 (N.D. Ill. Apr. 5, 2019).

an assault rifle in the trunk. ██████ feared that ██████ would kill her and their baby, which prompted her to leave the state of Illinois¹⁴. Equipped with this knowledge, it is objectively reasonable that P.O. Silius performed a sweep of the Corolla for officer safety prior to conducting an inventory search. He was relocating the vehicle back to the 014th District station, in accordance with Department policy¹⁵, and had reasonable suspicion that firearms were located in the Corolla. Noteworthy, ██████ motion to suppress the evidence in the Cook County Circuit Court was denied on 7 Dec 2021. The Court held that P.O. Silius' actions were reasonable and aligned with the community caretaking doctrine¹⁶.

The Officers acted lawfully in seizing the Corolla pursuant to their community caretaking function. Additionally, the Officers followed Department policy in conducting an inventory search of the Corolla and consequently this allegation should not be sustained due to the inevitable discovery and inventory search exception.

Allegation #3 – Seizing ██████ vehicle without justification.

This allegation should not be sustained for the same reasons explained in the Department's response to allegation two.

Allegation #4 – Failing to timely activate and/or prematurely deactivating his body-worn camera.

This allegation should be sustained. COPA has met its burden by the preponderance of the evidence. Furthermore, P.O. Moreno admitted to failing to timely activate his BWC¹⁷.

Allegation #5 – Aiding in the improper re-enactment of the recovery of a firearm.

This allegation should not be sustained, due to COPA's lack of proof and insufficient evidence. Unfortunately, the Officers did not activate their BWCs in a timely manner, which may have captured any dialog between them on the street and in their Department vehicle prior to P.O. Silius recovering the firearm and narcotics in the Corolla. However, this infraction is encompassed in allegation four and should have no bearing on the finding for this allegation. P.O. Moreno advised COPA that he activated his BWC with P.O. Silius simultaneously because partners often do that to be on the same page. He further explained that BWCs were fairly new to the Department at the time of arrest, which may indicate why it is common practice for partners to activate at the same time¹⁸. When asked by COPA why he moved his hands around his BWC several times, P.O. Moreno provided an innocent explanation that he may have been attempting to activate it, but he could not give a definitive answer, due to a lapse of memory¹⁹.

Moreover, COPA did not take a statement from P.O. Silius before his resignation from the Department, which is an impediment to sustaining this allegation. P.O. Silius performed the search of the Corolla, and his version of the facts is paramount to the adjudication of this allegation. P.O. Moreno did not search the Corolla and denied any involvement in the improper re-enactment of the recovery of the firearm. A statement from P.O.

¹⁴ Att. 12.

¹⁵ Chicago Police Department, General Order G07-03 - Vehicle Towing and Relocation Operations. Eff. Nov. 1, 2014.

¹⁶ Att. 43.

¹⁷ Att. 59.

¹⁸ *Id.*

¹⁹ *Id.*

Silius could also shed light on the content of the dialog between him and P.O. Moreno, since P.O. Moreno's memory was exhausted. P.O. Moreno's lack of memory is plausible because the timespan between the date of occurrence and P.O. Moreno's COPA statement was almost five years. Nonetheless, the search of the Corolla was proper under the inevitable discovery doctrine and inventory search exception. It is difficult to understand why COPA would accuse the Officers of re-enacting a vehicle search when it was lawful from the outset. Moreover, the Circuit Court denied [REDACTED] motion to suppress the evidence recovered in the Corolla and determined that P.O. Silius' search and seizure were reasonable.

Furthermore, when asked by COPA about the vehicle maneuvering, P.O. Moreno explained that he may have reversed and repositioned the Department vehicle behind the Corolla for tactical positioning because there were several buildings nearby²⁰. Additionally, the Officers were outside of their District, and they were unfamiliar with the area. P.O. Moreno's actions can easily be justified for officer safety purposes. Moreover, Department members are taught tactical vehicle positioning in the driving skills portion of the Recruit Training Academy and in-service training.

Finally, COPA's assertion that the Officers were attempting to defeat their BWC's automatic buffered mode by waiting thirty seconds before P.O. Silius searched the Corolla is conjectural. It is impossible to conclude that the Officers were engaged in wrongdoing without knowing the full context of the conversation between them. "Thirty seconds" can refer to anything, and COPA cannot even determine who said it. COPA has not met its burden of proof to sustain this allegation.

CONCLUSION

COPA sustained four allegations from a total of five made against CPD P.O. Alejandro MORENO. Allegations 2-3 and 5 are not legally sufficient. The Department concurs with COPA's finding of not sustained for allegation 1 and sustained for allegation 4.

P.O. Moreno's COPA statement was credible, and he has an impeccable complimentary history and an unblemished disciplinary record. Furthermore, the sustained allegation is a less serious transgression and is punishable by a one-day suspension.

CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii). If COPA and the CPD find themselves at an impasse on the resolution of this matter, the CPD asks that COPA include all attachments from the log investigation to the member of the Police Board selected to conduct the review.

Sincerely,

[REDACTED]
Larry Snelling
Superintendent of Police
Chicago Police Department

²⁰ *Id.*