

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

IN THE MATTER OF THE)	
RECOMMENDATIONS FOR DISCIPLINE OF)	
)	
POLICE OFFICER MICHAEL WAGNER,)	No. 19 RR 15
STAR No. 14637, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO, AND)	
)	
POLICE OFFICER MICHAEL SHIELDS)	No. 19 RR 16
STAR No. 5951, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO.)	(CR No. 1078451)

REQUEST FOR REVIEW

On August 12, 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 recommendations for discipline of Police Officer Michael Wagner, Star No. 14637, and Police Officer Michael Shields, Star No. 5951, arising out of the investigation of Complaint Register No. 1078451 (“Request for Review”).

The Chief Administrator recommended that the following allegations against Officers Wagner and Shields be *Sustained*:

Allegation No. 1: On December 9, 2015, at 1730 hours, at 65 East North Water Street, Chicago, Officers Wagner and Shields stopped Mr. [E.C.] without justification, in violation of Rule 6, which prohibits “Disobedience of an order or directive, whether written or oral.”

Allegation No. 2: On December 9, 2015, at 1730 hours, at 65 East North Water Street, Chicago, Officers Wagner and Shields each pointed his gun at Mr. [E.C.], in violation of Rule 38, which prohibits “Unlawful or unnecessary use or display of a weapon.”

Allegation No. 3: On December 9, 2015, at 1730 hours, at 65 East North Water Street, Chicago, Officers Wagner and Shields searched Mr. [E.C.]’s possessions without justification, in violation of Rule 1, which prohibits “Violation of any law or ordinance,” and Rule 6.

The Chief Administrator recommended that Officers Wagner and Shields each be suspended for

five days.

The Superintendent objected to the Chief Administrator's recommendations in that the Superintendent recommended that Allegation Nos. 1 and 3 and be classified as *Unfounded* and Allegation No. 2 and be classified as *Exonerated*.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendations for discipline on May 31, 2019; (2) the Chief Administrator received the Superintendent's written response on July 22, 2019; (3) the Chief Administrator's designees met with the Superintendent's designees and discussed this matter on August 5, 2019; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on August 12, 2019.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to John H. Simpson, 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"). On August 22, 2019, 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. Following this review, the Reviewing Member requested additional information from the Chief Administrator and the Superintendent.

OPINION

Based on a thorough review of the Request for Review file, it is my opinion that the Superintendent met the burden of overcoming the Chief Administrator's recommendations for discipline.

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The facts of this case are not in dispute and are well described in the pleadings. In short, during a Black Lives Matter demonstration in December of 2015, officers with the Illinois State Police advised the Chicago Police Department that they had observed on-camera a man with a gun walking down Michigan Avenue.

Given the large and public nature of the events of that day, a number of CPD officers responded to attempt to locate the subject identified by the State Police. They ultimately encountered Mr. [E.C.] just west of Michigan Avenue. The police were guided to Mr. [C.] by radio transmissions from police officers who positively (and as it turns out, erroneously) identified Mr. [C.] as the person who had been observed carrying a firearm. There is no dispute that the police acted reasonably in believing that Mr. [C.] was the armed subject earlier observed by the State Police, and COPA acknowledges that in its pleadings. The issue, instead, is whether the police were justified in detaining Mr. [C.], conducting a pat down search, and opening a container he was carrying. That question turns on whether the police had “reasonable, articulable suspicion that a person has committed or is about to commit a crime.” Here, I conclude they clearly did.

COPA’s position is that carrying a concealed firearm does not, in and of itself, constitute reasonable suspicion of criminal activity under our Second Amendment jurisprudence. COPA is, of course, right. However, that does not end the discussion.

The law in Illinois is clear. Under 720 ILCS 5/24-1, it is unlawful for someone to carry or possess “on or about his person, upon any public street . . . any pistol, revolver, . . . or other firearm” The statute goes on to say, however, that a firearm may be carried or possessed in “accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under” that Act. (720 ILCS 5/24-1(a)(10)) Thus, it is generally illegal to carry a

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firearm on a public street in Illinois, but carrying in accordance with the Firearm Concealed Carry Act (the “Concealed Carry Act”) is legal.

Therefore, it seems clear that if the person observed carrying the weapon on Michigan Avenue in this case was doing so in violation of the Concealed Carry Act, the police clearly had reasonable and articulable suspicion that such person has committed a crime, viz., violation of the Illinois Unlawful Use of Weapons Act and the Concealed Carry Act.

The Concealed Carry Act is clear that even if a person has a license to carry a concealed weapon, that weapon must be “completely or mostly concealed from view of the public.” (430 ILCS 66/5) In this case, the fact that the State Police, at some distance and on a camera, could clearly see the firearm ipso facto means it was neither concealed or mostly concealed.

The facts of this case illustrate why that requirement exists. In the middle of a large public demonstration, a person carrying a firearm (in a manner that is visible from a distance) down the middle of what is arguably Chicago’s busiest street is highly likely to cause fear and panic. Indeed, all the police in this case heard is that an armed person was positively identified to them and that: “It's said that people are running in between the Wrigley building, guys. So are there any units at the Trump Tower on Wabash?”

It is also my opinion that the police acted reasonably in searching Mr. [C.]’s bag and box which turned out to contain audio equipment. The officers state in their interviews that the box was approximately the size that would hold a weapon, Mr. [C.] had been positively, albeit erroneously, identified to them as possessing a weapon in violation of the Concealed Carry Act, and to let him go without a search to ensure that he was not armed would have been inappropriate and potentially pose a danger to the public.

People v. Harris, cited by COPA, is inapposite here. In that case, the police did not observe the weapon in question until the suspect raised his hands above his head. Before that time, the firearm had been entirely concealed by his clothing. Here, the police observed the gun in plain view. Moreover, as COPA points out, *Harris* is a decision involving a probable cause determination, where here the parties agree that the lesser “Terry stop” factors apply.

This case presents a situation where the police,

- having been advised that there is an armed man;
- carrying a gun that is clearly visible;
- in the middle of a large public demonstration;
- along one of the busiest streets in the City filled with hundreds if not thousands of holidaymakers and demonstrators;
- are advised that “people are running” in the location where they believe the armed man to be;
- approach a suspect with somewhat unique physical characteristics, positively identified to them by a highly reliable (police) source as armed;
- who even if licensed, is carrying his weapon in clear contravention of the Concealed Carry Act; and
- conduct a brief detention, a pat down search, and a search of a container of a size appropriate to contain a firearm.

It is my opinion that the detention and searches are entirely lawful and entirely appropriate, and that to do otherwise would have been negligent and potentially put the public in danger.

I fully understand and acknowledge that Mr. [C.] must have felt frightened, threatened, and angry. That he has a remarkably similar appearance to the subject identified by the State Police as armed in a crowded area displaying his weapon is, of course, no fault of Mr. [C.]. However, in my opinion these officers did nothing wrong, and in this unfortunate incident, Mr. [C.]’s considerable inconvenience is the price of safety of his fellow citizens.

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It is important to note that this Opinion is based solely on the facts and circumstances of the particular matter before me and is not intended to serve as a precedent for any future matter or as a statement of the constitutionality of any police policy or practice. A single member of the Police Board reviewing one case is not the appropriate forum for that type of broad decision. The Chief Administrator of COPA and the Superintendent obviously have strong views on the issues raised in this case, as evidenced by their final submissions. I therefore strongly urge COPA and CPD to meet and/or use other means (such as the established policy-recommendation process) to attempt to resolve disagreements on police policies and practices presented by this case.

For the reasons set forth above, it is my opinion that the Superintendent met the burden of overcoming the Chief Administrator's recommendations for discipline. Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response— that Allegation Nos. 1 and 3 and be classified as *Unfounded* and Allegation No. 2 and be classified as *Exonerated*—shall be implemented.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 30th DAY OF AUGUST, 2019.

/s/ JOHN H. SIMPSON
Member
Police Board

Attested by:

/s/ MAX A. CAPRONI
Executive Director
Police Board