

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

IN THE MATTER OF THE)	
RECOMMENDATION FOR DISCIPLINE OF)	No. 17 RR 06
POLICE OFFICER DOMINIC R. MEROLA,)	
STAR No. 7221, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO)	(CR No. 1081904)

REQUEST FOR REVIEW

On August 25, 2017, the Office of the Police Board of the City of Chicago received from the Chief Administrator of the Independent Police Review Authority (“IPRA”) a request for review of IPRA’s recommendation for discipline of Police Officer Dominic R. Merola, Star No. 7221, arising out of the investigation of Complaint Register No. 1081904 (“Request for Review”).

The Chief Administrator recommended that the following allegations against Officer Merola be *Sustained*:

Allegation No. 1: On August 18, 2016, Officer Merola stopped, detained, and handcuffed Conrad Burnett for an extended period of time without justification in violation of his Fourth Amendment rights as protected under the United States Constitution, thereby violating Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,” and Rule 8, “Disrespect to or maltreatment of any person, while on or off duty.”

Allegation No. 2: On August 18, 2016, Officer Merola displayed and pointed his weapon at Conrad Burnett during a traffic stop without justification, thereby violating Rule 8 and Rule 38, “Unlawful or unnecessary use or display of a weapon.”

Allegation No. 3: On August 18, 2016, Officer Merola displayed and pointed his weapon at Aquantee Hendricks during a traffic stop without justification, thereby violating Rule 8 and Rule 38.

The Chief Administrator recommended that Officer Merola be suspended from the Chicago Police Department for a period of sixteen (16) days.

The Superintendent objected to the Chief Administrator's recommendations. The Superintendent recommended that Allegation Nos. 1-3 be classified as *Exonerated*, and therefore that no disciplinary action be taken against Officer Merola.

According to the Certificate of Meeting and of Service submitted by the Chief Administrator: (1) the Chief Administrator met with the Superintendent and/or his designees to discuss this matter on August 2, 2017, a discussion which continued via verbal and written communications, and ended on August 25, 2017, with no agreement on the recommendations for discipline; and (2) the Request for Review was hand-delivered to the Executive Director of the Police Board on August 25, 2017.

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"). 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*.

OPINION

This matter arises out of a traffic stop initiated by Police Officer Dominic Merola of Mr. Conrad Burnett and Ms. Aquantee Hendricks at approximately 6 p.m. on August 18, 2016, on East 91st Street in the City of Chicago.

Facts

At approximately 6 p.m. on August 18, 2016, while parked in his marked police vehicle, Officer Merola observed a red car driven by Mr. Burnett, in which Ms. Aquantee Hendricks was a passenger, traveling westbound on East 91st Street. Officer Merola made a U-turn from the

location at which he was parked and followed Mr. Burnett's vehicle.

After observing Mr. Burnett's car travel at a high rate of speed, make several turns, cruise through a stop sign, and travel through an alley, Officer Merola illuminated his emergency lights and sounded his siren, and Mr. Burnett's vehicle came to a stop in front of his destination. However, his vehicle's engine was still running and its transmission was not in Park (a fact indicated by the clear illumination of the brake lights on the vehicle and Mr. Burnett's statements). Officer Merola exited his marked police vehicle with his sidearm drawn and pointed at Mr. Burnett's vehicle and ordered Mr. Burnett to display his hands, exit the vehicle, and put his hands on his vehicle, commands with which Mr. Burnett complied. Officer Merola promptly placed Mr. Burnett in handcuffs, in which he remained for a period of approximately 20 – 25 minutes. Two other officers arrived almost immediately at the scene and guarded Mr. Burnett and Ms. Hendricks (who was not detained) while Officer Merola wrote the traffic citations he issued to Mr. Burnett. Officer Merola released Mr. Burnett from the handcuffs as he presented the three traffic citations to Mr. Burnett to sign. After some back and forth between Mr. Burnett and Officer Merola, Mr. Burnett signed the citations and left the scene.

Allegations

The Chief Administrator recommends sustaining the allegations that Officer Merola violated Mr. Burnett's Fourth Amendment rights in that Officer Merola stopped, detained, and handcuffed Mr. Burnett for an extended period of time without justification during a traffic stop, and that Officer Merola unnecessarily displayed and pointed his weapon at Mr. Burnett and Ms. Hendricks during the traffic stop.

There is no disagreement that Officer Merola was justified in stopping Mr. Burnett and in

issuing him the traffic citations. The disagreement between IPRA and the Superintendent is whether:

- Officer Merola behaved reasonably and appropriately in drawing his weapon and pointing it at the vehicle occupied by Mr. Burnett and Ms. Hendricks upon initially stopping them;
- Officer Merola was justified in placing Mr. Burnett in handcuffs upon initially stopping him; and
- Officer Merola was justified in continuing to detain Mr. Burnett in handcuffs while writing the traffic citations which were issued to him.

To answer those questions requires an assessment of Officer Merola's rationale for his actions and whether that rationale was, when examined objectively, reasonable under the circumstances with which he was faced.

The Initial Stop

Officer Merola stated that he observed the vehicle driven by Mr. Burnett in which Ms. Hendricks was a passenger while he was parked in his marked police vehicle on 91st Street facing eastbound. He stated that the "revving" sound of Mr. Burnett's vehicle indicated heavy acceleration of a vehicle driving at a rapid pace. Officer Merola stated that when he observed Mr. Burnett drive his vehicle through a stop sign at 91st and Exchange, he conducted a U turn and started to follow Mr. Burnett.

Officer Merola stated that Mr. Burnett's rate of speed, his quick, sharp turns, and his traveling through an alleyway indicated to Officer Merola that Mr. Burnett was trying to elude him.

In his interview with IPRA, there is no indication that Mr. Burnett denies that he was traveling at a high rate of speed, that he initiated several quick turns, that he turned through an

alley or that he failed to put his transmission into Park upon stopping, all facts supported fully by the video evidence. In fact, Mr. Burnett, upon being stopped, stated to Officer Merola, that “You made a U-turn, started coming after me, so I took off.”

Upon being approached by Officer Merola and questioned about Mr. Burnett’s driving, Ms. Hendricks stated that they were “scared . . . he was just trying to hurry.” In her interview with IPRA, Ms. Hendricks states in describing Mr. Burnett’s driving, “so then we make the other right. We were just going to get out and go in the house and just say like forget it; hurry up, because we were being followed.”

In describing the body worn camera videos, the IPRA investigator describes the driving leading up to Officer Merola’s stop of Mr. Burnett as a “pursuit,” stating that “the captured footage shows Officer Merola in his vehicle in what appears to be a pursuit of a red 4-door vehicle. After a short pursuit around the block, the red vehicle, driven by Conrad Burnett, abruptly stops and parks.”

All of these facts lead me to the opinion that Officer Merola was reasonable in concluding that Mr. Burnett was attempting to elude him, or, as Officer Merola more colorfully puts it, “to give me the slip”.

I am thus faced with the question of whether, having observed Mr. Burnett commit several traffic violations and having reasonably concluded that Mr. Burnett was attempting to elude him, it was reasonable for Officer Merola to approach Mr. Burnett with his gun drawn, command him to exit the vehicle, initially place him in handcuffs and keep him in handcuffs for approximately 20 minutes while he issued citations to Mr. Burnett.

The Manner in Which Officer Merola Effected the Traffic Stop – Display of Weapon and Use of Handcuffs

I first conclude that the manner in which Officer Merola effected the traffic stop of Mr. Burnett's vehicle and initially placing Mr. Burnett in handcuffs was reasonable and prudent.

Mr. Burnett gave Officer Merola ample reason to believe he was attempting to elude the police and even after stopping appeared to maintain the option to continue to do so. He committed several traffic violations, made multiple turns, drove at a high rate of speed, drove through an alley, and after pulling over once Officer Merola activated his lights and siren, did not put his transmission into Park, thus maintaining his ability to immediately pull away once Officer Merola exited his vehicle. Mr. Burnett denies none of this, and in fact both his statement at the scene and Ms. Hendrick's later statements to IPRA support this conclusion. While IPRA is correct that none of those statements was available to Officer Merola at the time he chose to draw his weapon in approaching Mr. Burnett's vehicle, they certainly lend credence to the reasonableness of Officer Merola's belief that Mr. Burnett was trying to get away from him.

Mr. Burnett's actions gave Officer Merola, particularly given that he was acting alone and was outnumbered, every reason to question Mr. Burnett's motives and every reason to take reasonable precautions to protect himself in effecting a traffic stop of Mr. Burnett's vehicle, including drawing his weapon.

IPRA suggests that in order to draw his weapon in approaching Mr. Burnett's vehicle, Officer Merola is required to have concluded that the occupants were "armed and dangerous." I am unaware of any support for such a proposition. Officer Merola would certainly have to have a reasonable belief that drawing his weapon was justified for reasons of officer safety or the

safety of others. While that could certainly result from the risk that a person attempting to elude the police could be armed, it could also be that the fleeing subject could be under the influence of drugs or alcohol and potentially violent, could have just committed a crime, could attack the officer and attempt to get away, could be holding a hostage, could himself be a hostage of the passenger, could be transporting drugs or other contraband, or any other number of possibilities. I am not suggesting that Mr. Burnett was guilty of any of those things, as he clearly was not. However, by driving at a high rate of speed, violating several traffic laws, making multiple turns, and failing to put his car in Park or turn off his engine, Mr. Burnett raised sufficient concern as to his behavior and motives in the mind of a reasonable officer to justify taking steps to protect himself, including drawing his weapon, until the situation and Mr. Burnett's motives were clear.

Placing and keeping Mr. Burnett in Handcuffs

IPRA also argues that both placing Mr. Burnett in handcuffs and keeping him in handcuffs for what IPRA suggests was a lengthy period of time were violations of Mr. Burnett's Fourth Amendment rights.

First, as to initially placing Mr. Burnett in handcuffs, there is no dispute that Officer Merola had a right to detain Mr. Burnett, if for no other reason than to issue citations for the undisputed traffic violations. The question is whether placing Mr. Burnett in handcuffs was a violation of Mr. Burnett's Fourth Amendment rights. Returning to the analysis above, I believe Officer Merola did not act unreasonably in placing Mr. Burnett in handcuffs for a brief period to ascertain why Mr. Burnett had attempted to flee. Officer Merola was alone and outnumbered (although two other officers arrived promptly after Officer Merola and remained with him

throughout the incident), and placing Mr. Burnett in handcuffs until he could determine the particulars of the situation he was facing and Mr. Burnett's motives for attempting to elude the police was not unreasonable.

I also conclude that Officer Merola's and his colleagues' continued detention of Mr. Burnett in handcuffs for a period of approximately 20 minutes was warranted.

One would be tempted once the situation had calmed and other officers had arrived to suggest that any potential threat had been resolved and that the handcuffs placed on Mr. Burnett should have been removed. However, Mr. Burnett became obviously agitated, and stated that "I should have shot his (Officer Merola's) ass when I seen him . . . I should have shot people when I seen him. Someone pull a gun on me you shoot. What the fuck. You heard me, right? You don't need to ask twice. If I did, what the fuck?" By that statement (and other statements Mr. Burnett made regarding shooting the police), he clearly demonstrated that in that moment he was angry and potentially violent. Keeping him in handcuffs at that point was entirely reasonable until he had calmed himself. Indeed, had the handcuffs been removed and a physical altercation ensued, an entirely reasonable possibility given Mr. Burnett's agitated state, the police would have been subject to justifiable criticism for that decision.

IPRA suggests that Officer Merola's statement that Mr. Burnett can "sweat it out" indicates that Officer Merola intended to punish Mr. Burnett by leaving him in handcuffs. I do not believe this is at all clear. This brief and vague statement is not sufficient evidence of an intent on Officer Merola's part to punish Mr. Burnett. "Sweat it out" in this context could mean many things having nothing to do with Mr. Burnett remaining in handcuffs. Moreover, regardless of what Officer Merola meant by that statement, once Mr. Burnett started talking about shooting police officers, none of the officers at the scene would have been responsible in removing his

handcuffs.

The Superintendent has the burden of overcoming the Chief Administrator's recommendation for discipline. In my opinion, in this case the Superintendent has clearly done so.

- Mr. Burnett clearly gave Officer Merola reason to believe he was trying to elude the police and, by failing to put his vehicle in Park or shut off his engine when he did stop, that he might continue to do so.
- Mr. Burnett's actions justified Officer Merola, an officer acting alone and outnumbered, to use appropriate officer safety techniques, including drawing his weapon and placing Mr. Burnett in handcuffs, until he determined whether Mr. Burnett posed a threat to either Officer Merola or others.
- Once Officer Merola had reason to believe Mr. Burnett did not pose a threat, Mr. Burnett's continued behavior, including his statement that he should have "shot his (Officer Merola's) ass . . . when he seen him" whether he meant it or not, clearly and unequivocally justified keeping him restrained. Removing Mr. Burnett's handcuffs when he was angry and potentially violent, with the attendant risk of physical violence resulting in harm to either the police or Mr. Burnett, would have been irresponsible at best.

I conclude that Officer Merola's initial display of his weapon was justified, and that his placing Mr. Burnett in handcuffs, and his and his colleagues' continued detention of Mr. Burnett in handcuffs did not violate Mr. Burnett's Fourth Amendment rights and was reasonable and appropriate given Mr. Burnett's behavior.

NOW THEREFORE, in the opinion of the Reviewing Member, the Superintendent of Police has met the burden of overcoming the Chief Administrator's recommendation for discipline. Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response—that Allegation Nos. 1-3 be classified as *Exonerated*—shall be implemented.

No. 17 RR 06
Police Officer Dominic R. Merola
Request for Review and Opinion

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 14th DAY
OF SEPTEMBER, 2017.

/s/ JOHN H. SIMPSON

Attested by:

/s/ MAX A. CAPRONI
Executive Director
Police Board