

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

IN THE MATTER OF THE)	
RECOMMENDATIONS FOR DISCIPLINE OF)	
)	
POLICE OFFICER BERNARDO RODARTE,)	No. 19 RR 17
STAR No. 19762, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO, AND)	
)	
SERGEANT PHILLIP HOOPER,)	No. 19 RR 18
STAR No. 899, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO.)	(CR No. 1080695)

REQUEST FOR REVIEW

On September 10, 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 Bernardo Rodarte, Star No. 19762, and Sergeant Phillip Hooper, Star No. 899, arising out of the investigation of Complaint Register No. 1080695 (“Request for Review”).

The Chief Administrator recommended that the following allegation against Officer Rodarte be *Sustained*:

Allegation No. 4: On May 26, 2016, at approximately 7:47 p.m., in the vicinity of 5300 South Lowe Avenue, Chicago, Officer Rodarte stopped Mr. [B.C.] without justification, in violation of Rule 2, which prohibits any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department, and Rule 6, which prohibits disobedience of an order or directive, whether written or oral (in that he disobeyed Special Order S04-13-09).

The Chief Administrator recommended that the following allegation against Sergeant Hooper be *Sustained*:

Allegation No. 2: On May 26, 2016, at approximately 7:47 p.m., in the vicinity of 5300 South Lowe Avenue, Chicago, Officer¹ Hooper stopped Mr. [C.] without justification, in

¹On the date of the incident, Sergeant Hooper held the rank of Police Officer.

Nos. 19 RR 17 & 18
Police Officer Rodarte and Sergeant Hooper
Request for Review and Opinion

violation of Rule 6 (in that he disobeyed Special Order S04-13-09).

The Chief Administrator recommended that Officers Rodarte and Hooper each be suspended for ten days. The Chief Administrator further recommended that each officer receive procedural justice and Fourth Amendment training and transfer out of the 9th District.

The Superintendent objected to the Chief Administrator's recommendations in that the Superintendent recommended that Allegation No. 4 as to Officer Rodarte and Allegation No. 2 as to Officer Hooper be classified as *Unfounded*.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendations for discipline on June 28, 2019; (2) the Chief Administrator received the Superintendent's written response on August 19, 2019; (3) the Chief Administrator's designees met with the Superintendent's designees and discussed this matter on September 3, 2019; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on September 10, 2019.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Ghian Foreman, 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

It is my opinion that the Superintendent did not meet his burden of overcoming the Chief Administrator's recommendations for discipline. Based on a thorough review of the Request for

Nos. 19 RR 17 & 18
Police Officer Rodarte and Sergeant Hooper
Request for Review and Opinion

Review file, I agree with the Chief Administrator that there is sufficient evidence to sustain the allegations against Officers Rodarte and Hooper.

The facts of this case are described in the file. In short, on May 26, 2016, Officers Rodarte and Hooper were in the vicinity of 5300 South Lowe Avenue on a “post shooting mission,” in which police saturate a high crime area or an area where shootings have recently occurred. While there, the officers observed Mr. [B.C.] roller-skating on the sidewalk and both noticed a “bulge” in Mr. [C.]’s pocket. The officers stated to Mr. [C.] words to the effect of, “Hey, Chicago Police can we talk to you?” Mr. [C.] did not respond and, instead, continued skating. The officers then pursued Mr. [C.] and detained him at gun point. The officers searched Mr. [C.] and recovered a rectangular cell phone and a rubber ball in his pocket, which had created the “bulge” that the officers had observed. Mr. [C.] did not have a firearm in his pocket or anywhere else on his person. Members of the public informed the officers that Mr. [C.] is autistic, explaining why he did not respond to the officers initially, and the officers promptly released him.

To conduct an investigatory *Terry* stop, officers must have reasonable, articulable suspicion that the person has committed or is about to commit a crime. *People v. Moore*, 286 Ill. App. 3d 649, 653 (3d Dist. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21, (1968)). “Reasonable, articulable suspicion” must be based on “specific and articulable facts.” *Id.* The question here is whether the officers had “reasonable, articulable suspicion” that Mr. [C.] had committed or was about to commit a crime based on their observation of a “bulge” in his pocket and his conduct following police contact. I conclude that they did not.

Based on a thorough review of the record, there is insufficient evidence to show that Officers Rodarte and Hooper had a reasonable suspicion that the “bulge” they observed in Mr.

Nos. 19 RR 17 & 18
Police Officer Rodarte and Sergeant Hooper
Request for Review and Opinion

[C.]’s pocket was a firearm. Once Mr. [C.] was detained, officers determined that he was in fact in possession of a rectangular cell phone and a circular rubber ball. It is unclear from the record how the officers, who have experience with concealed firearms, could mistake the bulge caused by a rubber ball or cell phone for a firearm. And more importantly, as noted by COPA, neither Officer could explain, beyond a conclusory assertion, how the bulge they observed in Mr. [C.]’s pocket resembled a firearm in any way. If there was evidence that the “bulge” appeared to be a gun – or even seemed likely to have been a gun – that evidence was not developed in this record. An unsupported assertion that any “bulge” may constitute a firearm, without a more specific articulation as to the officer’s basis for believing that the suspect is concealing a firearm, does not – on its own – constitute “reasonable, articulable suspicion” to support a *Terry* stop.

I further find unpersuasive the Superintendent’s assertion that Mr. [C.] “fled” from the Officers, providing additional grounds for reasonable suspicion under *Terry*. Again, there is insufficient evidence in the record to support that Mr. [C.] was fleeing from police. At the time he was contacted by the Officers, Mr. [C.] was roller skating down the sidewalk. Mr. [C.] continued to roller skate down the sidewalk after the officers asked to speak with him. As cited by the Superintendent, the Supreme Court in *Wardlow* affirmed that “an individual, when approached, has a right to ignore the police and go about his business. Unprovoked flight is the exact opposite of ‘going about one’s business.’” *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). There is no evidence in the record that Mr. [C.] did anything beyond “going about [his] business” in continuing to roller skate down the sidewalk; these actions do not constitute “fleeing” from police. *See, e.g. People v. Rafeal E. (In re Rafeal E.)*, 2014 IL (1st) 133027, ¶ 32. If Mr. [C.] exhibited indications that he was in fact fleeing from the officers, those facts were not developed by the officers.

Nos. 19 RR 17 & 18
Police Officer Rodarte and Sergeant Hooper
Request for Review and Opinion

Therefore, the facts as developed in this record do not establish reasonable suspicion that a crime had been committed, both because the record does not establish why the “bulge” appeared to be a gun and does not establish that Mr. [C.] fled from police. Therefore, it is not necessary for this Opinion to reach the issue of whether a police officer is precluded, as a matter of law, from conducting a *Terry* stop based on possession of a firearm. 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.

While the Superintendent did not meet his burden of overcoming the Chief Administrator’s recommendations for discipline, I believe that the Chief Administrator’s recommendation for a 10-day suspension for each officer is far too high. As noted by the officers, they were present in the area as part of a “post shooting mission.” In these circumstances it is understandable that police were overly cautious and therefore a punishment of additional training would have been sufficient, in my opinion. To that point, I strongly urge CPD to instate additional training regarding when it is appropriate for an officer to conduct an investigatory stop based on possession, or suspected possession, of a firearm. And more importantly, officers should be trained on clearly articulating in reports the basis for their belief that they have observed a firearm (merely stating they have seen a “bulge” is insufficient) or that an individual was in fact “fleeing.”

Nevertheless, my role is limited to determining whether the Superintendent has overcome the recommendations for discipline – not the discipline itself. And for the reasons set forth above, it is my opinion that the Superintendent did not meet the burden of overcoming the Chief Administrator’s recommendations for discipline. Therefore, pursuant to Section 2-78-130(a)(iii)

Nos. 19 RR 17 & 18
Police Officer Rodarte and Sergeant Hooper
Request for Review and Opinion

of the Municipal Code of Chicago, the Chief Administrator's recommendations for discipline—that Allegation No. 4 as to Officer Rodarte and Allegation No. 2 as to Officer Hooper be classified as *Sustained* and that Officers Rodarte and Hooper be suspended for ten days—shall be deemed accepted by the Superintendent.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY
OF SEPTEMBER, 2019.

/s/ GHIAN FOREMAN
President
Police Board

Attested by:

/s/ MAX A. CAPRONI
Executive Director
Police Board