

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.) **NO.**
)
JOHN DOE)

RESPONSE TO PEOPLE’S MOTION TO EXCLUDE EVIDENCE¹

NOW COMES Defendant, John Doe, by and through his attorneys, and in response to the State’s Motion to Exclude Evidence, states as follows:

INTRODUCTION

John Doe was a passenger in a car that was illegally stopped and searched for an alleged traffic violation. When officers stop a car, they need reasonable, articulable suspicion that a crime or traffic violation has occurred. *People v. Hackett*, 2012 IL 111781, ¶ 20. A search of a vehicle requires probable cause. *Chambers v. Maroney*, 399 U.S. 42, 51 (1970). Routine traffic stops must be relatively brief encounters, and cannot be prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015).² Thus, in order to prevail at this hearing, the State must demonstrate that there were specific, articulable facts that gave the officers reasonable suspicion to stop the car, prolong the stop, order the occupants out, and search the vehicle multiple times. Despite video footage of the traffic stop and search, none of the facts the officer’s claim gave

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² For full discussion of applicable law, *see* Motion to Suppress Gun and Statements on Fourth Amendment Grounds, filed October 16, 2019.

them reasonable suspicion to engage in the stop and search are captured on their videos. Thus the officers' credibility is critical to evaluating their claims.

In this case, the court has the benefit of assessing the officers' conduct with reference to body worn camera footage of the two weeks of traffic stops that preceded their stop of John. The footage reveals a pattern and practice of routinely stopping cars, ordering the occupants out, and searching the cars, almost always without ultimately recovering any contraband or issuing any traffic citations. The videos are relevant because they show that these officers have a routine pattern and practice of using traffic stops to immediately search vehicles without cause—indeed, the proffered videos appear to suggest that this tactic comprises the majority of traffic stops executed by this unit. The fact of the officers' pattern of stops and the officers' actions during those stops are directly related to whether they regularly conduct stops and searches without reasonable *articulable particularized* suspicion. If the officers are engaged in the same conduct every time they stop a car, regardless of the type of alleged traffic violation or the fruits of their searches, it undermines the argument that they were engaging in constitutional behavior, and rather suggests that they routinely conduct indiscriminate, baseless stops as an excuse to search vehicles. Confronting the officers about their conduct in the two weeks of stops preceding John's stop is critical to John's claim that the officers' conduct in his case was unconstitutional. Thus, the videos are relevant both substantively and for the purposes of impeachment.

SUMMARY OF FACTS

On _____, John Doe crossed the street. and got into the rear passenger seat of a sedan driven by his cousin. There was another individual in the front passenger seat. Together, they drove north. Tactical Chicago Police officers, driving southbound, made a U-turn, followed the car, and eventually pulled it over, allegedly for double parking. The officers ordered the men out

of the car. When the driver of the sedan asked the Officer why he was being ordered out of the car, the Officer responded, “Because I’m asking you to step out. I don’t like - legitimately, I’m not, I’m not being a dick. I’m not just saying I’m doing it because I’m police. Legally, I can ask anybody out of a car for any reason any time I want, ok.” When asked for that reason, the Officer responded, “I know what I’m saying is, I don’t need a reason. Any time I want, I don’t need a reason. Legally, I’m allowed to order someone out of the car if I want to.” Once the men were out of the car, another Officer searched it, finding nothing. A third Officer conducted a second search, and allegedly found a gun tucked deep under the back seat. At the time the officers stopped and searched the car they were not aware of any warrants for any of the individuals in the car. They only discovered a warrant for the front passenger nearly 8 minutes after the initial stop, after the officers had already stopped the car, ordered everyone out, searched the car twice, and recovered evidence. The officers did not issue a traffic ticket or give the driver a stop receipt for the alleged traffic violation.

The officers who conducted the stop and search are all part of a Chicago Police Department 10th district tactical unit. Tactical officers do not drive in marked cars, do not wear the traditional police uniform, and do not typically answer calls for service. Rather, they are charged with aggressively seeking out problematic activity. *See* Exhibit 1, Excerpt from U.S. Dept. of Justice Civil Rights Division and U.S. Attorney’s Office Northern District of Illinois, *Investigation of the Chicago Police Department*, Jan. 13, 2017, 142-4, available at: <https://www.justice.gov/opa/file/925846/download> (“DOJ Report”).³ They operate outside of normal police channels. The DOJ Report documents that officers in these units essentially “hunt” for offenders. *Id.* at 142. This results in more frequent car stops in minority neighborhoods and a

³ In the recent Court of Appeals case, *People v. Horton*, 2019 IL App (1st) 142019-B, ¶ 70, the Court took judicial notice of the DOJ report documenting aggressive police tactics and the effect of such tactics on the community.

pattern of routinely searching those cars. *Id.* at 143-4. Even after the Department of Justice identified this issue, CPD nearly doubled the number of traffic stops they conducted from 2017 to 2018. Illinois Department of Transportation. *Illinois Traffic and Pedestrian Stop Study*, available online at <http://www.idot.illinois.gov/transportation-system/local-transportation-partners/law-enforcement/illinois-traffic-stop-study> (last visited Jan. 23, 2020).⁴ In 2015, CPD conducted about 85,000 traffic stops; in 2018, they conducted 489,000. *Id.* Of those 489,000 stops, 421,500 (86%) were of black or Latino motorists. *Id.*

PROFFERED EVIDENCE

John may use the following evidence to demonstrate the officers' course of conduct as tactical officers, pattern and practice of indiscriminate stops and searches, and to impeach the officers' credibility:

- Officer X's body-worn camera footage from every traffic-related stop he recorded in the two weeks preceding the stop of John Doe. In those two weeks, Officer X stopped at least 17 cars. In 14 of those stops, the driver of the car was black, and in 3, the driver was Latino. In 13 of the 17 stops, Officer X and his team ordered the occupants of the cars out of the car. In 11 of the 17 stops, Officer X and his team searched the car. Notably, one of these stops and searches occurred just 5 minutes before the officers stopped John. With the exception of the stop of John, the body worn camera footage shows no contraband recovered and no arrests made. No video shows the officers writing a traffic ticket or stop receipt. Additionally, we submitted a FOIA request for Officer X's traffic tickets and

⁴ See Exhibits 2 & 3, for Chicago Police Traffic stop data in 2018 and 2017.

investigative stop reports during that time period. There are no tickets or stop reports for the recorded traffic stops.⁵

- Officer Y’s body-worn camera footage from every traffic-related stop he recorded in the two weeks preceding the stop of John Doe. Officer Y stopped at least 9 cars. All of the drivers were black. In 7 of the 9 stops, Officer Y and his team ordered the occupants out of the car. In 6 of the 9 stops, Officer Y and his team searched the car. Officer Y’s body worn camera footage only shows him making one arrest in addition to John. Additionally, we submitted a FOIA request for Officer Y’s traffic tickets and investigative stop reports during that time period. There are no tickets or stop reports for the recorded traffic stops.

ARGUMENT

I. Evidence of prior acts of police misconduct is relevant at hearings on Motions to Suppress when the conduct is similar and involves the same officers.

While the State is correct that there are no cases directly on point (People’s Motion to Exclude “People Motion”, ¶9), there is clear precedent that prior officer misconduct can be relevant when assessing their conduct in a specific case. *People v. Patterson*, 192 Ill. 2d 93, 143-45 (2000). The trial court has broad discretion on issues of relevance and materiality. *See People v. Evans*, 373 Ill. App. 3d 948, 959 (2007). While the rules of evidence do not apply at a *Motion to Suppress* hearing (IL R. Evid. 104(a)), the Illinois Appellate Court has repeatedly found that prior acts of police misconduct are relevant even under the more stringent rules of evidence at trial, if the allegations against the officers are similar, involve the same officers, and are not too distant in time. *People v. Banks*, 192 Ill. App. 3d 986, 993-994 (1989); *Patterson*, 192 Ill. 2d 93,

⁵ Pursuant to Chicago Police Department Special Order S04-13-09, Preliminary Investigations, sworn members who conduct an investigatory stop are *required* to complete an Investigatory Stop Report. *See* S04-13-09 at III.C. Such reports are required when officers perform protective pat downs and searches as a result of a traffic stop. *Id.* at VIII.A.4.b. The officers’ failure to follow the required procedure is relevant to their claim that their actions were reasonable.

143-45 (2000); *People v. Almodovar*, 2013 IL App (1st) 101476, ¶¶ 63-75 (finding pattern and practice of police misconduct relevant to both suppression and trial issues). Indeed, the case law cited by the State acknowledges as much: prior allegations of police misconduct may be relevant to show intent, plan, motive, and course of conduct, in addition to impeaching credibility. People’s Motion, ¶¶ 4, 6; *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 11 (citing *People v. Cannon*, 293 Ill.App.3d 634, 640 (1997)). Further, the cases that are cited by the State all involve evidence of *allegations* of misconduct, consisting of formal complaints, pending lawsuits, testimony of witnesses who made past claims, and reports of the misconduct. In this case the quality of the evidence is stronger because the proffered videos give the court objective evidence of the actual prior misconduct.⁶

The State’s argument that John has not made a specific claim of misconduct (People Motion, ¶9) ignores the fact that his Motion to Suppress specifically alleges that the officers illegally stopped and searched the car in which John was riding; this is clearly police misconduct. Contrary to the State’s claim that John’s proffered evidence is broad and vague (People’s

⁶ The State also argues that only allegations of misconduct for which the officers were punished can be used for impeachment. State’s Motion, ¶¶ 7-8. It should first be noted that Jeffery is seeking to use the video evidence both to demonstrate the pattern and practice of the investigating officers *and* for impeachment purposes if necessary. Regardless, when a defendant wishes to use prior allegations of misconduct for impeachment purposes, disciplinary action is not always necessary. *See, e.g. Almodovar*, 2013 IL App (1st) 101476 ¶ 74 (the *Almodovar* court did not require any disciplinary finding against the detective when it held that the detective’s pattern and practice of misconduct of improperly influencing witness identifications was relevant to assessing his credibility); *Cannon*, 293 Ill. App. 3d 634 (1997) (the court did not require evidence of officer discipline when it found that the testimony of over two dozen witnesses with allegations of prior misconduct by Area 2 officers were relevant to defendant’s challenge to the voluntariness of his confession). In the cases cited by the State, the type of evidence the defendants sought to admit and the purpose for offering the evidence both differ from the present case. *See, e.g. People v. Nelson*, 235 Ill.2d 386, 419-422 (appellate court found not abuse of discretion in denying the defendant’s request to cross the officer on a pending civil rights lawsuit involving *one* prior allegation of misconduct claiming the suit gave the detective a motive to lie); *People v. Davis*, 193 Ill.App.3d 1001 (1990) (trial court did not abuse its discretion when it denied defendant’s attempt to cross examine officer on a prior and a pending civil rights suit in order to impeach him with bias or motive to testify falsely); *People v. Porter-Boens*, 2013 IL App (1st) 111074 (in ¶ 17, articulating the standard for admitting prior misconduct evidence does not require disciplinary finding, and finding that the trial court did not abuse its discretion when it quashed defense subpoena for 12 past Independent Police Review Authority (IPRA) complaints against the officer after reviewing the complaints *in camera* and finding that they were either too remote in time or concerned “generalized misconduct” not a series of similar incidents to the conduct in question).

Motion, ¶ 5), the proffered videos show collectively over two dozen traffic stops in the two week period leading up to and including the day that John was stopped. The prior stops proffered here were conducted by the same officers who stopped John and are factually similar to the instant case. The officers here were engaged in a pattern: (1) stop a car occupied by young black or Latino men⁷, ostensibly because of a traffic violation, (2) order the car's occupants out of the car, and (3) search the car. Even for stops involving obvious traffic violations like driving without a driver's license, the officers never issue a traffic citation. This pattern is relevant to the officers' course of conduct and credibility because it undermines their claim that they had articulable and particularized suspicion to stop and search John's car.

II. The proffered evidence is relevant to the pattern and practice and credibility of the officers in John's case.

These videos reveal that pretextually stopping black and Latino men for traffic violations, then searching their cars for contraband whether they have reason to or not, is virtually the entire strategic playbook of this squad. It suggests the officers did not have a legitimate fact-specific reason to suspect a traffic violation or illegal gun possession in John's case, but rather made the stop only because they persisted in the mistaken belief that they could order people out of cars and search the car without a reason. See U.S. Dept. of Justice Civil Rights Division and U.S. Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department*, Jan. 13, 2017, p 142, available at: <https://www.justice.gov/opa/file/925846/download> (discussing how tactical officers in Chicago "like to hunt" for crimes). In John's stop, the officers told John and the other occupants that they could "ask anybody out of a car" for "any reason". The videos demonstrates the officers' belief that they do not need a constitutional reason to stop, much less

⁷ The State contends that due to the demographic make-up of the 10th district it is unsurprising these officers stop primarily black and Latino drivers. While the 10th district does have a large population of black and Latino residents, there are also a significant number of hospitals, schools, and nonprofit organizations that employ non-minority individuals, as well as non-minority residents in the area.

search, a car; this is directly relevant to the credibility of their testimony as to why they stopped, and then searched, the car in which Jeffery was riding.

While John can raise this claim using just his stop, it is difficult to challenge the officers' accounts and motivations without the evidence of the officers' pattern and practice of conduct. *Almodovar*, 2013 IL App (1st) 101476 ¶¶ 63-4. In *Almodovar*, the defendant alleged that the lead detective improperly influenced the key witness' identification procedure, and argued that the trial court should consider evidence that the detective engaged in a pattern and practice of such conduct. *Id.* at ¶¶ 60-4. The Appellate Court agreed with defendant that without evidence of the detective's prior misconduct of influencing witnesses to provide identifications, he could not properly challenge the detective's credibility in his own case. *Id.* at ¶¶ 63-4.

Though this hearing is not a trial and is thus not subject to the Illinois Rules of Evidence, it is useful to consider the framework established by Illinois Rule of Evidence 404(b). Under 404(b), "other acts" evidence can be admitted for purposes other than showing character, such as motive, opportunity, intent, preparation, or plan. Ill. S. Ct. Rule 404(b). Evidence of other acts which establishes *modus operandi* is also generally admissible. *People v. Matthews*, 137 Ill. App. 3d 870 (1985). Where the other act evidence relates to a witness other than the defendant, there is no concern about prejudice, so the evidence is generally relevant. *People v. Pikes*, 2013 IL 115171, ¶¶ 16-21; *People v. Daniels*, 2016 IL App (4th) 140131, ¶ 76. In *People v. Cannon*, the defendant, challenging the voluntariness of his confession, sought to introduce evidence of over two dozen allegations of torture by Area 2 detectives, including some of the same officers in his case. 293 Ill. App. 3d 634, 638 (1997). The appellate court found that the trial court should have considered the prior bad acts of the officers as relevant to course of conduct and credibility, simply stating "in the case before us, our decision is grounded in basic evidence law: the trial

judge should consider relevant evidence when deciding whether a confession was voluntarily made,” finding such evidence clearly relevant. *Id.* at 640, 642. Prior “other” acts such as the ones proffered here are therefore relevant to show the officers’ motive, opportunity, intent, plan, course of conduct, and modus operandi, and should be considered by this court.

Furthermore, should the officers deny the actions they took in this stop, or deny that they are part of a broader routine pattern and practice, evidence of these prior stops is admissible to impeach them.

III. The procedural posture of this case weighs in favor of admitting the evidence.

The State distinguishes *Patterson* and *Almodovar* because they are post-conviction cases. People’s Motion, ¶ 4. At the post-conviction stage, the standard for disturbing a trial court decision is high, thus it make sense that there are several cases that find it was not an abuse of discretion in the particular case, with the particular allegations of misconduct, for a trial court to exclude certain evidence. However, even with such a high standard, in *Patterson* and *Almodovar*, the Court found that the past allegations should be considered. Certainly at the pretrial stage, when the decision is in the sound discretion of the trial court, the court should consider all relevant evidence. Here, we do not just have *allegations* of misconduct. There is video evidence captured by the officers’ own body worn camera of the traffic stops they made leading up to their stop of John. Officers are equipped with body worn cameras pursuant to the Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706/10-5. The act was passed with the goal to improve transparency and accountability, and to strengthen public trust. 50 ILCS 706/10-5. Considering John’s stop in the context of the two weeks of stops by the same officers is the only way for this court to hold the officer’s accountable and properly test their claims.

WHEREFORE, John respectfully requests that the Court deny the People's Motion to Exclude Evidence.

Respectfully submitted,

Counsel for John Doe