

# SUMMARY REPORT

## CHICAGO POLICE DEPARTMENT

LOG NO  
**1084795**TYPE  
**CR**DATE OF REPORT  
**01-DEC-2017****INSTRUCTIONS: SUBMIT ORIGINAL AND 3 COPIES IF ASSIGNED TO SAME UNIT AS ACCUSED.  
SUBMIT ORIGINAL AND 4 COPIES IF NOT ASSIGNED TO SAME UNIT AS**TO:  CHIEF ADMINISTRATOR,  
INDEPENDENT POLICE REVIEW AUTHORITY  CHIEF,  
BUREAU OF INTERNAL AFFAIRS

FROM - INVESTIGATOR'S NAME	RANK	STAR NO	EMPLOYEE NO	UNIT ASSIGNED	UNIT DETAILED
O'BOYLE, MIRANDA	9181	75	120417	113	

REFERENCE NOS.(LIST ALL RELATED C.L., C.B., I.R., INVENTORY NOS., ETC., PERTINENT OF THIS INVESTIGATION)

INCIDENT ADDRESS: 1550 S. MILLARD AVE, CHICAGO, IL 60623 DATE / TIME: 10-APR-2017 23:04 BEAT: 1014

### ACCUSED

NAME	RANK	STAR NO	EMP NO	UNIT		SEX/RACE	DOB	APPOINTED DATE	ON DUTY ?	SWORN ?
				ASSIGNED	DETAILED					
NUNEZ, NICHOLAS E	9161	13672		010	193	M / WWH	1984	01-SEP-2010	YES	YES
MUKITE, NICHOLAS J	9161	15038		010		M / WHI	1985	27-OCT-2014	YES	YES
MURILLO, DAVIS	9161	18710		017		M / S	1981	26-APR-2004	YES	YES

### REPORTING PARTY

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
		CHICAGO, IL		M / BLK	-1987 / 30

### VICTIMS

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
		CHICAGO, IL		M / BLK	-1987 / 30

### WITNESSES

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
------	----------	------	-----------	------------	-----------

\* IF CPD MEMBER, LIST RANK, STAR, EMPLOYEE NOS. IN ADDRESS, PAX/BELL IN TELEPHONE BOX.

### ALLEGATIONS

\*\* SEE LAST PAGE FOR INSTRUCTIONS FOR STATING ALLEGATIONS, AND COMPLETING THE REMAINDER OF THE SUMMARY REPORT.

See Summary report

## I. INTRODUCTION

This case involves allegations of misconduct that occurred on April 10, 2017, when Chicago Police Department (CPD) Officers Nicholas Mukite and Nicholas Nunez arrested [REDACTED] for associating with a gang member, a violation of [REDACTED] parole.

## II. ALLEGATIONS

It is alleged that on April 10, 2017, at approximately 11:10 PM, 23:10 hours, at 1550 S Millard Ave., Chicago, IL 60623, **accused Officer Nicholas Mukite #15038, Employee # [REDACTED] Unit 010**, while on duty:

1. Handcuffed [REDACTED] too tightly.
2. Pulled [REDACTED] by his hooded coat into a police vehicle against his will.
3. Falsely charged [REDACTED] with a parole violation.
4. Performed a pat down of [REDACTED] without proper reasonable articulable suspicion.

It is alleged that on April 10, 2017, at approximately 11:10 PM, 23:10 hours, at 1550 S Millard Ave., Chicago, IL 60623, **accused Officer Nicholas Nunez #13672, Employee # [REDACTED] Unit 010**, while on duty:

1. Handcuffed [REDACTED] too tightly.
2. Pulled [REDACTED] by his hooded coat into a police vehicle against his will.
3. Falsely charged [REDACTED] with a parole violation.

It is alleged that on April 10, 2017, at approximately 11:10 PM, 23:10 hours, at 1550 S Millard Ave., Chicago, IL 60623, **accused Officer Davis Murillo #18710, Employee # [REDACTED] Unit 010**, while on duty:

1. Pulled [REDACTED] by his hooded coat into a police vehicle against his will.

## III. APPLICABLE RULES AND LAWS

**Rule 1:** Violation of any law or ordinance.

**Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.<sup>1</sup>

**Rule 3:** Any failure to promote the Department's efforts to implement its policy or

---

<sup>1</sup> This Rule applies to both the professional and private conduct of all members. It prohibits any and all conduct which is contrary to the letter and spirit of Departmental policy or goals or which would reflect adversely upon the Department or its members. It includes not only all unlawful acts by members but also all acts, which although not unlawful in themselves, would degrade or bring disrespect upon the member or the Department, including public and open association with persons of known bad or criminal reputation in the community unless such association is in the performance of police duties. It also includes any action contrary to the stated policy, goals, rules, regulations, orders or directives of the Department.

accomplish its goals.<sup>2</sup>

**Rule 6:** Disobedience of an order or directive, whether written or oral.<sup>3</sup>

**Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.

**Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.<sup>4</sup>

**Rule 10:** Inattention to duty.

**Fourth Amendment to the United States Constitution:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...

**Article 1, Section 6 of the Illinois State Constitution:** The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means...

#### IV. INVESTIGATION

The Civilian Office of Police Accountability<sup>5</sup> gathered relevant documentary evidence associated with this incident. In addition, COPA obtained statements from the complainant [REDACTED] and the accused officers.

##### A. Statement of Complainant [REDACTED]

On April 13, 2017, Investigators Dennis Kamalic and Oscar Nufio interviewed [REDACTED] at IPRA. [REDACTED] stated that he went to the area of 1550 S. Millard with his cousin [REDACTED] to check on his older brother, [REDACTED] stated he received information that [REDACTED] suffered a medical emergency. [REDACTED] stated that an ambulance transported [REDACTED] from the scene as his

<sup>2</sup> This Rule prohibits any omission or failure to act by any member of the Department, whether on or off duty, which act would be required by the stated policy, goals, rules, regulations, orders and directives of the Department. It applies to supervisory and other members who, through carelessness, inefficiency or design fail to implement all policy goals, rules, regulations, orders and directives of the Department or fail to report to the Department any and all known violations of same, or who through carelessness, inefficiency or design fail to become aware of any such violation, when their assigned duty or supervisory responsibility would require them to become so aware.

<sup>3</sup> This Rule prohibits disobedience by a member of any lawful written or oral order or directive of a superior officer or another member of any rank who is relaying the order of a superior.

<sup>4</sup> Rules 8 and 9 prohibit the use of any excessive force by any member. These rules prohibit all brutality, and physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind.

<sup>5</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>6</sup> [REDACTED] stated that he would provide contact information for his family present during the incident. To date, [REDACTED] has not provided this information.

<sup>7</sup> Attempts were made to contact [REDACTED] for an interview without success. (See Attachments 34 to 36)

cousins ██████ and ██████ arrived. After the ambulance departed, ██████ began to walk back to his house with ██████ as ██████ and ██████ walked towards their vehicle.

██████ stated that around this time plain clothed officers pulled up in an unmarked squad car and asked what was going on. ██████ stated that ██████ addressed the officers and advised the officers that they came to check on their cousin and were now leaving. ██████ stated that the officers then pulled up next to him and ██████ and asked what was going on. ██████ stated that he told the officers he came to check on his brother and the officers asked ██████ his name. ██████ stated the officers then pulled up next to ██████ and asked for his name, which ██████ provided. ██████ stated that the officers jumped out of their car, grabbed both ██████ and ██████ and told them to get on the car. ██████ stated that he and ██████ asked why they were being stopped and why they were being put on the car. The officers ran their names and learned that ██████ was on parole and that ██████ had gang ties. ██████ stated that at that point the officers placed him in handcuffs. ██████ stated that he demanded a supervisor as the officers walked him to the transport vehicle. ██████ admitted hesitating as the officers attempted to place him in the vehicle, scooting down to avoid being placed in the vehicle while continuing to request a supervisor. ██████ stated that the officers ultimately pulled him by the hood of his coat. ██████ stated that as the officers pulled on his coat, it choked him and at some point he hit his head on the police vehicle<sup>9</sup>. ██████ stated that once he was in the car he was transported to the police station.

██████ stated that when he arrived at the station he didn't want to go through the booking process, so he sat on the ground and the officers put leg irons on him. ██████ stated that the officers picked him up and carried him to the "police room," at which point they begin to try and take his personal belongings. ██████ stated that he balled up because he didn't want to go through the process. ██████ stated that he began "tussling" with officers, and one of the officers pushed his head forward as the officers tried to take the handcuffs off. ██████ stated he didn't want the officers to take his handcuffs off because he didn't want to be fingerprinted and the officers left the room. ██████ stated that he was in the room for a period of time, cooled off, and was yelling for the officers to loosen his handcuffs. ██████ stated that he stood up, and the officers came back in and removed the handcuffs. ██████ stated that he remained calm at that point and allowed the officers to process him and then requested medical attention for his head. (Attachments 6 to 9 & 49)

## **B. CPD Reports**

COPA obtained the case report and arrest report. Both documented that there were multiple individuals standing and yelling in the roadway, obstructing the flow of traffic. ██████ and ██████ were approached by officers and walked off quickly, with ██████ holding his hand in his pocket. Both individuals were stopped, patted down for officer safety, and name checks were conducted. ██████ was arrested for a parole violation after officers learned of his parole status. ██████ was listed as a documented gang member. Reports indicated ██████ refused to cooperate throughout the process and once at lock-up began to strike his head on a bench. (Attachments 12 & 20)

---

<sup>8</sup> IPRA investigators made telephone contact with ██████ on July 17, 2017 and IPRA investigators scheduled him for an interview on July 27, 2017. However, ██████ failed to appear for this interview. Future attempts to contact Mr. ██████ were unsuccessful.

<sup>9</sup> Later in ██████ statement he stated that he did not know when he hit his head and that it could have been on the car or at the station when the officer pushed his head down

**C. Photographs**

The evidence technician photographs taken of ██████ depicted what appeared to be minor abrasions to ██████ ankles. Photographs were taken of ██████ arms and wrists, one depicted an Ace bandage on his right hand. A photograph of the left side of ██████ head, behind his ear, depicted some swelling or what appeared to be a bump. There was a photo of the back of Mr. ██████ head depicting bumps on both sides of ██████ head. (Attachment 22)

**D. Medical Records from ██████ Hospital for ██████**

The medical records for ██████ were obtained from ██████ Hospital. The medical records documented that ██████ was diagnosed with a sprain to the right wrist, a minor closed head injury, leg pain, and multiple abrasions. ██████ reported to medical personnel that both his wrists and ankles had pain after being “beat up by police while I was in lockup last night.” The triage notes also indicated that ██████ favored his left ankle and had a noticeable limp. Additionally, notes indicated the wrist and leg pain was due to the CPD handcuffs and the head pain was from trauma from an unknown object. Abrasions were noted on Mr. ██████ wrists and lower legs. (Attachment 24)

**E. Body Worn Camera (BWC)<sup>10</sup>**

Officer Nunez captured the interaction on his BWC. Officer Nunez’s BWC begins with him seated in his police vehicle. As the footage begins, the vehicle approaches ██████ and ██████. The officers get out of the vehicle and Officer Nunez checks ██████ hoodie pockets and places him against the squad car. ██████ walks over to Officer Nunez yelling and raising his hand while holding food. Officer Nunez places ██████ against the car and removes the food from his hand. Both ██████ and ██████ provide their identification to Officer Nunez. Officer Nunez then walks to his vehicle to obtain ██████ and ██████ information. Officer Nunez tells his partner that ██████ is on parole and ██████ is a documented gang member. Officer Nunez walks to the back of his car and a marked squad car stops and advises they can transport ██████ becomes more agitated and begins yelling. ██████ and ██████ yell at ██████ to calm down and get into the car. Officers try to place ██████ into the transport vehicle, but he sits on the floor board and continually asks for a “white shirt,” while refusing to get into the vehicle. At one point, ██████ yells “Ah man, man stop pulling on me bro. I can get up. You choking me bro.” Officer Mukite backs away from ██████ who is still on the floor board and tells him to get up, and the hood of ██████ jacket appears to no longer be attached to his sweatshirt. ██████ then gets into the car and the door is closed.

Officer Mukite realized after the interaction that his BWC had not engaged, and at the district recorded the error with the event number.<sup>11</sup> (Attachment 32)

<sup>10</sup> There was no dash camera footage of the incident (Attachment 30)

<sup>11</sup> COPA does not believe that Officer Mukite knowingly failed to turn on his BWC and he complied with CPD policy by recording the error with the event number.

**F. Statement of Witness Officer Victor Perez**

On September 7, 2017, Investigators Miranda O'Boyle and Norelis Martinez interviewed Officer Perez at COPA. Officer Perez advised that he stopped to assist Officers Mukite and Nunez, and one of them asked him if he could transport [REDACTED]. Officer Perez stated that the scene was chaotic with several civilians yelling. Officer Perez stated that [REDACTED] was brought to his vehicle for transport. Officer Perez stated that he did not see [REDACTED] hit his head at any point or be pulled by the hood of his coat. Officer Perez stated that [REDACTED] was irate and very upset about being arrested while he transported him back to the station. Upon arriving to the 10<sup>th</sup> District, [REDACTED] was turned back over to the arresting officers. Officer Perez stated that [REDACTED] was moving a lot while being transported which could have caused the handcuffs to tighten if the handcuffs were not double-locked. (Attachments 45-46)

**G. Statement of Accused Officer Nicholas Mukite**

On September 6, 2017, Investigator Miranda O'Boyle and Supervisor Mark Clark interviewed Officer Mukite at COPA. Officer Mukite stated that while on patrol, he and officer Nunez witnessed a group of people loudly arguing in the street. Officer Mukite stated that upon stopping to see what was going on, two males were stopped, [REDACTED] who began to walk away with his hand in his pocket and [REDACTED] who was verbally abusive and had a bladed stance. Officer Mukite stated that both [REDACTED] and [REDACTED] were advised to stop, placed against the car, patted down for officer safety, and had their names checked. Officer Mukite stated that he patted down [REDACTED] for officer safety because [REDACTED] was loud and took a bladed stance.

Officer Mukite stated that [REDACTED] was on parole and [REDACTED] was a documented gang member. Officer Mukite arrested [REDACTED] for a parole violation and obstructing a motor vehicle for walking on the road. Officer Mukite stated he assisted placing the handcuffs on [REDACTED] and that the handcuffs were checked for proper fit, but were not double-locked at that time. Officer Mukite stated the handcuffs were double locked at the station. Officer Mukite advised that a transport vehicle responded and he attempted to place [REDACTED] into the transport vehicle, but [REDACTED] sat on the floor board. Officer Mukite stated that one of the transport officers then assisted with getting [REDACTED] into the vehicle. Officer Mukite denied that anyone pulled on [REDACTED] hood or that [REDACTED] complained that his handcuffs were too tight.

On October 19, 2017, Supervisor Clark and Investigator O'Boyle interviewed Officer Mukite at COPA regarding the additional allegation that Officer Mukite lacked justification for patting down [REDACTED]. Officer Mukite confirmed that the exclusive justifications for patting down [REDACTED] were the fact that [REDACTED] was loud and verbally combative and that [REDACTED] took a bladed stance. (Attachments 37-40 & 50-53)

**H. Statement of Accused Officer Nicholas Nunez**

On September 6, 2017, Investigator Miranda O'Boyle and Supervisor Mark Clark interviewed Officer Nunez. Officer Nunez provided substantially the same account of the incident as Officer Mukite. (Attachments 41-44)

**I. Statement of Accused Officer Davis Murillo**

On September 20, 2017, Investigators Miranda O'Boyle and Matthew Haynam interviewed Officer Murillo. Officer Murillo stated that he and his partner stopped at the location to see if the officers needed assistance. Officer Murillo stated that one of the officers asked if Officer Murillo and his partner could transport an arrestee. Officer Murillo stated that he did not see [REDACTED] placed in handcuffs, but that [REDACTED] was already handcuffed when he was brought over to be placed in the transport vehicle.

Officer Murillo stated that [REDACTED] refused to be placed into the transport vehicle. Officer Murillo stated that [REDACTED] sat down in the vehicle, but refused to put in his legs. Officer Murillo stated that he went to the other side of the vehicle and attempted to try and scoot [REDACTED] up by grabbing his shoulders but one hand also grabbed his hood. Officer Murillo stated that [REDACTED] leaned forward at that time and the snaps of his hood came undone. Officer Murillo stated that officers then placed [REDACTED] into the squad car.

[REDACTED]  
Miranda O'Boyle, Investigator

**IV. ANALYSIS AND FINDINGS**

**A. Officer Mukite and Officer Nunez handcuffed [REDACTED] too tightly**

CPD General Order G06-01-02, section V, A-1 covers the use of handcuffs. It states in relevant part: "When feasible, an arrestee will be handcuffed with both hands behind the back and palms positioned outward. Handcuffs will be double-locked." [REDACTED] medical records corroborate his allegation that the handcuffs were too tight and caused him injury. Certainly, [REDACTED] contributed to his injuries by continually resisting and refusing to allow the officers to remove the handcuffs at the station. However, both Officers Nunez and Mukite admitted that [REDACTED] handcuffs were not double-locked until after [REDACTED] arrived at the 10<sup>th</sup> District. Officers Nunez and Mukite provided no justification for not initially double-locking [REDACTED] handcuffs. In fact, Officer Nunez specifically noted that he typically double-locks handcuffs because "if someone that is placed in cuffs, if they begin, uh, to move a lot. Ummm, if we feel that their actions are going to cause them to become tighter." Both Officer Nunez and Mukite described [REDACTED] as being aggressive and combative and therefore they should have known that [REDACTED] handcuffs might tighten and cause him injury.

For these reasons, COPA recommends a finding of **Sustained** for **Allegation #1** against Officer Mukite and Officer Nunez, in that Officer Mukite and Officer Nunez handcuffed Mr. [REDACTED] too tightly in violation of Rules 2, 3, 6, 8, 9, and 10.

**B. Officer Mukite, Nunez and Murrilo did not pull [REDACTED] by his hooded coat into a police vehicle against his will**

Officer Nunez and Officer Mukite denied pulling Mr. [REDACTED] by the hood of his coat. However, Officer Murillo admitted in his statement that in the midst of attempting to assist [REDACTED] into the transport vehicle [REDACTED] resisted and that while grabbing [REDACTED] shoulders he also grabbed [REDACTED] hood which unsnapped from his coat. COPA finds that Officer Murillo accidentally grabbed [REDACTED] hood as [REDACTED] resisted. Officer Murillo credibly stated that once he realized he had grabbed [REDACTED] hood and the snaps detached from the coat, he released his grip and didn't attempt further to assist [REDACTED] into the vehicle in that manner.

Therefore, COPA recommends a finding of **Unfounded** for **Allegation #2** against Officer Mukite and Officer Nunez. There is no credible evidence that Officer Mukite and Officer Nunez pulled [REDACTED] by his hooded coat into a police vehicle against his will.

Furthermore, COPA recommends a finding of **Exonerated** for **Allegation #1** against Officer Murillo. Officer Murillo did not violate any CPD directives when he accidentally grabbed [REDACTED] by his hood while [REDACTED] was resisting getting into the police vehicle.

**C. Officer Mukite did not falsely charge [REDACTED] with a parole violation**

Officer Mukite and Nunez properly and lawfully arrested [REDACTED] for a parole violation. Specifically, Officer Mukite and Nunez only arrested [REDACTED] after obtaining information demonstrating that [REDACTED] was on parole and that [REDACTED] was a known gang member.<sup>12</sup> Therefore, COPA recommends a finding of **Exonerated** for **Allegation #3** against Officer Mukite and Officer Nunez.

**D. Officer Mukite's pat down search of [REDACTED] is permissible under CPD Special Orders and training.**

CPD Special Orders, as presently written, do not allow a sustained finding for the allegation that Officer Mukite performed a pat down search without reasonable articulable suspicion. CPD's Special Order S04-13-09(c)(2) closely tracks the language of an Illinois statute, 725 ILCS 5/108-1.01, which provides in relevant part that "When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in *danger of attack*, he may search the person for weapons." Illinois courts have interpreted 725 ILCS 5/108-1.01 to adhere to the United States Supreme Court's Fourth Amendment jurisprudence which requires that an officer believe the individual is *armed* and dangerous before performing a pat down during an investigatory stop.<sup>13</sup> See, e.g., *People v. Walker*, 2013 IL App (4th) 120118. The plain language of the statute and special order, however, could be interpreted to allow officers

---

<sup>12</sup> 730 ILCS 5/3-3-7 provides in relevant part: The conditions of every parole and mandatory supervised release are that the subject . . . not associate with persons who are members of an organized gang as that term is defined in the Illinois Street gang Terrorism Omnibus Prevention Act."

<sup>13</sup> Any contrary interpretation of 725 ILCS 5/108-1.01 would be unconstitutional because Illinois law must comply with the United States Constitution.

to conduct a pat down any time they feel their safety threatened, irrespective of any facts to support that a person is armed. In the instant case, Officer Mukite indicated that he felt his safety was threatened. Therefore, to sustain this allegation against Officer Mukite would create an unjust result as he acted in accordance with Department orders and training.

**a. Fourth Amendment Discussion**

The Fourth Amendment of the United States Constitution and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Officers may not conduct a limited search for weapons during every valid investigatory stop. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). “The officer may subject the person to a limited search for weapons . . . only if the officer reasonably believes that the person is armed and dangerous.” *Id.* (citation omitted). An officer’s subjective belief is not determinative, but is probative in determining the validity of the frisk. *Id.*

Officer Mukite stated that he performed the pat down search of [REDACTED] for officer safety due to [REDACTED] placing himself in a bladed stance and being loud and “combative.” However, under the Illinois Constitution and the Fourth Amendment to the United States Constitution the exclusive purpose of performing a pat down during an investigatory stop is to search for weapons.<sup>14</sup> See *Terry v. Ohio*, 392 U.S. 1 (1967) (“There must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.”). While Officer Mukite arguably had a sufficient basis to believe that [REDACTED] was dangerous, Officer Mukite did not articulate any basis to believe that [REDACTED] possessed a weapon (i.e. that [REDACTED] was “armed”) and no reasonable basis existed. Under well-settled legal precedent interpreting the 4<sup>th</sup> Amendment, Officer Mukite could not lawfully frisk [REDACTED] for weapons.<sup>15</sup>

COPA recommends a finding of **Unfounded** for **Allegation #4** against Officer Mukite. However, COPA urges CPD to amend its Special Order to comport with the spirit and meaning of the 4<sup>th</sup> Amendment to the United States Constitution and the Illinois Constitution.

[REDACTED]  
Andrea Kersten, Deputy Chief Investigator

<sup>14</sup> COPA notes that if officers have legitimate and reasonable safety concerns during an investigatory stop they may handcuff a suspect for officer safety purposes. However, officers should not resort to handcuffing a suspect in the typical investigatory stop because “handcuffing is the type of action that may convert an investigatory stop into an arrest because it heightens the degree of intrusion.” *People v. Johnson*, 408 Ill. App. 3d 107, 113 (2d Dist. 2010).

<sup>15</sup> At the time Officer Mukite performed the pat down he did not know that [REDACTED] was on parole or that [REDACTED] was a known gang member. Therefore, those facts are irrelevant to determining the propriety of Officer Mukite’s pat down.