

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 3, 2019
Time of Incident:	8:08 p.m.
Location of Incident:	1807 South Avers Avenue
Date of COPA Notification:	August 5, 2019
Time of COPA Notification:	1:27 p.m.

II. INVOLVED PARTIES

Involved Officer #1:	Mark Palazzolo, star #6182, employee ID# [REDACTED], Date of Appointment: July 31, 2006, PO/FTO, Unit 010, DOB: [REDACTED], 1966, Male, White
Involved Officer #2:	Erica Hernandez, star #7157, employee ID# [REDACTED], Date of Appointment: October 29, 2018, PO, Unit 010, DOB: [REDACTED], 1993, Female, White Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 2002, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Mark Palazzolo	It is alleged that on or about August 3, 2019, at approximately 8:08 p.m., at or near 1807 South Avers Avenue, Officer Mark Palazzolo, star #6182, committed misconduct through the following acts or omissions, by:	
	1. using excessive force when you deployed your taser at [REDACTED] and	Sustained
	2. arresting [REDACTED] without justification; and	Sustained
	3. detaining [REDACTED] without justification.	Exonerated
	It is alleged by COPA that on or about August 3, 2019, at approximately 8:08 p.m., at or near 1807 South Avers Avenue, Officer Mark Palazzolo, star #6182, committed misconduct through the following acts or omissions, by:	
	4. failing to comply with S03-14 by failing to timely activate your body worn camera; and	Sustained

	5. failing to accurately complete a Tactical Response Report after a use of force incident.	Not Sustained
Officer Erica Hernandez	1. It is alleged that on or about August 3, 2019, at approximately 8:08 p.m., at or near 1807 South Avers Avenue, Officer Erica Hernandez, star #7157, committed misconduct through the following acts or omissions, by arresting ██████████ without justification.	Sustained
	2. It is alleged by COPA that on or about August 3, 2019, at approximately 8:08 p.m., at or near 1807 South Avers Avenue, Officer Erica Hernandez, star #7157, committed misconduct through the following acts or omissions, by failing to timely activate your body worn camera in violation of S03-14.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

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1. Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
 2. Rule 5: Failure to perform any duty.
 3. Rule 6: Disobedience of an order or directive, whether written or oral.
 4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
 5. Rule 9: Engaging in any unjustified verbal or physical altercation with any person.
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General Orders

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1. G03-02 Use of Force (effective October 16, 2017 to February 28, 2020)
 2. G03-02-01 Force Options (effective October 16, 2017 to February 28, 2020)
 3. G03-02-02 Incidents Requiring the Completion of a Tactical Response Report (effective October 16, 2017 to February 28, 2020)
 4. G03-02-04 Taser Use Incidents (effective October 16, 2017 to February 28, 2020)
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Special Orders

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1. S03-14 Body Worn Cameras (effective April 30, 2018 to present)
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V. SUMMARY OF EVIDENCE¹

On September 6, 2019, ██████████ (██████████) and his mother, ██████████ (██████████) provided statements to COPA. They alleged that, on August 3, 2019, Chicago police officers detained, arrested and tased ██████████ without justification. COPA investigated the

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in the analysis.

allegations and the following is a summary of the incident based on information gathered from several different sources, including body-worn cameras (BWCs),² witness statements,³ and police reports.⁴

On August 3, 2019, a back-to-school block party with police presence took place on the 1600 block of South Avers Avenue.⁵ At approximately 8:07 pm, a group of unknown male juveniles (the “group”), including a male juvenile dressed in black shorts and a baby blue t-shirt with the letter “P” on the front (Male #1), walked past several Department members posted at the corner of South Avers and 18th Street.⁶ Approximately thirty seconds later, a citizen informed Field Training Officer (FTO) Mark Palazzolo and Officer Erica Hernandez,⁷ who were seated in their marked police vehicle at approximately 1800 S. Avers, that a fight was occurring across the street. Officers Palazzolo and Hernandez ran across the street towards the altercation, located at approximately 1807 S. Avers.⁸ As the officers approached, they observed several citizens in the area, including an unknown male wielding a bat (Male #2). ██████████ was on the ground in a defensive posture, being kicked and punched by Male #1.⁹

According to Officers Palazzolo and Hernandez, all of the civilians, including ██████████ and Male #1, ignored the officers’ presence and multiple commands to stop.¹⁰ As ██████████ stood up, Male #1 continued to punch him, and two red laser dots appeared on ██████████ back (see Figure 1). FTO Palazzolo told COPA he pointed his taser in the direction of both juveniles to gain their compliance, as Male #1 and ██████████ were larger and younger than FTO Palazzolo, and they were not responding to verbal commands. When neither Male #1 nor ██████████ responded, FTO Palazzolo stated that he attempted to discharge his taser at Male #1, whom FTO Palazzolo identified as the predominant aggressor in the fight.¹¹ However, FTO Palazzolo’s taser struck ██████████¹² causing him to fall to the ground.¹³ According to ██████████ this was the first time he realized any officers were present. He knew officers were at the corner, but he did not hear any officers say anything or give any verbal commands before he was tased.¹⁴ The BWC video confirms FTO Palazzolo tased ██████████ within three seconds of arriving at the altercation.¹⁵

² Atts. 13-21.

³ Atts. 4, 5, 23-25, 27, 28, 34, 35.

⁴ Atts. 6-9.

⁵ Att. 13 at 1:38; Atts. 14-19.

⁶ Att. 15 at 0:56.

⁷ Officer Hernandez was a probationary police officer (PPO) at the time of this incident.

⁸ Atts. 25, page 9 lines 9-16; Att. 28, page 10 line 21 – page 11 line 3; *see also* Att. 14 at 0:04; Atts. 6-7.

⁹ Att. 13 at 1:43; Att. 14 at 0:14.

¹⁰ Att. 25, page 9 line 22 – page 10 line 12; Att. 28, pages 11, 14-15.

¹¹ Att. 25, page 10 line 20 – page 11 line 8.

¹² FTO Palazzolo stated he made a split-second decision to discharge his taser in the defense of members of the public, describing Male #1 and ██████████ as large, young, and combative. FTO Palazzolo intended to tase Male #1, but he “inadvertently” tased ██████████ instead. He explained that it was a chaotic scene with both vehicular and pedestrian traffic, including Male #2, who was holding a bat. Att. 25, pages 10-11, 19-20.

¹³ Att. 13 at 1:48, Att. 14 at 0:19. The Taser Download Report indicates that at approximately 8:08 pm, FTO Palazzolo discharged his taser one time for a total of five seconds. Att. 9.

¹⁴ Att. 34, pgs. 6, 17, 28; *see also* Atts. 13-17.

¹⁵ Att. 14 at 0:16-0:20.



Figure 1: Screenshot taken from Officer Hernandez’s BWC showing the laser dots from FTO Palazzolo’s taser were focused on [REDACTED]’ lower back as Male #1 punched [REDACTED]

When FTO Palazzolo tased [REDACTED] Male #1 fled on foot, along with the rest of the group.¹⁶ FTO Palazzolo reported his taser deployment and requested an ambulance over the radio.¹⁷ Several nearby Department members assisted by handcuffing [REDACTED] and talking to witnesses, who related that [REDACTED] was attacked by Male #1 and FTO Palazzolo tased the wrong person.¹⁸

FTO Palazzolo placed [REDACTED] in the back of his squad car. [REDACTED] asked why he was being arrested when the group “jumped” him. FTO Palazzolo responded, “You’re all fighting.”¹⁹ He then collected [REDACTED] information, including his parents’ contact information. According to Officers Palazzolo and Hernandez, [REDACTED] was arrested for reckless conduct, in that he engaged in a physical altercation on the public way.²⁰

[REDACTED] was transported via ambulance to Mt. Sinai Hospital to remove the taser prongs.²¹ According to [REDACTED] FTO Palazzolo entered his room and apologized to him, explaining that after watching the BWC footage, he determined [REDACTED] was the victim and would not be charged.²² FTO Palazzolo, however, told COPA he went to the police station to complete paperwork and did not go to the hospital.²³

¹⁶ Male #2 was standing a few feet south of the altercation at the time [REDACTED] was tased. Att. 13 at 1:49.

¹⁷ Att. 13 at 2:03; Att. 10.

¹⁸ Att. 13 at 2:15; Att. 16 at 2:40 – 3:30, Att. 17 at 3:47. One civilian told a responding sergeant, “That’s the crazy part, serg. [FTO Palazzolo] sat there and watched them walk right past him and start jumping on that boy. He done tased the wrong motherfucker, that’s fucked up.” Att. 16 at 3:18.

¹⁹ Att. 14 at 2:35-2:44; *see* Att. 15 at 4:04-4:08 ([REDACTED] stated he was sixteen and the group attacked him.)

²⁰ Att. 25, page 24 line 24 – page 25 line 14, Att. 28 pages 50-51.

²¹ Atts. 6, 7. [REDACTED] stated he had bruises due to the taser prongs, but was otherwise uninjured. Att. 34, page 23.

²² Att. 34, pages 7, 22-23.

²³ Att. 25, pages 11-12, 27.

According to ██████████ at approximately 8:43 pm, she and her husband received a phone call from FTO Palazzolo. The officer explained that he accidentally tased ██████████ and informed both parents they could meet ██████████ at the hospital.²⁴ When ██████████ arrived at the hospital, ██████████ was being escorted out of the hospital in handcuffs. The officers who were with ██████████ stated he was not under arrest but had to be in handcuffs for transport to the police station, and they could not provide any further details.²⁵ At approximately 9:20 pm, Officers Casimir Janus and Cassandra Tijerina transported ██████████ to the 010 District Police Station.²⁶ Three hours later, at 12:04 am, ██████████ was released without charges from the 010 District lock up, after further investigation.²⁷

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.²⁸ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”²⁹

²⁴ Att. 35, pages. 4-9, 16-17.

²⁵ Atts. 5, 35.

²⁶ Atts. 7, 20, 21.

²⁷ Att. 7, page 5; see Att. 6; Att. 25, page 30.

²⁸ See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (“A proposition is proved by a preponderance of the evidence when it has found to be more probably true than not.”).

²⁹ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

VII. ANALYSIS AND CONCLUSIONS

In reaching the findings discussed herein, COPA evaluated the credibility of the accused Department members as well as the civilian witnesses to this incident. The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness; and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. As discussed in more detail throughout, COPA finds the officers provided materially accurate statements, although their explanations for acting were not always objectively reasonable.

a. Officers Palazzolo and Hernandez failed to comply with S03-14 by failing to timely activate their BWCs.

Department policy requires officers to activate their BWCs at the beginning of an incident and record the entire incident for all law-enforcement activities, including calls for service, use of force incidents, and arrests. If circumstances prevent BWC activation at the beginning of an incident, the member will activate their camera as soon as practical.³⁰ Here, Officers Palazzolo and Hernandez both stated they activated their BWCs when safe and practical. The officers asserted their focus was on controlling a volatile situation, not activating their cameras.

While it is undisputed that the officers responded to a volatile situation, the preponderance of the evidence demonstrates the officers had multiple opportunities to activate their BWCs when it was safe and reasonable to do so, including when they received the call for service and as they approached the altercation in the street. Instead, Officer Hernandez activated her BWC approximately ten seconds after the taser discharge, and FTO Palazzolo waited an additional 90 seconds before he began recording.³¹ For these reasons, COPA finds Officers Palazzolo and Hernandez failed to timely activate their BWCs, in violation of Rules 5 and 6. As a result, Allegation 4 against FTO Palazzolo and Allegation 2 against Officer Hernandez are **sustained**.

b. Officers Palazzolo and Hernandez arrested ██████████ without justification.

An officer may arrest an individual when there is probable cause to believe the individual has committed a crime.³² "Probable cause to arrest exists when the circumstances within the arresting officer's knowledge at the time of the arrest are sufficient to warrant a man of reasonable caution to believe an offense has been committed and that the individual arrested has committed the offense."³³ In Illinois, a person commits reckless conduct "when he or she, by any means lawful or unlawful, recklessly performs an act or acts that: (1) cause bodily harm to or endanger the safety of another person; or (2) cause great bodily harm or permanent disability or disfigurement to another person."³⁴

³⁰ Special Order S03-14 III.A.2.

³¹ The taser discharge occurred at 8:08:10 pm; Officers Hernandez and Palazzolo activated their BWCs at 8:08:20 pm and 8:09:50 pm, respectively. *See* Atts. 13-14.

³² *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

³³ *People v. D.W. (In re D.W.)*, 341 Ill. App. 3d 517, 526 (1st Dist. 2003) (citing *People v. Love*, 199 Ill.2d 269, 279 (2002)).

³⁴ 720 ILCS 5/12-5-a.

Here, ██████ complained that Officers Palazzolo and Hernandez arrested him even though he was the victim. The officers asserted there was probable cause to arrest ██████ for reckless conduct, as he was engaged in a physical altercation in the public way. FTO Palazzolo further explained that while Male #1 appeared to be the predominant aggressor when the officers approached, at the time of the incident both ██████ and Male #1 were engaged in behavior that endangered the public. However, Officers Palazzolo and Hernandez also admitted they arrested ██████ based on the incomplete information they had at the time. COPA finds that additional information was readily available to the officers at the time they arrested ██████ but neither officer took any steps to uncover the information.

The evidence shows that the officers, and particularly FTO Palazzolo, observed Male #1 fighting with ██████ and made a knee-jerk decision to arrest both subjects. The officers failed to take any steps to assess whether Male #1 and ██████ were mutual combatants or an offender attacking a victim. Instead, FTO Palazzolo immediately escorted ██████ to a squad car, told him he was under arrest for fighting, and ignored ██████ statement that the group had “jumped” him. The officers also ignored the eyewitness accounts of at least four different civilians, all of whom reported that Male #1 had attacked ██████. They also failed to speak to other officers at the scene, who could have corroborated that a group of juveniles, including Male #1 and Male #2 with the baseball bat, walked purposefully towards ██████ location less than thirty seconds before the altercation began. Finally, Officers Palazzolo and Hernandez failed to review their BWC videos, which captured ██████ on the ground in a defensive position as Male #1 punched and kicked him. All of this evidence indicates ██████ was the victim, not the aggressor or a mutual combatant. COPA finds that a reasonable officer would not have arrested ██████ under these circumstances. In fact, Department reports document that Lt. Sean Ronan investigated the incident, determined ██████ was the victim, and declined to charge him.

For all these reasons, COPA finds the preponderance of the evidence demonstrates that Officers Palazzolo and Hernandez did not have probable cause to arrest ██████ based on the information available to them at the time of the arrest. Therefore, Allegation 2 against FTO Palazzolo and Allegation 1 against Officer Hernandez are **sustained** as violations of Rules 2, 3, and 6.

c. FTO Palazzolo had reasonable suspicion to detain ██████ after the incident.

Although Officers Palazzolo and Hernandez did not have probable cause to arrest ██████ they did have reasonable articulable suspicion³⁵ to detain ██████ while they conducted an investigation. Additionally, although it took approximately three hours for ██████ to be released, COPA finds this was a reasonable amount of time for the Department members to investigate the incident and complete the required paperwork. There is no evidence that FTO Palazzolo delayed the process or unnecessarily prolonged ██████ detention. For these reasons, COPA finds there is clear and convincing evidence that FTO Palazzolo did not detain ██████ longer than necessary, and Allegation 3 against him is **exonerated**.

³⁵ Department policy defines reasonable articulable suspicion as “an objective legal standard that is less than probable cause but more substantial than a hunch or general suspicion. Reasonable Articulable Suspicion depends on the totality of the circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member's training and experience.” Special Order S04-13-09(II)(C).

d. FTO Palazzolo used excessive force when he discharged his taser at [REDACTED]

An officer's use of a taser must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.³⁶ Department policy authorizes officers to use a taser against (1) an active resister, defined as a person who attempts to create distance from an officer with the intent to avoid physical control and/or defeat the arrest; or (2) an assailant, defined as a person who is using or threatening to use force against another person which is likely to cause physical injury.³⁷ However, tasers may only be used for the purpose of gaining control of and restraining a subject.³⁸ In this case, it is undisputed that [REDACTED] and Male #1 were classified as assailants, and therefore the taser was an authorized force option. At issue here is whether it was objectively reasonable, necessary, and proportional for FTO Palazzolo to discharge his taser at [REDACTED]

This incident occurred during a block party with police presence. The BWC footage shows that several Department members were approximately half a block from the incident, and Male #1 walked past those Department members less than a minute before instigating the physical altercation with [REDACTED]. When FTO Palazzolo and Officer Hernandez approached the altercation, Male #1 was punching and kicking [REDACTED] who was on the ground in a defensive position. Although the officers asserted they repeatedly yelled verbal commands to stop, neither officer believed they announced their office. Instead, FTO Palazzolo immediately pointed his taser at [REDACTED] and kept the taser's laser dots pointed at [REDACTED] until he discharged the weapon. Neither FTO Palazzolo nor Officer Hernandez attempted to physically separate Male #1 and [REDACTED] before FTO Palazzolo discharged his taser. Additionally, several Department members responded to the incident at approximately the same time as FTO Palazzolo, but none had time to assist in separating Male #1 and [REDACTED] because FTO Palazzolo discharged his taser approximately three seconds after arriving at the altercation.

Based on the totality of the circumstances, COPA finds it was unreasonable, unnecessary, and disproportionate for FTO Palazzolo to discharge his taser against [REDACTED]. Therefore, COPA finds FTO Palazzolo used excessive force when he tased [REDACTED] in violation of Rules 2, 3, 6, 8, and 9. As a result, Allegation 1 against FTO Palazzolo is **sustained**.

e. There is insufficient evidence to determine whether FTO Palazzolo failed to accurately complete a Tactical Response Report after a use of force incident.

When an officer is involved in a reportable use of force, Department policy requires the officer to accurately complete a Tactical Response Report (TRR) that includes a narrative detailing the actions of both the officer and the subject.³⁹ In his TRR, FTO Palazzolo documented that he attempted to discharge his taser toward Male #1, but [REDACTED] stood up and moved, causing [REDACTED] to be struck by the taser. In his statement to COPA, Officer Palazzolo maintained that his intention was to strike Male #1 with his taser. However, BWC shows the taser's laser dots were always focused on [REDACTED] not Male #1.

³⁶ General Order G03-02-04 II.C.

³⁷ General Order G03-02-01 IV.B.2; G03-02-01 IV.C.

³⁸ General Order G03-02-04 II.C.

³⁹ G03-02-02 IV.B.

The evidence is unclear whether FTO Palazzolo was negligent in aiming and discharging his taser, or whether he intentionally discharged his taser at [REDACTED]. Therefore, COPA finds there is insufficient evidence to determine whether FTO Palazzolo accurately documented his actions in his TRR, and Allegation 5 against FTO Palazzolo is **not sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. FTO Mark Palazzolo

COPA has found that FTO Palazzolo violated Rules 2, 3, 5, 6, 8 and 9 by tasing and arresting [REDACTED] without justification, and by untimely activating his BWC. In mitigation, COPA has considered FTO Palazzolo’s complimentary history and lack of disciplinary history.⁴⁰ In aggravation, COPA notes that FTO Palazzolo bears the brunt of the responsibility for [REDACTED] maltreatment. He was a field training officer when this incident occurred, and his decision to both tase and arrest [REDACTED] set a poor example for Officer Hernandez, who had less than a year of experience as a CPD officer. FTO Palazzolo’s actions also brought significant discredit to the Department, with a civilian witness noting that the officer “tased the wrong motherfucker...you all wonder why people don’t give you all respect, man. Your people out here doing the wrong shit.”⁴¹ Accordingly, COPA recommends Officer Palazzolo receive a **45-day suspension**.

b. Officer Erica Hernandez

COPA has found that Officer Hernandez violated Rules 2, 3, 5, and 6 by arresting [REDACTED] without justification and untimely activating her BWC. In mitigation, COPA has considered Officer Hernandez’s complimentary history, lack of disciplinary history, and inexperience as an officer.⁴² COPA has also considered Officer Hernandez’s minor role in this incident, including her lack of meaningful involvement in FTO Palazzolo’s decision to arrest [REDACTED]. Finally, although Officer Hernandez was approximately thirty seconds late in activating her BWC, she still began recording a minute and a half earlier than her training officer, FTO Palazzolo. Accordingly, COPA recommends Officer Hernandez receive a **reprimand**.

Approved:

[REDACTED]

5/27/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

⁴⁰ Officer Palazzolo has received 97 awards, including one field training service award, one life saving award, two complimentary letters, three Department commendations, and 83 honorable mentions. He has no sustained disciplinary history in the past five years. Att. 37.

⁴¹ Att. 17 at 3:18.

⁴² At the time of this incident, Officer Hernandez was a PPO with less than a year of experience as a CPD officer. She has no sustained disciplinary history and has received 12 awards, including one complimentary letter and nine honorable mentions. Att. 38.

