



August 19, 2022

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log No. 2019-3030, Officer Mark Palazzolo

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (Department) in Log No. 2019-3030.¹

As set forth in detail in COPA's Summary Report of Investigation in Log No. 2019-3030 (SRI), dated May 27, 2022, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of 45 days' suspension against Officer Mark Palazzolo based on findings that he violated Department policy by using excessive force by deploying his taser at [REDACTED] (Mr. [REDACTED] by arresting Mr. [REDACTED] without justification, and by failing to timely activate his body worn camera. There is also a compelling legal and evidentiary basis to support COPA's finding and disciplinary recommendation of reprimand against Officer Erica Hernandez for arresting Mr. [REDACTED] without justification.²

I. BACKGROUND

A. Relevant Factual Background³

On August 3, 2019, at approximately 8:07 pm, a citizen informed Field Training Officer (FTO) Mark Palazzolo and Officer Erica Hernandez that a fight was occurring across the street. FTO Palazzolo and Officer Hernandez ran across the street towards the altercation, located at approximately 1807 S. Avers. As the officers approached, they observed Mr. [REDACTED] on the ground in a defensive posture, being kicked and punched by Male #1. Mr. [REDACTED] and Male #1 ignored the officers' presence and commands to stop. As Mr. [REDACTED] stood up, Male #1 continued to punch him. Then, Officer Palazzolo pointed his taser at Mr. [REDACTED] and two red laser dots appeared on Mr. [REDACTED] lower back. FTO Palazzolo told COPA he pointed his taser in the direction of both individuals to gain their compliance. FTO Palazzolo stated that he attempted to discharge his taser at Male #1, whom FTO Palazzolo identified as the predominant aggressor in the fight. However, FTO Palazzolo's taser struck Mr. [REDACTED] causing him to fall to the ground. FTO Palazzolo tased Mr. [REDACTED] within three seconds of arriving at the altercation. Almost immediately after FTO Palazzolo's taser discharge, witnesses told the officers that Mr. [REDACTED] was attacked by Male #1 and that FTO Palazzolo tased the wrong person. Nevertheless, Mr. [REDACTED] was placed under arrest for reckless conduct. After a trip

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's non-concurrence letter, and the certificate of meeting.

² The Superintendent agrees with the finding and recommended penalty on Allegation #2 against Officer Hernandez.

³ A more detailed factual summary can be found in the SRI.

to the hospital for the removal of taser prongs, Mr. ██████ was taken to the 10th District police station. He was released without charges approximately three hours later.

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he does not concur with COPA's findings as to Allegations #1 and #2 against FTO Palazzolo, and Allegation #1 against Officer Hernandez. The Superintendent also disagrees with the penalty recommendation for Allegation # 4 against FTO Palazzolo.

C. Applicable Department Policy

1. Taser Use Incidents

The Department Policy in effect at the time of this incident provided that the 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 person.⁴ Department Policy authorized the use of a taser on individuals classified as active resisters and assailants, but not passive resisters.⁵

2. Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters to be electronically recorded on the officers' BWC.⁶ Law-enforcement-related encounters include, but are not limited to, calls for service, investigatory stops, seizure of evidence, foot and vehicle pursuits, arrests, use of force incidents, high risk situations, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.⁷ The recording of law-enforcement-related encounters is mandatory.⁸ Officers must activate their BWCs at the beginning of an incident and record the entire incident.⁹ If there are circumstances preventing the activation of the BWC at the beginning of an incident, the officer "will activate the BWC as soon as practical."¹⁰

II. ANALYSIS

A. FTO Palazzolo Used Excessive Force in Tasing Mr. ██████

The Superintendent argues that FTO Palazzolo's taser discharge against Mr. ██████ did not constitute excessive force.¹¹ The evidence contradicts his argument. Specifically, the evidence is uncontradicted that FTO Palazzolo accidentally tased the wrong person. FTO Palazzolo admitted that he inadvertently tased Mr. ██████ and that he had intended to tase Male #1 instead. The BWC footage from the incident shows that FTO Palazzolo discharged his taser within 3 seconds of arriving at the altercation. His hasty discharge undoubtedly contributed to his error. Although FTO Palazzolo claimed that he had given verbal commands

⁴ G03-02-04.II.C (Eff. Oct. 16, 2017)

⁵ G03-02-01.IV (Eff. Oct. 16, 2017)

⁶ S03-14.II.A

⁷ S03-14.III.2

⁸ S03-14.III.1

⁹ S03-14.III.2

¹⁰ S03-14.III.2

¹¹ As a preliminary matter, COPA notes that, in its discussion of Allegation #1 against FTO Palazzolo, it mistakenly characterized Mr. ██████ as an assailant. *See* Summary Report of Investigation, Log # 2019-0003030, at p.8 (May 27, 2022). COPA does not believe Mr. ██████ qualified as an assailant or a resister. COPA has raised this error during its communication with the Superintendent's designees.

for the men to separate prior to discharging his taser, he failed to identify himself as a police officer and failed to take any other steps to ensure that he tased only the intended person and did not endanger innocent bystanders. Thus, FTO Palazzolo's taser discharge against Mr. ██████ was neither objectively reasonable, necessary, nor proportional, because Mr. ██████ posed no threat to FTO Palazzolo or anyone else on scene. For these reasons, FTO Palazzolo's taser discharge was excessive and violated Department Policy.

B. FTO Palazzolo and Officer Hernandez Lacked Probable Cause to Arrest Mr. ██████

The Superintendent contends that FTO Palazzolo and Officer Hernandez had probable cause to arrest Mr. ██████ on scene for reckless conduct. His argument lacks merit. First, Mr. ██████ conduct did not meet the elements of the offense to justify his arrest. Second, the accused officers had information immediately available to them on scene indicating that Mr. ██████ was the victim. As such, they lacked probable cause to arrest Mr. ██████ without further investigation. Based on these facts, COPA maintains that the officers arrested Mr. ██████ without probable cause in violation of Department Policy.

FTO Palazzolo justified Mr. ██████ arrest by claiming that Mr. ██████ conduct endangered the safety of another person. The record contradicts his claim. Specifically, based upon the events FTO Palazzolo and Officer Hernandez observed when they first arrived on scene, they had no probable cause to believe that Mr. ██████ was causing any harm to anyone, let alone great bodily harm or permanent disfigurement.¹² Likewise, the officers had no probable cause to believe that Mr. ██████ recklessly performed any act endangering the safety of another person.¹³ Mr. ██████ was the victim of a violent beating. Immediately upon arrival on scene, the officers' BWC shows Mr. ██████ bent over trying to protect himself from the blows from Male #1 while on the ground. Even once he manages to stand up, Mr. ██████ is attempting to protect his head with his arms while Male #1 punches him. There is no evidence that Mr. ██████ is an aggressor when the officers arrive. Rather, Mr. ██████ appears vulnerable, with his clothing disheveled and his pants sliding down and exposing his buttocks. Nearby bystanders then almost immediately inform the officers that Mr. ██████ was attacked. Mr. ██████ also reiterates to the officers that he was "jumped."

Here, the totality of the circumstances would have indicated to any reasonable officer that although an offense had been committed, Mr. ██████ was not the offender, but the victim. At this point, the officers lacked probable cause to believe that Mr. ██████ had committed a crime. Thus, FTO Palazzolo and Officer Hernandez needed additional information to confirm or dispel their suspicion that Mr. ██████ was the aggressor, which they could have acquired through additional investigation. They failed to obtain such additional information. Instead, they placed Mr. ██████ under arrest without having probable cause. FTO Palazzolo's and Officer Hernandez' arrest of Mr. ██████ was unlawful and violated Department Policy.

C. FTO Palazzolo's Failure to Timely Activate his BWC Warrants a Higher Penalty than the Superintendent Proposes.

FTO Palazzolo failed to timely activate his BWC. In fact, he only activated his camera 90 seconds after he discharged his taser at Mr. ██████. The Superintendent concedes that such activation was untimely, but recommends that FTO Palazzolo receive a reprimand and re-training, instead of the 45-day suspension recommended by COPA. As a Field Training Officer, Palazzolo was responsible for setting an example for Officer Hernandez by following Department Policy. Instead, he activated his BWC nearly 80 seconds later than Officer Hernandez. In addition, his failure to timely activate the BWC resulted in a loss of possibly mitigating evidentiary material. Specifically, FTO Palazzolo claimed that he had issued verbal commands prior to discharging his taser, but, due to his failure to timely activate his BWC, such audio was never

¹² 720 ILCS 5/12-5(a): 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."

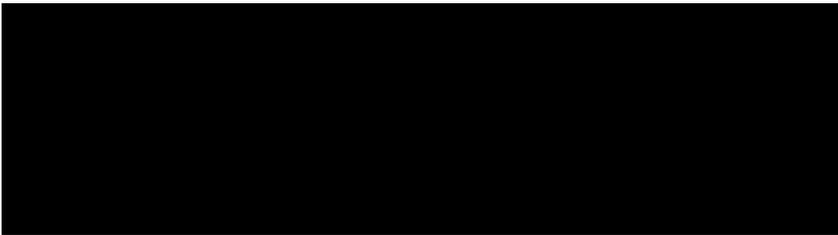
¹³ 720 ILCS 5/12-5(a)

recorded. FTO Palazzolo had ample time and opportunity to activate his BWC but had failed to do so. He has provided no valid justification for his delayed activation. As such, COPA maintains that a 45-day suspension is an appropriate penalty.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's finding and penalty recommendation in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommended finding and penalty of 45 days' suspension for FTO Palazzolo.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

Copy of Superintendent's Letter



Lori E. Lightfoot
Mayor

Department of Police • City of Chicago
3510 South Michigan Avenue • Chicago, Illinois 60653

David O. Brown
Superintendent of Police

July 19, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability (COPA)
1615 West Chicago Avenue, 4th Floor
Chicago, Illinois 60622

RE: Complaint Log Number 2019-0003030
Field Training Officer Mark Palazzolo, Star No. 6182
Probationary Police Officer Erica Hernandez, Star No. 7157

Dear Chief Administrator:

After a careful review of the above referenced complaint log number, the Chicago Police Department (CPD) does not concur with the sustained findings nor the recommended penalties. Pursuant to the Municipal Code of Chicago, the CPD provides the following comments.

The COPA investigation recommended a penalty of a forty-five (45) day suspension for Field Training Officer (FTO) Mark Palazzolo after concluding that he:

1. used excessive force when he deployed his taser at a citizen;
2. arrested the citizen without justification;
3. failed to timely activate his body worn camera.

In addition, the COPA investigation recommended a penalty of a reprimand for Probationary Police Officer Erica Hernandez after concluding that she:

1. arrested the citizen without justification;
2. failed to timely activate her body worn camera.

FTO Palazzolo - Allegation #1 (excessive force):

The COPA investigation stated that “Based on the totality of the circumstances, COPA finds it was unreasonable, unnecessary and disproportionate for FTO Palazzolo to discharge his taser...” However, the investigation acknowledges that because both the citizens that were fighting would be classified as assailants, the taser was an authorized force option. This is a contradiction to state that the officer was authorized to use this specific force option but that it was unreasonable to do so. The Force Options Model specifically states that for assailants, a member’s proportional response is direct mechanical options, including the use of a taser.

Emergency: 9-1-1 • **Non-Emergency:** (Within City limits) 3-1-1 • **Non-Emergency and TTY:** (Outside City limits) 312-746-6000

E-mail: clearpath@cityofchicago.org • **Website:** www.chicagopolice.org

At the moment of taser discharge, Officer Palazzolo stated he was aiming at one of the fighting citizens but because of their movements, he struck the other fighting citizen. The COPA investigation addressed this by stating that it was unclear whether the officer was negligent in aiming and discharging his taser or whether he intentionally discharged his taser at the citizen that was struck. If the former, then this would be a reasonable use of force for which the negligence should be addressed by training. If the latter, then this would be a reasonable use of force authorized under CPD policy.

The investigation stated that neither officer attempted to physically separate the two men fighting. However at the 19 second mark of Officer Palazzolo's body-worn camera video, he can be seen running right up to the men and then backing away. And at the 1:48 minute mark of Officer Hernandez' Body-Worn Camera video, Officer Palazzolo can be seen touching one of the combatants and then backing away. Officer Palazzolo explained that the reason he had his taser out was that both of the men fighting were physically larger and younger than him. This would explain why he would run up but then back away as this perception would be very obvious as he came that close to both the individuals. CPD policy specifically states that nothing requires a member to take an action, or fail to take an action, that would unreasonably endanger themselves. As the officer could clearly see that the two men were not stopping in their conduct of fighting, it would be very likely that the officer could be struck, either intentionally or inadvertently.

The COPA investigation also states that several CPD members responded to the incident at approximately the same time as Officer Palazzolo, but none had time to assist in separating the men fighting because Officer Palazzolo had discharged his taser. But there is nothing in the file to determine whether Officer Palazzolo knew that other officers were mere seconds away as he was not looking for other officers but rather at the men themselves. It is reasonable for Officer Palazzolo to believe that one man could suffer severe injuries if he didn't take action immediately. CPD policy specifically acknowledges that members are often forced to make split-second decisions about the use of force required in circumstances that are tense, uncertain and rapidly evolving. Therefore, these decisions must be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable CPD member on the scene and not with the benefit of 20/20 hindsight.

FTO Palazzolo – Allegation #2 and PPO Hernandez - Allegation #1 (Arrest w/out Justification):

At the time the complainant was placed under arrest, there was probable cause to do so. The complainant was just involved in a fist fight on the public way. The fact that it was later determined that the complainant was the victim does not change this initial justification. This is the reason that a policy and procedure exists that allows a person to be released without charging. Further investigation can always determine whether the initial determination was incorrect. But at the time of arrest, the complainant was involved in the fist-fight. The fact that at the time of police arrival the complainant had fallen to the floor doesn't necessarily mean he is the victim but can also be because the other fighter, who may have been the victim and acting in self-defense, was essentially "winning." The officer doesn't know at this time who was the initiator of the fight or who is acting in any type of self-defense. All the officer knows at this time is that they are fighting. By the time the complainant/arrestee returned from the hospital after having the taser prongs removed, the Watch Operations Lieutenant had done his investigation for the Tactical Response Report and the Lieutenant made the determination that the complainant/arrestee was the victim and then released him without charging. Even if the officer disagreed with the Lieutenant about the complainant/arrestee being the victim, that is irrelevant because it is the Lieutenant's final decision. But that doesn't change the probable cause determination made at the time of arrest.

FTO Palazzolo – Allegation #3 and PPO Hernandez - Allegation #2 (Fail to timely activate BWC):

Both members did activate their BWC's and the event is caught on video. But because of their delayed activation, the audio does not immediately start due to the buffer and the activation occurring after the taser discharge. The Department acknowledges that they should have activated their BWC as soon as they exited their vehicle, or as soon as practicable thereafter. As such, the CPD recommends that this allegation be sustained and both members receive a Reprimand and additional training on Taser use and policy and BWC activation and policy.

The Chicago Police Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department

Copy of SRI

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#102206, Date of Appointment: July 31, 2006, PO/FTO, Unit 010, DOB: December 3, 1966, Male, White
Involved Officer #2:	Erica Hernandez, star #7157, employee ID#124590, Date of Appointment: October 29, 2018, PO, Unit 010, DOB: April 17, 1993, Female, White Hispanic
Involved Individual #1:	Edmond [REDACTED] DOB: November 22, 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 Edmond [REDACTED] and	Sustained
	2. arresting Edmond [REDACTED] without justification; and	Sustained
	3. detaining Edmond [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.	NotSustained
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 Edmond ██████ 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

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.

General Orders

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)

Special Orders

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

V. SUMMARY OF EVIDENCE¹

On September 6, 2019, Edmond ██████ (Mr. ██████ and his mother, Roxanne ██████ (Mrs. ██████) provided statements to COPA. They alleged that, on August 3, 2019, Chicago police officers detained, arrested and tased Mr. ██████ 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). Mr. ██████ 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 Mr. ██████ and Male #1, ignored the officers’ presence and multiple commands to stop.¹⁰ As Mr. ██████ stood up, Male #1 continued to punch him, and two red laser dots appeared on Mr. ██████ 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 Mr. ██████ were larger and younger than FTO Palazzolo, and they were not responding to verbal commands. When neither Male #1 nor Mr. ██████ 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 Mr. ██████¹² causing him to fall to the ground.¹³ According to Mr. ██████ 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 Mr. ██████ 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 Mr. ██████ as large, young, and combative. FTO Palazzolo intended to tase Male #1, but he “inadvertently” tased Mr. ██████ 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 Mr. [REDACTED] lower back as Male #1 punched Mr. [REDACTED]

When FTO Palazzolo tased Mr. [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 Mr. [REDACTED] and talking to witnesses, who related that Mr. [REDACTED] was attacked by Male #1 and FTO Palazzolo tased the wrong person.¹⁸

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

Mr. [REDACTED] was transported via ambulance to Mt. Sinai Hospital to remove the taser prongs.²¹ According to Mr. [REDACTED] FTO Palazzolo entered his room and apologized to him, explaining that after watching the BWC footage, he determined Mr. [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 Mr. [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 (Mr. [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. Mr. [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 Mrs. [REDACTED] at approximately 8:43 pm, she and her husband received a phone call from FTO Palazzolo. The officer explained that he accidentally tased Mr. [REDACTED] and informed both parents they could meet Mr. [REDACTED] at the hospital.²⁴ When Mrs. [REDACTED] arrived at the hospital, Mr. [REDACTED] was being escorted out of the hospital in handcuffs. The officers who were with Mr. [REDACTED] 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 Mr. [REDACTED] to the 010 District Police Station.²⁶ Three hours later, at 12:04 am, Mr. [REDACTED] 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 Mr. [REDACTED] 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, Mr. ██████ complained that Officers Palazzolo and Hernandez arrested him even though he was the victim. The officers asserted there was probable cause to arrest Mr. ██████ 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 Mr. ██████ and Male #1 were engaged in behavior that endangered the public. However, Officers Palazzolo and Hernandez also admitted they arrested Mr. ██████ 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 Mr. ██████ 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 Mr. ██████ and made a knee-jerk decision to arrest both subjects. The officers failed to take any steps to assess whether Male #1 and Mr. ██████ were mutual combatants or an offender attacking a victim. Instead, FTO Palazzolo immediately escorted Mr. ██████ to a squad car, told him he was under arrest for fighting, and ignored Mr. ██████ 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 Mr. ██████. 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 Mr. ██████ location less than thirty seconds before the altercation began. Finally, Officers Palazzolo and Hernandez failed to review their BWC videos, which captured Mr. ██████ on the ground in a defensive position as Male #1 punched and kicked him. All of this evidence indicates Mr. ██████ was the victim, not the aggressor or a mutual combatant. COPA finds that a reasonable officer would not have arrested Mr. ██████ under these circumstances. In fact, Department reports document that Lt. Sean Ronan investigated the incident, determined Mr. ██████ 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 Mr. ██████ 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 Mr. ██████ after the incident.

Although Officers Palazzolo and Hernandez did not have probable cause to arrest Mr. ██████ they did have reasonable articulable suspicion³⁵ to detain Mr. ██████ while they conducted an investigation. Additionally, although it took approximately three hours for Mr. ██████ 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 Mr. ██████ detention. For these reasons, COPA finds there is clear and convincing evidence that FTO Palazzolo did not detain Mr. ██████ 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 Mr. [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 Mr. [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 Mr. [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 Mr. [REDACTED]. When FTO Palazzolo and Officer Hernandez approached the altercation, Male #1 was punching and kicking Mr. [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 Mr. [REDACTED] and kept the taser's laser dots pointed at Mr. [REDACTED] until he discharged the weapon. Neither FTO Palazzolo nor Officer Hernandez attempted to physically separate Male #1 and Mr. [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 Mr. [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 Mr. [REDACTED]. Therefore, COPA finds FTO Palazzolo used excessive force when he tased Mr. [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 Mr. [REDACTED] stood up and moved, causing Mr. [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 Mr. [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 Mr. [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 Mr. [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 Mr. [REDACTED] maltreatment. He was a field training officer when this incident occurred, and his decision to both tase and arrest Mr. [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 Mr. [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 Mr. [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:



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.

Certificate of Meeting

CERTIFICATE OF MEETING AND SERVICE

I, Andrea Kersten, Chief Administrator of the Civilian Office of Police Accountability (COPA), hereby certify the following with respect to Log No. 2019-3030:

1. On May 27, 2022, COPA provided the Superintendent the final disciplinary file related to COPA's recommendation of discipline in the above log number.
2. COPA received the Superintendent's written response on July 20, 2022.
3. On August 12, 2022, COPA designees met with Department designees to conclude their discussion of the non-concurrence related to the above log number.
4. The Request for Review was referred to the Police Board on August 19, 2022. It was delivered as a PDF attached to an email addressed to Executive Director Max Caproni.
5. Pursuant to § 2-78-130, on August 19, 2022, the Superintendent's designees were provided by email notice that the Chief Administrator referred the above log number to the Police Board for a Request for Review. The Superintendent's designees were also provided by email with a copy of the Certificate and all Request for Review material that was sent to the Police Board.



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

August 19, 2022

Date