



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