



Log # 2019-0002411

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On June 29, 2019, the Civilian Office of Police Accountability (COPA) received a complaint from ██████████ (██████████) and ██████████ (██████████) reporting alleged misconduct by a member of the Chicago Police Department (CPD). ██████████² and ██████████³ alleged that on June 28, 2019, Officer Martin Hernandez (Officer Hernandez) and Officer Joseph Cunningham (Officer Cunningham) stopped and searched them both without justification⁴. Upon review of the evidence, COPA served additional allegations that Officer's Hernandez and Cunningham also failed to complete investigatory stop reports for this stop. Following its investigation, COPA reached sustained and not sustained findings.

II. SUMMARY OF EVIDENCE⁵

On June 28, 2019, at approximately 4:30 pm, Officers Cunningham⁶ and Hernandez⁷ were on patrol in the area of 4031 W Gladys Ave when they observed ██████████⁸ and ██████████ make what appeared to be a hand-to-hand narcotics transaction with two unknown individuals near that location. The officers then initiated a street investigation where both ██████████ and ██████████ were detained on scene.⁹

While detained, Officer Hernandez and Officer Cunningham claimed that ██████████ told the officers to search him. He also turned out his own pockets for the officers to view. Officer Cunningham and Hernandez did not recall physically patting-down ██████████ because he turned his pockets out and they did not suspect ██████████ to be in possession of a weapon. Officers Hernandez and Cunningham described ██████████ as belligerent and she requested that a female officer come to the scene to search her and her bag, which will prove that she does not have anything on

¹ Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

² Att. 21 – ██████████ interview

³ Att. 20 – ██████████ interview

⁴ One or more of these allegations fall within COPA's jurisdiction pursuant to Chicago Municipal Code § 2-78-120. Therefore, COPA determined it would be the primary investigative agency in this matter.

⁵ The following is a summary of what COPA finds occurred during this incident. This summary utilized information from several different sources, including civilian and officer interviews.

⁶ Att. 30 – Officer Cunningham interview

⁷ Att. 29 – Officer Hernandez interview

⁸ Officer Cunningham and Officer Hernandez noted in their statements having recognized ██████████ from previous narcotics encounters in the area.

⁹ Att. 5

her.¹⁰ [REDACTED] was later assessed by a female officer who was requested to the scene.¹¹ No narcotics were found during this investigation and both [REDACTED] and [REDACTED] were released on scene.¹²

Officer Cunningham and Officer Hernandez were not assigned BWCs by their unit¹³ at the time of this incident. The vehicle that they were driving did not have an In Car Camera (ICC). There were also no ISRs documenting this investigation to be found. Both Officer Hernandez and Officer Cunningham admitted that they forgot to complete ISRs after they left the location¹⁴.

III. ALLEGATIONS

Officer Hernandez and Officer Cunningham

1. It is alleged that the accused unjustifiably stopped and searched Enrique R. [REDACTED] on or about June 28, 2019, at or about 4:30 p.m., near the property located at 4031-4033 W. [REDACTED]
 - Not Sustained
2. The accused officer failed to complete an investigatory stop report for an investigatory stop of Enrique R. [REDACTED] on or about June 28, 2019, at or about 4:30 p.m., near the property located at 4031-4033 W. Gladys St.
 - Sustained
3. It is alleged that the accused unjustifiably stopped and searched [REDACTED] on or about June 28, 2019, at or about 4:30 p.m., near the property located at 4031-4033 W. Gladys St.
 - Not Sustained
4. The accused officer failed to complete an investigatory stop report for an investigatory stop of [REDACTED] on or about June 28, 2019, at or about 4:30 p.m., near the property located at 4031-4033 W. Gladys St.
 - Sustained

IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any significant objective evidence that caused COPA to question the credibility of any of the individuals (sworn or unsworn) who provided statements.

¹⁰ Att. 23 – unit history shows that Unit 4415 arrived at the location of 4037 W Gladys

¹¹ Both officers could not recall whether [REDACTED] was searched, pat-down, or both on scene by the female officer.

¹² Prior to releasing [REDACTED] and [REDACTED] Officer Hernandez had a conversation with [REDACTED] mother who pleaded for [REDACTED] and [REDACTED] release while also acknowledging [REDACTED] involvement in the narcotics trade.

¹³ Att. 29 at 12:18 “Summer Mobile – a gang investigation team to address violence and narcotics.” And Att. 30 at 8:05

¹⁴ Att. 30 at 15:21

V. ANALYSIS¹⁵

a. Stop and Search Allegations

COPA finds the allegation that Officers Hernandez and Cunningham unjustifiably stopped and searched ██████ and ██████ is **Not Sustained**. CPD members are authorized to conduct investigatory stops when they have reasonable articulable suspicion that an individual is committing, is about to commit, or has committed a criminal offense.¹⁶ Reasonable articulable suspicion has been described as less than probable cause and more than a hunch or general suspicion. It “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.”¹⁷

Outside of the statements conflicting provided by the involved parties, COPA finds there is a lack evidence as to what happened during the officer interaction with ██████ and ██████. Therefore, COPA finds there is insufficient evidence to either prove or disprove the allegation by a by the applicable burden of the evidence. Accordingly, the allegation is not sustained against the involved officers.

b. ISR Allegations

COPA finds the allegation that Officers Hernandez and Cunningham failed to complete an investigatory stop report for an investigatory stop for both ██████ and ██████ are **Sustained**. S04-13-09 provides that “sworn members who conduct an Investigatory Stop are required to complete an Investigatory Stop Report” (ISR). Both Officers Hernandez and Cunningham acknowledged conducting an investigatory stop of both ██████ and ██████ yet no ISRs were completed by either officer. This was addressed in both Officer Hernandez’ and Officer Cunningham’s interviews with COPA where they each admitted to not completing ISRs because they forgot.¹⁸

VI. DISCIPLINARY RECOMMENDATION

a. Officer Joseph Cunningham Star# 21238¹⁹

- i. **Complimentary and Disciplinary History:** Officer Cunningham has received a total of 108 complimentary awards and recognitions. He has 1 Reprimand for failure to inventory a prisoner’s property in 2020.
- ii. **Recommended Discipline:** COPA has considered Officer Cunningham’s complimentary history and lack of disciplinary history. Officer

¹⁵ For a definition of COPA’s findings and standards of proof, *see* Appendix B.

¹⁶ The authority for conducting an investigatory stop is delineated in 725 ILCS 5/107-14(a) and Special Order S04-13-09, Investigatory Stop System (effective July 10, 2017 – present).

¹⁷ S04-13-09(II)(C)

¹⁸ Atts. 28 & 29

¹⁹ Att. 34

Cunningham acknowledged during his interview that he failed to complete an ISR after his interaction with [REDACTED] and [REDACTED]. Therefore, COPA recommends a Reprimand and Retraining in Investigatory Stop Reports.

b. Officer Martin Hernandez Star#6529²⁰

- i. Complimentary and Disciplinary History:** Officer Hernandez has received a total of 89 complimentary awards and recognitions, including 1 life saving award, 1 annual bureau award of recognition and 1 superintendent's award of tactical excellence. Officer Hernandez does not have a reported history of sustained allegations.
- ii. Recommended Discipline:** COPA has considered Officer Martinez's complimentary history and lack of disciplinary history. Officer Martinez acknowledged during his interview that he failed to complete an ISR after his interaction with [REDACTED] and [REDACTED]. Therefore, COPA recommends a Reprimand and Retraining in Investigatory Stop Reports.

Approved:



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

5/1/2023

Date

²⁰ Att. 35

Appendix A**Case Details**

Date/Time/Location of Incident:	June 28, 2019 / 4:30 PM / 4031 W Gladys Ave
Date/Time of COPA Notification:	June 29, 2019 / 4:15 PM
Involved Officer #1:	Martin Hernandez, Star# 6529, Employee# [REDACTED], Date of Appointment: June 3, 2013, PO, Unit: 011, DOB: [REDACTED], 1983, Male, Hispanic
Involved Officer #2:	Joseph Cunningham, Star# 21238, Employee# [REDACTED], Date of Appointment: February 18, 2014, PO/Detective, Detective Area 4, DOB: [REDACTED], 1985, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1992, Male, Black/Hispanic
Involved Individual #2:	[REDACTED] DOB: [REDACTED], 1999, Female, Black

Applicable Rules

- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- 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.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.
- Rule __:** *[Insert text of any additional rule(s) violated]*

Applicable Policies and Laws

- 725 ILCS 5/107-14
- 725 ILCS 5/108-1
- S04-13-09: Investigatory Stop System (effective July 10, 2017 to present)

Appendix B

Definition of COPA’s Findings and Standards of Proof

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.²¹ 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.”²²

²¹ 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 is found to be more probably true than not).

²² *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

Appendix C

Transparency and Publication Categories

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation