



Brandon Johnson
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Fred L. Waller
Interim Superintendent of Police

August 28, 2023

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL. 60622

RE: Superintendent's Non-Concurrence with COPA's proposed penalty
Log Number #2020-0001353
Police Officer Josue Rodriguez, Employee # [REDACTED]

Dear Chief Administrator:

After a careful review, the Superintendent concurs with the sustained findings for Allegations #2 through #6 against Officer Josue Rodriguez for allegations related to sexual misconduct reported on 15 March 2020, but does not concur with the sustained finding for allegation #1 and the proposed penalty of separation. Based on the facts detailed in this investigation, the Superintendent believes that a two-hundred-seventy (270) day suspension is an appropriate penalty in this case.

The Superintendent does not concur with the sustained finding for Allegation #1 against Officer Josue Rodriguez for violation of Rule 02 and Rule 08 of the Chicago Police Department's (CPD) Rules and Regulations. The Superintendent believes that the facts and evidence made available through COPA's investigation which include but are not limited to reviews of the CPD report under RD number JD186656; the Oak Lawn Police Department (OLPD) criminal investigation reports under #20-01320; the Complainant's interview with OLPD; and independent interviews with the Complainant, then P.P.O. Josue Rodriguez, and [REDACTED] do not support the proposed penalty of separation.

The Complainant, [REDACTED] reported that on 15 March 2020, then P.P.O. Rodriguez sexually assaulted her by way of non-consensual digital and penile penetration to her vagina at [REDACTED] residence located at [REDACTED], Oak Park, Illinois [REDACTED]. Upon further investigation, COPA served additional allegations that P.P.O. Rodriguez "committed the act of oral copulation on [REDACTED] used his hands to fondle [REDACTED] breast, removed and/or rearranged clothing from [REDACTED] body, pulled [REDACTED] by the legs to re-position her body on a bed; all without consent, made various unwanted sexual advances, and was intoxicated off-duty."¹

It is well established that sexual assault cases often turn on difficult fact and credibility determinations. The issue in this case is consent and while the Complainant's general statements related to the alleged sex acts were uncontested, the allegations related to the issue of consent were refuted by P.P.O. Rodriguez and the lone witness, [REDACTED]. By his own admission, P.P.O. Rodriguez confirms that he engaged in sexual

¹ COPA Final Summary Report Log #2020-0001353

intercourse with the Complainant, ██████████ on 15 March 2020. The factual dispute in this case is whether ██████████ consented to engage in sexual intercourse with P.P.O. Rodriguez. In his statement, P.P.O. Rodriguez confirms that he inserted his penis inside of ██████████ vagina² (Allegation 1); confirms that his hand touched ██████████ vagina,³ but neither confirms nor denies inserting his finger(s) inside of ██████████ vagina⁴ (Allegation 2); confirms touching ██████████ breasts⁵ (Allegation 4); and confirms ██████████ shorts were removed and/or rearranged⁶ (Allegation 5), but asserts that ██████████ removed and rearranged her own clothing to facilitate P.P.O. Rodriguez's penile penetration of her vagina.⁷ The lone witness, ██████████ confirms she was an active participant and present during the alleged sexual misconduct and corroborated P.P.O. Rodriguez's assertion that ██████████ consented to the sexual encounter. At no time did the Complainant allege that "force" or "threat of force" was used by P.P.O. Rodriguez during the commission of the alleged sexual misconduct; therefore, the allegation (Allegation 01) that P.P.O. Rodriguez "forcibly penetrated ██████████ by inserting his penis into her vagina without her consent, is not legally sufficient.

Following a lengthy investigation which commenced on 24 March 2020 and concluded on 25 May 2023, COPA sustained six (6) allegations out of eight (8) against the Accused, then Probationary Police Officer (P.P.O.) Josue RODRIGUEZ. The findings in Allegation 01 are not legally sufficient. Allegation numbers 02 through 08 are legally sufficient, however COPA did not sustain Allegations 07 and 08. COPA determined P.P.O. Rodriguez violated Rules 02 and 08, recommending P.P.O. Rodriguez be separated from the CPD.

In determining the appropriate level of discipline, the CPD should consider the nature and seriousness of the offense, the sworn member's performance record (including complimentary and disciplinary history), the employee's length of continuous service, other mitigating circumstances, and other relevant factors including but not limited to, case precedent and prior Police Board findings and decisions. Cause for separation means some substantial shortcoming that in some way renders the sworn member's continued service in the position detrimental to the reputation of the CPD, the public peace, and the service of law.

The CPD has a strong public interest in enforcing the law and holding its own members accountable, while also establishing a fair and constitutional disciplinary system. The undisputed facts and statements in this case suggest that P.P.O. Rodriguez may have displayed remarkably poor judgment on 15 March 2020 by engaging in a variety of sex acts with ██████████ but they do not necessarily support a finding that he did so without consent. While many of the allegations of sexual misconduct in this Complaint Log against P.P.O. Rodriguez may be proven by a preponderance of the evidence, the OLPD and Cook County State's Attorney's Office (CCSAO) have determined that the facts and evidence do not support a finding that P.P.O. Rodriguez engaged in various sex acts with ██████████ without her consent.

Further, no evidence other than the statements made by the Complainant were presented in support of the allegation that P.P.O. Rodriguez engaged in various sex acts with ██████████ without her consent. To the contrary, COPA found no evidence to support the allegation that P.P.O. Rodriguez made any prior unwanted verbal sexual advances towards ██████████ no evidence to support that P.P.O. Rodriguez or any other party to this incident was intoxicated, and no evidence was presented that P.P.O. Rodriguez knew or should have known that the Complainant did not consent to the alleged sex acts. Rather, COPA relies heavily on a mere

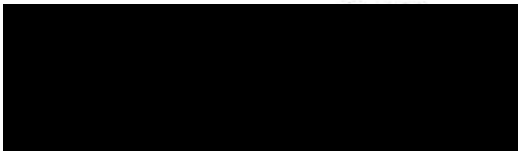
² Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page 30
³ Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page 29
⁴ Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page 59
⁵ Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page 29
⁶ Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page 30
⁷ Statement of Officer Josue Rodriguez to COPA on 10 August 2022 at 12:45 p.m. on page(s) 30 and 60

presumption that the Complainant's physical reaction, a "freeze response"⁸, during sexual intercourse demonstrated a lack of consent and therefore, P.P.O. Rodriguez should have known that the Complainant did not consent.

It should be noted that P.P.O. Rodriguez's appointment date is 19 February 2019 and at the time of service of this Complaint Log, 24 March 2020, P.P.O. Rodriguez remained an "at-will" employee subject to the eighteen-month probationary period. P.P.O. Rodriguez's eighteen-month probationary status expired at the end of 19 July 2020. P.P.O. Rodriguez has since completed his eighteen-month probationary period and is currently assigned to Unit 044.

In another case involving allegations of sexual misconduct where the Police Board determined that the officer "showed remarkably poor judgment"⁹ and engaged in conduct that "undermines public confidence in the judgment of CPD officers and the Department's mission"¹⁰, the Police Board found the officer's violations warranted severe disciplinary action and determined the appropriate penalty was a suspension without pay for two-hundred-seventy (270) days¹¹.

Similarly, the allegations contained in this Complaint Log brings discredit upon the Department and undermines the public's trust and confidence in CPD officers; however, due to the lack of sufficient evidence to validate, prove, or verify the issue of consent in this case, the penalty of SEPARATION recommended by COPA is inappropriate in this case. P.O. Josue Rodriguez has no other disciplinary history. Consistent with the aforementioned Police Board finding, a suspension without pay of two-hundred-seventy (270) days is appropriate discipline based on the facts and evidence presented in this particular case.



Fred L. Waller
Interim Superintendent of Police
Chicago Police Department

⁸ COPA Final Summary Report Log #2020-0001353 on page 10
⁹ Police Board Case #22 PB 3006, In the Matter of Charges Filed Against Police Officer Daniel Otero
¹⁰ Id.
¹¹ Id.