

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	April 5, 2019 / 7:15 pm / 7600 S Halsted Street, Chicago, IL 60620.
Date/Time of COPA Notification:	July 12, 2019 / 11:02 am.
Involved Officer #1:	Officer Hazem Sweis / Star#14720 / Employee ID# [REDACTED] / DOA: October 31, 2012 / Unit: 006/189 / Male / White.
Involved Officer #2:	Officer Harry Vazquez Jr. / Star#17014 / Employee ID# [REDACTED] / DOA: April 28, 2014 / Unit: 010/716 / Male. Hispanic.
Involved Individual #1:	[REDACTED] / Male / Black.
Case Type:	Q3 – Improper Detention

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation.
Officers Hazem Sweis and Harry Vazquez	1. Detaining Mr. [REDACTED] without justification.	Exonerated.
	2. Searching Mr. [REDACTED] without justification.	Exonerated.
	3. Striking Mr. [REDACTED] about the head and body, without justification.	Not Sustained.
	4. Arresting Mr. [REDACTED] without justification.	Exonerated.
	5. Failing to active your Body Worn Camera.	Sustained / Written Reprimand.

II. SUMMARY OF EVIDENCE¹

Officers Hazem Sweis and Harry Vazquez² (the Officers) were patrolling the area when they observed Mr. [REDACTED] exiting the Falcon Fuel (7600 S. Halsted St.)³ when he stopped, reached into his pocket, obtained a large roll of currency, and engaged in a hand-to-hand transaction with an unidentified male black. Based on these observations, the Officers decided to stop [REDACTED] for further investigation. As Officer Vazquez approached [REDACTED] he observed [REDACTED]

¹ During this incident, several members of the public refused various members’ directions to disperse from the location and their refusal resulted in their arrests. COPA determined that, absent a specific complaint from those arrested, there was no reasonable basis to serve the allegation.

² Harry Vazquez was promoted from Officer to Sergeant during the pendency of this investigation. For the purposes of this investigation and summary report, he will be addressed as “officer”, reflecting his rank at the time this incident occurred.

³ COPA notes that the Falcon Fuel is a participant in the Department’s Trespass Affidavit Program.

grab for his waistband causing Officer Vazquez to believe [REDACTED] was concealing a weapon or contraband. Officer Vazquez completed a protective pat down and detected an object consistent with narcotics in his waistband. Officer Vazquez handcuffed [REDACTED] and attempted to recover the discovered object. [REDACTED] responded by stiffing, pulling away and reaching towards the concealed object. To gain control of [REDACTED] the Officers executed an emergency takedown. Once [REDACTED] was on the ground, he continued to reach for the object concealed in his waistband. [REDACTED] was able to retrieve the concealed object, a clear plastic bag containing suspected cannabis, and attempted to place it in his mouth. Officer Vazquez attempted to prevent [REDACTED] from consuming the cannabis and was bit on his index finger, breaking the skin. Eventually, with the assistance of other members, the evidence was recovered, and [REDACTED] was secured in a Department vehicle.

During his statement, [REDACTED] alleged that he was struck in the head and his body by the Officers. Additionally, [REDACTED] alleged that the Officers failed to activate their Body Worn Cameras (BWC). Further, [REDACTED] explained that he engaged in action consistent with a hand-to-hand transaction in full view of the Officers.⁴

During their statements, the Officers denied striking [REDACTED] and acknowledged failing to activate their BWC in accordance with Department policy.⁵ Additionally, Officer Vazquez explained that he believed he attempted to activate his BWC but that the need to quickly act to detain [REDACTED] may have caused his late activation.⁶

III. 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 the conduct occurred and violated Department policy. *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). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

⁴ Att. 71 from 03:27 to 03:50 and 16:55 to 19:30.

⁵ Att. 76 at 10:26; Att. 79 at 08:28.

⁶ Att. 79 at 08:30.

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. See *e.g.*, *People v. Coan*, 2016 IL App (2d) 151036 (2016). 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.” *Id.* at ¶ 28.

IV. ANALYSIS AND CONCLUSION

COPA finds that Allegations #1, 2, and 4 against the Officers are **exonerated**. Department members are permitted to detain a person when there is reasonable articulable suspicion that person is about to commit, is committing, or has committed a criminal offense.⁷ This detention is an Investigatory Stop. Additionally, a person who is lawfully detained can be subjected to a limited search – a protective pat down – for weapons if a Department member “reasonably suspects that [the member] or another is in danger of attack, [the member] may search the person for weapons.”⁸ Further, if during the limited search the Department member “encounters an object that, based on their training and experience, . . . believes the object is contraband, the . . . member may seize the item without a warrant[; however, prior to the recovery t]he object may not be manipulated in order to determine the identity of the object.”⁹ Finally, an officer must have probable cause to arrest a subject.¹⁰ “Probable cause to arrest exists where the police have knowledge of facts that would lead a reasonable person to believe that a crime has occurred and that the subject had committed it.”¹¹ The reasonable basis of any arrest “should be considered from the perspective of a reasonable officer at the time” of the arrest.¹²

Here, it is undisputed that ██████ engaged in conduct consistent with a hand-to-hand narcotics transaction and that the Officers observed ██████ conduct. ██████ action alone created a reasonable articulable suspicion that he was committing a crime – specifically narcotic sales – that warranted further investigation. Additionally, it is undisputed that once the Officers attempted to detain ██████ for further investigation, he attempted to conceal an object, the cannabis, by grabbing at his waistband. This action, in conjunction with the suspicion of narcotic sales, would cause a reasonable officer to reasonably suspect that ██████ was a danger of attack, thereby permitting a protective pat down. While Officer Vazquez completed his protective pat down, he felt an object he recognized as consistent with narcotics packaging. Given the totality of Officer Vazquez’ observations, it was reasonable for him to believe the packaging was in fact narcotics packaging. Further, once Officer Vazquez handcuffed ██████ who responded by stiffing, pulling away, obtaining control of the cannabis, attempting to consume the cannabis, and biting Officer Vazquez, probable cause existed that ██████ had committed a crime, specifically possession of a controlled substance and aggravated battery. For the reasons explained above the Officers’ decisions to detain, subject ██████ to a protective pat down and arrest ██████ were reasonable and proper.

⁷ S04-13-09 II (A)

⁸ S04-13-09 IV(B).

⁹ S04-13-09 II (E).

¹⁰ *People v. Johnson*, 408 Ill. App. 3d 107 (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964).

¹¹ S04-13-09 II(D).

¹² S04-13-09 II(D).

COPA finds that Allegation #3 against the Officers is **not sustained**. Here, COPA was unable to locate any evidence, beyond ██████████ and the Officers' statements, the support or refute the allegations.¹³

COPA finds that Allegation #5 against the Officers is **sustained**. Department Members are required to activate BWC "at the beginning of" or "as soon as practical" for "calls for service; investigatory stops; ... arrest; use of force incidents; seizure of evidence; ... searches, including searches of people, items, vehicle, buildings, and places; ... any other instance when enforcing the law."¹⁴ Here, it is undisputed that the Officers failed to timely active their BWCs prior to detaining ██████████

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Hazem Sweis

i. Complimentary and Disciplinary History

Officer Sweis' complimentary history is comprised of 152 achievements, including two Superintendent's Award of Tactical Excellence, two Joint Operations Awards and 128 Honorable Mentions. His recent disciplinary history includes an October 2020 SPAR for a Preventable Accident resulting in a Reprimand.

ii. Recommended Penalty, by Allegation

1. Allegation No. 5 – Sustained – Written Reprimand

b. Officer Harry Vazquez Jr.

i. Complimentary and Disciplinary History

Officer Vazquez's complimentary history is comprised of 139 achievements, including one Superintendent's Award of Tactical Excellence, one Military Service Award, one Department Commendation, one Annual Bureau Award of Recognition, and 117 Honorable Mentions. His recent disciplinary history includes a March 2022 SPAR for a Preventable Accident resulting in No Disciplinary Action.

ii. Recommended Penalty, by Allegation

1. Allegation No. 5 – Sustained – Written Reprimand

It is undisputed the Officers violated Rule 6 by failing to timely activate their BWCs. While the late activation is a violation of policy, the Officers' failure did not directly impact this investigation.

¹³ COPA notes that during the interaction ██████████ was an active resister and assailant and that his actions would have permitted the Officers from striking.

¹⁴ S03-14 III(A)(2).

Approved:



Deputy Chief Investigator

7-14-2023

Date