



Log # 2021-3504

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On September 5, 2021, the Civilian Office of Police Accountability (COPA) received a complaint via an Initiation Report from Lieutenant Christoph McHugh reporting alleged misconduct by a member of the Chicago Police Department (CPD). Lieutenant McHugh's report stated that during a review of body-worn camera (BWC) footage from an arrest that had occurred earlier that morning, he observed Officer Jonathon Zarate discharging his Taser an excessive number of times at ██████████ (██████████) including using the drive-stun Taser technique in violation of CPD policy.² Following its investigation, COPA reached a sustained finding regarding the allegation that Officer Zarate used excessive force against ██████████

II. SUMMARY OF EVIDENCE³

On September 5, 2021, Officer Zarate and Officer Zachery McClanahan (collectively “the officers”) were on patrol when they responded to a 911 call reporting a disturbance in an apartment building at ██████████⁴ The BWC video evidence shows that Officers Zarate and McClanahan arrived at the location and met with ██████████ (██████████) and ██████████ (██████████) on the sidewalk outside the building.⁵ ██████████ and ██████████ informed the officers they made the 911 call to complain about an aggressive and threatening interaction they had just experienced with a neighbor from their building. They told the officers that their neighbor, who was later identified as ██████████ had knocked on the door of their third-floor apartment that evening, then aggressively pushed open the door and entered the apartment without permission.⁶ ██████████ said his toe was injured when ██████████ had pushed the door open so suddenly, but he declined to have the officers call an ambulance to treat him.⁷ After confirming that ██████████ and ██████████ both intended to sign complaints, the officers provided them with misdemeanor complaint forms and other related documents, advised them how to obtain a warrant or order of protection

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 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.

³ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including BWC footage, CPD reports, a fire department/ambulance report, and officer interviews.

⁴ Att. 8, pg. 11.

⁵ Att. 22 at 2:00 to 2:10.

⁶ Att. 22 at 2:10 to 2:37.

⁷ Att. 22 at 2:56 to 3:07.

against ██████ in the event it should prove necessary for them to do so, and then proceeded inside the building.⁸

█████ answered the door of his second-floor apartment when the officers knocked, but he refused to exit when Officer McClanahan asked him to come out into the hallway.⁹ Instead, ██████ told the officers to come into his apartment if they wanted to speak to him. Officer McClanahan stood on the threshold of the apartment's dark entranceway as ██████ explained that he had initiated a confrontation with his upstairs neighbors because they had disturbed him by jumping on the floor.¹⁰ Officer McClanahan told ██████ to come downstairs with them, but ██████ retreated into his apartment and pulled away when the officer attempted to reach out to him.¹¹ Officer Zarate entered behind Officer McClanahan and activated his flashlight to illuminate the dark space. This light revealed that ██████ wife, ██████ was also in the apartment and was standing just behind ██████¹²

A struggle ensued between ██████ and Officer McClanahan, and Officer Zarate warned, "I'm gonna Tase the shit out of you, man," before calling for backup on his radio.¹³ ██████ put her hands out and repeatedly pushed and grabbed at the officers as her ██████ and Officer McClanahan moved into a very cluttered room at the back of the apartment.¹⁴ Officer Zarate unholstered his Taser and called again for backup as both Officer McClanahan and ██████ fell to the floor.¹⁵ While readying the Taser, Officer Zarate again warned that he would tase ██████ and then said, "Zack, I can't get in," just before he pressed the Taser against ██████ unclothed right side using the drive-stun technique.¹⁶

There appeared to be a brief pause, and then ██████ grabbed at Officer Zarate's arms and positioned herself between him and the two men on the floor.¹⁷ Officer Zarate called for backup a third time and pushed ██████ aside, warning that that he would tase her too if she failed to get back.¹⁸ At that point, ██████ became more active in his struggle with Officer McClanahan. Officer Zarate said, "Move Zack, move Zack, move!" just before discharging the Taser prongs into ██████ lower torso.¹⁹ When the initial five-second Taser charge did not appear to incapacitate ██████ Officer Zarate intermittently reenergized the Taser approximately seven or eight more times in quick succession, while again warning ██████ to get back.²⁰ Officer Zarate asked ██████ if he was done struggling, to which ██████ answered, "Yeah."²¹ Officer Zarate then ordered him to put his hands behind his back.

⁸ Att. 22 at 3:17 to 17:10.

⁹ Att. 22 at 17:10 to 18:07; Att. 21 at 17:10 to 18:08.

¹⁰ Att. 22 at 18:07 to 18:28; Att. 21 at 18:08 to 18:29.

¹¹ Att. 22 at 18:28 to 18:36, Att. 21 at 18:29 to 18:37.

¹² Att. 22 at 18:36 to 18:39.

¹³ Att. 22. at 18:39 to 18:43.

¹⁴ Att. 22 at 18:43 to 18:48.

¹⁵ Att. 22 at 18:48 to 18:57.

¹⁶ Att. 22 at 18:57 to 19:11.

¹⁷ Att. 22 at 19:11 to 19:16.

¹⁸ Att. 22 at 19:25 to 19:35.

¹⁹ Att. 22 at 19:35 to 19:46.

²⁰ Att. 22 at 19:46 to 20:11.

²¹ Att. 22 at 20:13 to 20:17.

At this point, the only BWC still functioning was Officer Zarate's, as Officer McClanahan's BWC had fallen off his vest and become deactivated during the struggle.²² Officer Zarate's BWC was too close to ██████████ to clearly capture ██████████ movements, but the officer's Taser was visible and audible as he activated it again in drive-stun mode directly against ██████████ naked back.²³ While ██████████ was lying on the floor, not appearing to present any further active resistance, Officer Zarate again threatened to deploy his Taser at ██████████. Officer Zarate then re-applied the Taser directly to ██████████ back in drive-stun mode.²⁴ Officer Zarate appeared to be breathing heavily, and his speech was not clearly audible as he seemed to say, "Zack..." and then shouted, "We need another car!" as he energized the Taser again for another five-second discharge.²⁵ Officer Zarate energized the Taser in short bursts approximately five or six more times, after which he seemed to say, "Gonna keep tasing you, man!"²⁶ Shortly thereafter, the officers successfully restrained ██████████ in handcuffs.²⁷

In total, the physical confrontation lasted more than six minutes.²⁸ According to the Taser Download Report, Officer Zarate used his Taser eighteen times, including two full five-second activations, for a total of 28 seconds of electrical discharges.²⁹ Other officers arrived on scene and took ██████████ into custody. He was able to walk on his own to the ambulance, where paramedics found two taser probes in his back.³⁰ ██████████ wife, ██████████ was also arrested for two counts of aggravated battery to a peace officer due to her having struck and interfered with the officers during the incident.³¹

Officer Zarate wrote in his Tactical Response Report (TRR) that he used his Taser because he believed ██████████ was trying to reach Officer McClanahan's duty belt in order to disarm him.³² During his interview with COPA, Officer Zarate stated that he initially found it difficult to determine which force option he should employ to help Officer McClanahan during the struggle, as, "I wanted to deploy my Taser, but I really couldn't at that time because of the close proximity that – that my partner was in and I couldn't really use any other tool because, you know, the only thing available was ██████████ head, ██████████ head and I can't strike him in the head..."³³ Officer Zarate also explained his initial usage of the Taser's drive-stun function, stating, "I had to maneuver my way through a stationary bike as my partner was getting battered and I drive stunned ██████████ to try and stop him from battering my partner. At that point, it had -- it had an effect on him so my partner was able to create separation."³⁴

²² Att. 21 at 19:48 to 20:15 (Officer McClanahan's BWC was deactivated at 20:15).

²³ Att. 22 at 20:34 to 20:38.

²⁴ Att. 22 at 20:51 to 20:52.

²⁵ Att. 22 at 21:32 to 21:44 (Officer Zarate's BWC was not facing ██████████ at the time the Taser was deployed again, but the sound of its activation was audible).

²⁶ Att. 22 at 21:49 to 22:12.

²⁷ Att. 22 at 22:12 to 24:49.

²⁸ Att. 22 at 18:36 to 24:49.

²⁹ Att. 26, pgs. 1 to 2.

³⁰ Att. 44, pg. 2.

³¹ Att. 10, pg. 1.

³² Att. 14, pg. 2.

³³ Att. 65, pg. 18, lns. 19 to 24.

³⁴ Att. 65, pg. 19, lns. 12 to 17.

Regarding his next use of the Taser, in which he discharged the probes into ██████████ back, Officer Zarate stated, “I came around the front side and then I deployed my Taser on ██████████ ██████████ which seemed to have a -- like I said, a connection and mildly incapacitated him.”³⁵ Officer Zarate said he repeated the Taser activations because ██████████ “continued to strike my partner. I went to reenergize the arc so – attempting to reenergize the probes that were already attached from the first deployment. It didn’t seem to have an effect on it. And every time I went to reenergize my arc, that’s when ██████████ ██████████ would make a – I guess a straight line for me and then I would have to stop...”³⁶ Officer Zarate further explained that ██████████ physically interfered with him multiple times, and in doing so distracted him from focusing on his Taser activations.³⁷ When asked how many times he reenergized the Taser during the encounter, Officer Zarate answered that even after having watched his own BWC recording, he was unable to keep track of all his Taser activations.³⁸

COPA attempted to contact ██████████ and his wife to obtain statements about this incident, but neither responded despite multiple attempts to reach them.

III. ALLEGATIONS

Officer Jonathon Zarate:

1. Excessively utilized his Taser on ██████████ in violation of G03-02-04.
 - Sustained, Violation of Rules 2, 3, 6, 8, and 9.

IV. CREDIBILITY ASSESSMENT

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

V. ANALYSIS³⁹

COPA finds the allegation against Officer Zarate, that he used excessive force by discharging his Taser numerous times on ██████████ is **sustained**. CPD’s Rules of Conduct establish a list of acts which are expressly prohibited for all CPD members, including Rule 8, which states that members may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits members from engaging in any unjustified verbal or physical altercation with any person.⁴⁰ Additionally, all uses of force employed by members must be “objectively reasonable, necessary, and proportional” depending

³⁵ Att. 65, pg. 19, lns. 18 to 21.

³⁶ Att. 65, pg. 25, lns. 16 to 23.

³⁷ Att. 65, pg. 27, lns. 8 to 16.

³⁸ Att. 65, pg. 27, lns. 19 to 21. Similarly, Lieutenant McHugh noted in Officer Zarate’s TRR that he did not require the officer to account for each re-energization of the Taser probes, “due to the quantity of re-energizations along with the chaotic situation which will make PO not remember each individual arc.” Att. 14, pg. 6.

³⁹ For a definition of COPA’s findings and standards of proof, *see* Appendix B.

⁴⁰ Att. 74, Rules and Regulations of the Chicago Police Department, (V) Rules of Conduct, Rules 8 to 9, pg. 7 (effective April 16, 2015 to present).

on the circumstances of the situation.⁴¹ CPD members are trained to view the use of force according to a spectrum of possible encounters, based on whether the subject involved is a cooperative person, a passive resister, an active resister, or an assailant, with greater levels of force being permitted as the subject's behavior becomes more dangerous.⁴²

CPD members are taught that Tasers are intended to be used in active resistance situations to obtain compliance “through the application of electrical impulses that override the central nervous system and cause uncontrollable muscle contractions.”⁴³ Tasers are classed as non-lethal weapons, but officers are cautioned that “Taser discharges under certain circumstances may increase the risk of serious injury or death.”⁴⁴ Additionally, although the Tasers issued to CPD members can be operated in drive stun mode by activating the contact electrodes and touching them directly against a subject's body, the use of drive stuns by members is strictly confined to situations where the subject is an assailant, rather than an active resister, and where other force options are not readily available or would otherwise be ineffective.⁴⁵

CPD policy defines a Taser discharge as any probe discharge, any initiation of the ARC switch to re-energize the subject, and any use of the device to drive stun a subject.⁴⁶ Each Taser discharge is considered a separate use of force, and consequently, each activation must be individually justified and documented in a TRR in order to explain why the member employed that force.⁴⁷ With regard to the use of multiple Taser discharges, members are instructed to “use only one five-second energy cycle (the default length of an energy cycle when the Taser trigger is pressed and released) and reassess the situation, including whether the subject has the ability and has been given a reasonable opportunity to comply, before any additional cycles are given or cartridges are discharged.”⁴⁸ Furthermore, CPD policy limits the overall duration of time that a Taser may be used, stating, “If the subject has been exposed to three, five-second energy cycles (or has been exposed to a cumulative 15 total seconds of energy) and the member has not gained control of the subject, [the member will] switch to other force options unless the member can reasonably justify that continued Taser use was necessary to ensure the safety of the member or another person.”⁴⁹

During his COPA interview, Officer Zarate stated that he experienced difficulty in deciding which force option he should initially use to assist Officer McClanahan with ██████████ stating, “I wanted to employ my Taser, but I really couldn't at that time” due to the risk that he might accidentally hit his own partner.⁵⁰ COPA observed that in the BWC footage Officer Zarate appeared intent on using the Taser from the beginning of the incident. He warned immediately

⁴¹ Att. 75, G03-02(II)(D), De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 28, 2023).

⁴² Att. 76, G03-02-01(IV)(A to C), Response to Resistance and Force Options (effective April 15, 2021 to June 28, 2023).

⁴³ Att. 76, G03-02-01(IV)(B)(2)(c)(5).

⁴⁴ Att. 77, G03-02-04(II)(E), Taser Use Incidents (effective April 15, 2021 to June 28, 2023).

⁴⁵ Att. 77, G03-02-04(II)(D)(5).

⁴⁶ Att. 77, G03-02-04(III)(A).

⁴⁷ Att. 77, G03-02-04(II)(F).

⁴⁸ Att. 77, G03-02-04(III)(B)(5).

⁴⁹ Att. 77, G03-02-04(III)(B)(7).

⁵⁰ Att. 65, pg. 18, Ins. 19 to 24.

upon entering the apartment that he would tase [REDACTED] and he ultimately made the same warning a total of eight times throughout the encounter.

The force option Officer Zarate first used was a Taser drive stun pressed directly against [REDACTED] right side.⁵¹ Drive stuns are prohibited except in limited situations when used against an assailant; however, given the fact that [REDACTED] qualified as an assailant as soon he entered into a hand-to-hand fight with Officer McClanahan, as well as the lack of viable force options available within the narrow limits of that cluttered room, Officer Zarate's use of the first drive stun was justifiable.⁵² His next decision to discharge the Taser probes into [REDACTED] back was also justifiable, as [REDACTED] was not yet compliant.⁵³ However, when Officer Zarate then repeatedly reenergized the probes approximately seven or eight times without stopping to assess the effects on [REDACTED] he crossed the line, and his use of force became excessive.⁵⁴

During his recorded interview, Officer Zarate said he was distracted by [REDACTED] actions during the time when he was reenergizing the Taser again and again.⁵⁵ COPA accepts that the intrusions of [REDACTED] and the overall chaotic nature of the situation were extenuating factors that influenced Officer Zarate's ability to think clearly and use the Taser responsibly.⁵⁶ Nevertheless, his behavior cannot be excused, as this was exactly the sort of difficult scenario in which law enforcement professionals are expected to fall back on their training and exercise extra care in the performance of their duties.

The most egregious aspect of Officer Zarate's excessive Taser use was his decision to employ two more drive stuns and multiple probe reenergizations on [REDACTED] after the struggle with Officer McClanahan had ended.⁵⁷ This final portion of the incident encompassed policy violations including the maltreatment of a person (Rule 8) and engagement in an unjustified physical altercation (Rule 9). At the point when Officer Zarate resumed the drive stuns, [REDACTED] was behaving as an active resister rather than an assailant, and he had already received more Taser discharges than was normally permitted by policy. Furthermore, other officers had been called to the scene and began arriving to assist shortly thereafter. There was no imminent threat at that moment, and no need for urgent action. Officer Zarate had already engaged in excessive Taser usage during the earlier stages of this encounter, but his act of unnecessarily resuming Taser usage against [REDACTED] including the use of the proscribed drive stun technique on a non-assailant, was a particularly blatant example of excessive force.

⁵¹ Att. 22 at 18:57 to 19:11.

⁵² Att. 76, G03-02-01(IV)(C). (CPD defines an assailant as a person who is using or threatening to use force in such a way as to be likely to cause physical injury.)

⁵³ Att. 22 at 19:35 to 19:46.

⁵⁴ Att. 22 at 19:46 to 20:11.

⁵⁵ Att. 65, pg. 27, lns. 8 to 16.

⁵⁶ COPA also recognizes Officer Zarate's dilemma regarding his available force options. Officer Zarate explained that he could not use OC spray due to the confined space and the likelihood it would also incapacitate the officers. Additionally, Officer Zarate stated he considered using his asp, but the only area of [REDACTED] body he could have struck without hitting Officer McClanahan was [REDACTED] head, and Officer Zarate recognized this was not a situation calling for deadly force.

⁵⁷ Att. 22 at 20:34 to 22:12.

For all these reasons, COPA finds the preponderance of the evidence shows that Officer Zarate used excessive force when he tased [REDACTED] eighteen times, exposing [REDACTED] to a cumulative 28 total seconds of energy. Therefore, Allegation 1 against Officer Zarate is **sustained** as a violation of Rules 2, 3, 6, 8, and 9.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Jonathon Zarate

i. Complimentary and Disciplinary History⁵⁸

Officer Zarate has received 28 various awards, the highlights of which include one CPD commendation. His recent disciplinary history includes a March 2023 SPAR for a court appearance violation, which resulted in a reprimand.

ii. Recommended Discipline⁵⁹

COPA has found that Officer Zarate excessively used his Taser against [REDACTED] in violation of Rules 2, 3, 6, 8 and 9. It is undisputed that Officer Zarate encountered a dangerous situation when he entered the [REDACTED] highly cluttered apartment and was met by two confrontational subjects. COPA acknowledges that some of Officer Zarate's Taser uses were justifiable and within policy. However, when using his Taser eighteen times against the same subject, including three drive stuns, Officer Zarate went far beyond what was objectively reasonable, necessary, and proportional. His actions also constituted a clear and flagrant violation of CPD's Taser Use Policy. As such, COPA recommends he receive a **45-day suspension** and retraining on CPD's Taser Use Policy.

Approved:

[REDACTED]

Steffany Hreno
Director of Investigations

7/10/2023

Date

⁵⁸ Att. 78.

⁵⁹ See CMS Notes for additional factors considered in recommending discipline.

Appendix A

Case Details

Date/Time/Location of Incident:	September 5, 2021 / 12:12 am / ██████████ Chicago, IL 60647
Date/Time of COPA Notification:	September 5, 2021 / Approximately 3:17 am
Involved Officer #1:	Jonathon Zarate / Star #10508 / Employee ID # ██████████ / Date of Appointment: May 16, 2018 / Unit of Assignment: 025 / Male / White-Hispanic
Involved Individual #1:	██████████ / Male / Hispanic
Involved Individual #2:	██████████ / Female / Hispanic

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

- G03-02: De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 28, 2023).
- G03-02-01: Response to Resistance and Force Options (effective April 15, 2021 to June 28, 2023).
- G03-02-04: Taser Use Incidents (effective April 15, 2021 to June 28, 2023).

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.⁶⁰ 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.”⁶¹

⁶⁰ 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).

⁶¹ *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