



Brandon Johnson
Mayor

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

Fred L. Waller
Interim Superintendent

September 6, 2023

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

Re: Superintendent's Non-Concurrence with Finding and with Penalty Recommendation
Complaint Log No. 2021-0003504

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with the recommended finding nor with the recommended penalty as they pertain to Officer Jonathon Zarate # 10508. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a 45-day suspension for Officer Jonathon Zarate #10508 after concluding that he:

1. Excessively utilized his Taser on a person in violation of G03-02-04 (Taser Use Incidents).

In its summary report, COPA states:

"The force option Officer Zarate first used was a Taser drive stun pressed directly against [REDACTED] right side. 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 as 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. His next decision to discharge the Taser probes into [REDACTED] back was also justifiable, as [REDACTED] was not yet compliant. 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." SRI at page 6. The Summary report continues that "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." SRI at page 6 with Footnote 57 referencing "Att. 22 at 20:34 to 22:12." (Attachment #22 being the Body Worn Camera of Officer Zarate.)

First, The Department disagrees that the subsequent discharges of the Taser were excessive. COPA

acknowledges that the entire physical confrontation lasted more than six minutes. SRI at page 3. During this entire six minutes, nothing changed as the offender never stopped being an assailant as the offender continued to not only resist Officer McClanahan but was actively fighting with Officer McClanahan. And both officers were still faced with a lack of viable force options available with the narrow limits of that cluttered room. The Department disagrees that the struggle with McClanahan had ended at the 20:34 mark of the Body Worn Camera identified as Attachment #28. In the same Body Worn Camera Video (Attachment #28), Officer McClanahan is heard stating "Let me go! Stop Fighting" at the 21:09 mark. He is then heard stating "Quit Scratching me" at the 22:02 mark. And then he is heard stating "Stop Grabbing me. Let me go!" at the 22:34 mark. These statements all occur after COPA indicates there was no longer a struggle. These statements not only show that the struggle was still on-going but also show that the offender was still an assailant. Officer Zarate used his Taser immediately after Officer McClanahan made the first and third statement and was justified in doing so due to the offender being an assailant and the lack of viable force options available in that confined area. This is completely consistent with the Taser policy that "Drive stunning is prohibited, unless the person is defined as an assailant and other force options are not readily available or would otherwise be ineffective under the circumstances at the time." G03-02-04-II-F-5.

Second, COPA states that Officer Zarate failed to stop to assess the effects of the Taser use on the offender. During the entire video, after using the Taser each time, Officer Zarate then immediately gave verbal warnings to the offender. This is consistent with the training that while assessing the effects, verbal commands should still be given at all times. Consistent with the directive, a member giving these verbal commands after the discharge of the Taser simultaneously allows the person a reasonable amount of time to comply with a warning prior to continuing the use of a Taser. G03-02-04-III-B-1 and 2.

It is for these reasons that the Department believes that this allegation should be Not Sustained and that there should be no penalty assessed. The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,



Fred L. Waller
Interim Superintendent
Chicago Police Department