



Log # 2023-0005404

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On November 16, 2023, the Civilian Office of Police Accountability (COPA) received a telephone complaint from Reporting Party Third Party [REDACTED] alleging misconduct by Detective Geraldo Ortiz, #18496², and Officers Sergio Zagala, #19734, and Gerardo Silva, #19281, against her brother/Subject [REDACTED] Jr. [REDACTED] alleges on November 16, 2023, that Detective Ortiz and Officer Zagala detained [REDACTED] Jr. without justification, searched [REDACTED] Jr. without justification, and failed to inform [REDACTED] Jr. why an Investigatory Stop was conducted of him. In addition, COPA served three additional allegations to Officer Zagala for failure to issue [REDACTED] Jr. an Investigatory Stop Receipt (ISR), displaying a gun at or in the direction of [REDACTED] Jr. without justification, and failure to report pointing of gun to Office of Emergency Management & Communication (OEMC). It is alleged that Officer Silva forcefully moved [REDACTED] Jr. against the hood of a Department vehicle without justification. Following its investigation, COPA reached Sustained findings.

II. SUMMARY OF EVIDENCE³

Officers Ortiz and Zagala conducted an Investigatory Stop of [REDACTED] Jr., after observing [REDACTED] Jr. walking and clutching an unknown object about his waistband area⁴. The Officers exited their vehicle, instructed [REDACTED] Jr. to remove his hands from his pocket, and [REDACTED] Jr. complied. As he exited the vehicle, Officer Zagala had his gun drawn and pointed in the direction of [REDACTED] Jr.⁵ The Officers placed [REDACTED] Jr. in custody/handcuffs and searched through his pants pocket. When [REDACTED] Jr. asked why he was being searched the Officers did not answer. Detective Ortiz removed [REDACTED] Jr.'s wallet from his pocket, removed an identification card and ran a name check of [REDACTED] Jr.⁶ Assisting Officers arrived on the scene and escorted [REDACTED] Jr. to the hood of a Department SUV. While being detained, Officer Silva shoved/pushed [REDACTED] Jr. about his body

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 Detective Ortiz had the title of Officer at the time of this incident, but has been promoted since then, and will be referred to as Detective Ortiz in this report.

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 *[identify the most material and outcome-determinative evidence relied upon, such as BWC footage, police reports, officer interviews]*.

⁴ Att. 19

⁵ Att. 12, 2:00 mark

⁶ Att. 12, 3:05 mark

and against the hood of the SUV⁷. After [REDACTED] Jr.'s name cleared via a LEADS check, [REDACTED] Jr. was released and given an Investigatory Stop Receipt (ISR)⁸.

COPA's attempts to obtain a statement from [REDACTED] Jr. were unsuccessful⁹.

In a **statement** to COPA, **Officer Zagala** related that he and Detective Ortiz conducted an Investigatory Stop of [REDACTED] Jr. after observing [REDACTED] Jr. walking eastbound on 43rd street. Per Officer Zagala, he believed that [REDACTED] Jr. was in possession of a firearm. Officer Zagala's reasonable articulable suspicion for the Investigatory Stop was that [REDACTED] Jr. was manipulating an unknown object in his front waistband area, he avoided making eye contact with Officers, and [REDACTED] Jr. had a bladed stance¹⁰. Based on his experience as a Police Officer, that usually means an individual is attempting to conceal a firearm or contraband. A Pat Down of [REDACTED] Jr. for a firearm or contraband was negative. A name check of [REDACTED] Jr. came back clear. After watching his BWC and being questioned about the Pat Down he conducted of [REDACTED] Jr., Officer Zagala admitted that he searched through [REDACTED] Jr.'s pants pockets and agreed his actions went beyond the scope of a Pat Down¹¹. When questioned, Officer Zagala stated he drew and pointed his firearm in the direction of [REDACTED] Jr. because he believed that [REDACTED] Jr. was in possession of a firearm. Officer Zagala stated [REDACTED] Jr.'s hands were raised and visible at the time he had his firearm pointed at [REDACTED] Jr. Officer Zagala could not recall if he notified OEMC in regards to pointing his firearm, or if he informed [REDACTED] Jr. why he was detained. Per Officer Zagala, Detective Ortiz provided [REDACTED] Jr. with an Investigative Stop Receipt.

In a **statement** to COPA, **Detective Ortiz** related that he and Officer Zagala conducted an Investigatory Stop of [REDACTED] Jr. because they had reasonable articulable suspicion to believe that [REDACTED] Jr. was in possession of a firearm. Per Detective Ortiz, the reasonable articulable suspicion was that [REDACTED] Jr. was adjusting/clutching the waistband area of his hoodie, he was in a known gang/narcotic area, and based on his experience as a Police Officer, people who are adjusting/clutching their waistband are usually concealing a firearm. Detective Ortiz's Pat Down of [REDACTED] Jr. for a firearm/contraband was negative. Detective Ortiz's conducted a name check of [REDACTED] Jr. that came back clear. Detective Ortiz confirmed that the Investigatory Stop Report (ISR) of [REDACTED] Jr. was correct, in that he and Officer Zagala conducted a protective pat down of [REDACTED] Jr. Per Detective Ortiz, a protective pat down is a pat down of the outer garments for weapons/contraband. Detective Ortiz acknowledged that he reached inside [REDACTED] Jr.'s pants pocket to retrieve [REDACTED] Jr.'s wallet for identification purposes. Detective Ortiz stated that he did not ask [REDACTED] Jr. for his name or consent prior to searching his pockets. When asked if he was allowed to go into [REDACTED] Jr.'s pocket during an Investigatory Stop based on the circumstances, Detective Ortiz stated, "I guess not, right?"¹² Detective Ortiz provided [REDACTED] Jr. with an

⁷ Att. 11, 4:00 mark

⁸ Att. 11, 6:50 mark

⁹ CMS notes, CO-1364894, 1365061, 1365062, 1365067, 1386774, 1388639

¹⁰ Attempt to conceal a side of one's body.

¹¹ Att. 25, 10:15 mark

¹² Att. 29, 13:40 mark

Investigative Stop Receipt that related “other/suspected of weapon (firearm)”. Detective Ortiz stated he did not draw his firearm during this incident because it was not necessary¹³. When asked, Detective Ortiz confirmed that [REDACTED] Jr. was not in the process of committing a crime, [REDACTED] Jr. hadn’t committed a crime, that he had no previous contact with [REDACTED] Jr., he was not aware of any reports in the area that factored in [REDACTED] Jr. being stopped, he was not aware of an Investigative Alert for [REDACTED] Jr., and that he hadn’t received an anonymous tip regarding [REDACTED] Jr. being in possession of a firearm or contraband.

In a **statement** to COPA, **Officer Silva** related he assisted Officer Zagala in the detainment of [REDACTED] Jr. Officer Silva gave [REDACTED] Jr. verbal commands to stop moving. While detaining [REDACTED] Jr. by the hood of his hoodie, Officer Silva related that his right hand inadvertently made contact with [REDACTED] Jr.’s face as he attempted to gain control of [REDACTED] Jr. Per Officer Silva, [REDACTED] Jr. was placed against the hood of the vehicle to prevent [REDACTED] Jr. from fleeing.

III. ALLEGATIONS

Detective Geraldo Ortiz:

1. Detained Complainant [REDACTED] Jr. without justification.
-Sustained, Violation of Rules 1, 6
2. Searched Complainant [REDACTED] Jr. without justification.
-Sustained, Violation of Rules 1, 6
3. Failed to inform [REDACTED] Jr. why and Investigatory Stop was conducted of him.
-Unfounded

Officer Sergio Zagala:

1. Detained Complainant [REDACTED] Jr. without justification.
-Sustained, Violation of Rules 1, 6
2. Searched Complainant [REDACTED] Jr. without justification.
-Sustained, Violation of Rules 1, 6
3. Displayed a gun at or in the direction of [REDACTED] Jr. without justification.
-Sustained, Violation of Rule 38
4. Failed to issue [REDACTED] Jr. an Investigatory Stop Receipt.
-Unfounded

¹³ Att. 29, 21:3 0 mark

5. Failed to report pointing of gun to Office of Emergency Management & Communications.
-Unfounded
6. Failed to inform ██████████ Jr. why an Investigatory Stop was conducted of him.
-Unfounded

Officer Gerardo Silva:

1. Forcefully moving ██████████ Jr. against the hood of a Department vehicle without justification.
-Not Sustained

IV. CREDIBILITY ASSESSMENT

COPA assessed the credibility of **Officer Zagala** utilizing truthfulness and reliability criteria. This investigation caused COPA to question both the truthfulness and reliability of Officer Zagala. Officer Zagala's reasonable articulable suspicion for conducting an Investigatory Stop of ██████████ Jr. did not have articulable facts which reasonably warranted a belief that ██████████ Jr. was committing, was about to commit, or had committed a criminal offense. Officer Zagala admitted that his Protective Pat Down of ██████████ Jr. exceeded the boundaries of a Protective Pat Down, in that he searched ██████████ Jr.'s pants pockets. Officer Zagala's reasoning for drawing and pointing his firearm in the direction of ██████████ Jr. is questionable. Officer Zagala related that ██████████ Jr.'s hands were visible and raised at the time he drew and pointed his firearm in the direction of ██████████ Jr.

COPA assessed the credibility of **Detective Ortiz** utilizing truthfulness and reliability criteria. This investigation caused COPA to question both the truthfulness and reliability of Detective Ortiz. Detective Ortiz's reasonable articulable suspicion for conducting an Investigatory Stop of ██████████ Jr. did not provide articulable facts which reasonably warranted a belief that ██████████ Jr. was committing, was about to commit, or had committed a criminal offense. Detective Ortiz admitted that he went into ██████████ Jr.'s pocket during the stop and was unsure if his actions were within in policy.

COPA assessed the credibility of **Officer Silva** utilizing truthfulness and reliability criteria. This investigation did not reveal any evidence that caused COPA to doubt the truthfulness and reliability of Officer Gerardo.

V. ANALYSIS¹⁴

Officer Sergio Zagala:

COPA finds **allegation #1** that Officer Zagala detained Complainant [REDACTED] Jr. without justification Sustained. Per Officer Zagala, his reasonable articulable suspicion for conducting an Investigatory Stop of [REDACTED] Jr. was that [REDACTED] Jr. was manipulating an object in his front waistband area, [REDACTED] Jr. attempted to conceal one side of his body from Officers, and [REDACTED] Jr. avoided making eye contact with Officers. Per Special Order S04-13-09, Investigatory Stop System, Section II 1. For Investigatory Stops, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is committing, is about to commit, or has committed a criminal offense. Officer Zagala's reasonable articulable suspicion did not meet the criteria set forth by the Special Order/Investigatory Stop System.

COPA finds **allegation #2** that Officer Zagala searched [REDACTED] Jr. without justification Sustained. Officer Zagala admitted that his search of [REDACTED] Jr. exceeded the boundaries of a Protective Pat Down, in that he searched [REDACTED] Jr.'s pockets. Per Special Order S04-13-09, Investigatory Stop System, Section II B. Protective Pat Down, a limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity.

COPA finds **allegation #3** that Officer Zagala displayed a gun at or in the direction of [REDACTED] Jr. without justification Sustained. Officer Zagala believed that [REDACTED] Jr. was in possession of a firearm, and therefore, he drew and pointed his firearm in the direction of [REDACTED] Jr. Officer Zagala pointing his gun in the direction of [REDACTED] Jr. was in violation of Rules of Conduct, Rule 38, Unlawful or unnecessary use or display of a weapon. Officer Zagala admitted that [REDACTED] Jr. hands were raised and visible at the time he pointed his firearm in the direction of [REDACTED] Jr. [REDACTED] Jr. was not an imminent threat to Officer Zagala, members or others, and [REDACTED] followed Officer Zagala's verbal commands. Furthermore, Detective Ortiz related that he did not draw his firearm during this encounter because he did not feel it was necessary.

COPA finds **allegation #4** that Officer Zagala Failed to issue [REDACTED] Jr. an Investigatory Stop Receipt Unfounded. Detective Ortiz issued [REDACTED] Jr. an ISR.

¹⁴ For a definition of COPA's findings and standards of proof, see Appendix B.

COPA finds **allegation #5** that Officer Zagala Failed to report pointing of gun to Office of Emergency Management & Communications Unfounded. Per the Event Query Report (event number 2332007610), Officer Zagala reported the pointing of his gun to OEMC on November 16, 2023, at 1237 hrs.

COPA finds **allegation #6** that Officer Zagala Failed to inform ██████████ Jr. why an Investigatory Stop was conducted of him Unfounded. Per Special Order S04-13-09, Investigatory Stop System, Section VIII. 3, Upon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number. Detective Ortiz provided ██████████ Jr. with an Investigatory Stop receipt as required.

Detective Geraldo Ortiz:

COPA finds **allegation #1** that Detective Ortiz detained Complainant ██████████ Jr. without justification Sustained. Per Detective Ortiz, his reasonable articulable suspicion for conducting an Investigatory Stop of ██████████ Jr. was that ██████████ Jr. was adjusting/clutching the waistband area of his hoodie, he was in a known gang/narcotic area, and based on his experience as a Police Officer, people who are adjusting/clutching their waistband are usually concealing a firearm. Per Special Order S04-13-09, Investigatory Stop System, Section II 1. For Investigatory Stops, a sworn member must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is committing, is about to commit, or has committed a criminal offense. Detective Ortiz reasonable articulable suspicion did not meet the aforementioned criteria. When asked, Detective Ortiz confirmed that ██████████ Jr. was not in the process of committing a crime, ██████████ Jr. hadn't committed a crime, there was no previous contact between he and ██████████ Jr., Detective Ortiz was not aware of any reports in the area that factored into ██████████ Jr. being stopped, Detective Ortiz was not aware of an Investigative Alert for ██████████ Jr., and Detective Ortiz hadn't received an anonymous tip regarding ██████████ Jr. being in possession of a firearm or contraband.

COPA finds **allegation #2** that Detective Ortiz searched Complainant ██████████ Jr. without justification Sustained. Detective Ortiz admitted that he searched ██████████ Jr.'s pants pocket and removed his wallet. Per Special Order S04-13-09, Investigatory Stop System, Section II B. Protective Pat Down, a limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity. Detective Ortiz's of ██████████ Jr.'s pockets was beyond the scope allowed by the Special Order.

COPA finds **allegation #3** that Detective Ortiz Failed to inform [REDACTED] Jr. why an Investigatory Stop was conducted of him Unfounded. Per Special Order S04-13-09, Investigatory Stop System, Section VIII. 3, Upon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Investigatory Stop Receipt will include the event number, the reason for the stop, and the sworn member's name and star number. Detective Ortiz provided [REDACTED] Jr. with an Investigatory Stop receipt as required.

Officer Gerardo Silva:

COPA finds **allegation #1** that Officer Silva Forcefully moved [REDACTED] Jr. against the hood of a Department SUV vehicle without justification Not Sustained. Officer Silva related that in the process of detaining [REDACTED] Jr. by the hood of his hoodie, he inadvertently made contact with [REDACTED] Jr.'s face. There is insufficient evidence to prove or disprove this allegation.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Geraldo Ortiz

i. Complimentary and Disciplinary History

Officer Geraldo Ortiz has 60 Honorable Mention, 1 Honorable Mention Ribbon Award, 1 Emblem of Recognition-Physical Fitness, 2 Department Commendation, and 1 Crime Reduction Award. 1 SPAR, January 3, 2024, Reprimand, Preventable accident.

ii. Recommended Discipline

COPA has considered Detective Ortiz's complimentary and disciplinary history. COPA has considered the totality of the circumstances in this case. Detective Ortiz failed to adhere to the General orders and Department Rules. COPA recommends a suspension of up to 10 days and 4th Amendment Rights Training.

b. Officer Sergio Zagala

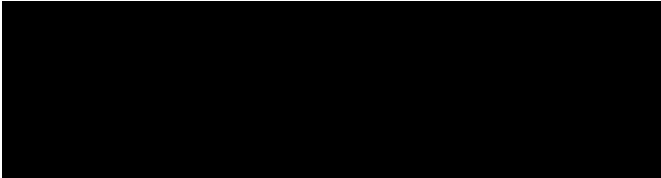
i. Complimentary and Disciplinary History

Officer Zagala has 1 Sustained Finding, LOG# 2022-0001753, March 6, 2022, violation noted, Operation/Personnel Violations Neglect of Duty. 1 SPAR, January 16, 2024, Reprimand, Non-Compliance with Motor Vehicle pursuit Requirements. 73 Honorable Mention, 5 Department Commendation, 1 Complimentary Letter, 1 Emblem of Recognition – Physical Fitness, 1 Honorable Mention Ribbon Award, 1 problem Solving Award.

ii. Recommended Discipline

COPA has considered Zagala’s complimentary and disciplinary history. COPA has considered the totality of the circumstances in this case. Officer Zagala failed to adhere to the General Orders and Department Rules. COPA recommends a suspension of up to 15 days and 4th Amendment Rights Training.

Approved:



12-30-2024

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Case Details

| | |
|---------------------------------|---|
| Date/Time/Location of Incident: | November 16, 2023, 1:26 PM, 314 E. 43 rd Street |
| Date/Time of COPA Notification: | November 16, 2023, 7:26 PM |
| Involved Member #1: | Sergio Zagala, Star #19734, employee ID # [REDACTED] Date of Appointment: March 16, 2020, Unit of Assignment: 002, Male, White Hispanic |
| Involved Member #2: | Gerardo Silva, Star #19281, employee ID # [REDACTED] Date of Appointment: April 16, 2021, Unit of Assignment: 002, Male, White Hispanic |
| Involved Member #3: | Gerald Ortiz, Star #21018, employee ID # [REDACTED] Date of Appointment: March 16, 2018, Unit of Assignment: 640 Detectives – Area 4 |
| Involved Individual #1: | [REDACTED] Jr., male, 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

- *S04-13-09, Investigatory Stop System, (effective July 10, 2017, to present).*
- *Department Notice, D19-01, Firearm Pointing Incidents, (effective November 1, 2019, 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.¹⁵ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD 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.”¹⁶

¹⁵ 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).

¹⁶ *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