



August 19, 2022

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log No. 2019-3030, Officer Mark Palazzolo

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (Department) in Log No. 2019-3030.¹

As set forth in detail in COPA's Summary Report of Investigation in Log No. 2019-3030 (SRI), dated May 27, 2022, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of 45 days' suspension against Officer Mark Palazzolo based on findings that he violated Department policy by using excessive force by deploying his taser at [REDACTED] (Mr. [REDACTED] by arresting Mr. [REDACTED] without justification, and by failing to timely activate his body worn camera. There is also a compelling legal and evidentiary basis to support COPA's finding and disciplinary recommendation of reprimand against Officer Erica Hernandez for arresting Mr. [REDACTED] without justification.²

I. BACKGROUND

A. Relevant Factual Background³

On August 3, 2019, at approximately 8:07 pm, a citizen informed Field Training Officer (FTO) Mark Palazzolo and Officer Erica Hernandez that a fight was occurring across the street. FTO Palazzolo and Officer Hernandez ran across the street towards the altercation, located at approximately 1807 S. Avers. As the officers approached, they observed Mr. [REDACTED] on the ground in a defensive posture, being kicked and punched by Male #1. Mr. [REDACTED] and Male #1 ignored the officers' presence and commands to stop. As Mr. [REDACTED] stood up, Male #1 continued to punch him. Then, Officer Palazzolo pointed his taser at Mr. [REDACTED] and two red laser dots appeared on Mr. [REDACTED] lower back. FTO Palazzolo told COPA he pointed his taser in the direction of both individuals to gain their compliance. FTO Palazzolo stated that he attempted to discharge his taser at Male #1, whom FTO Palazzolo identified as the predominant aggressor in the fight. However, FTO Palazzolo's taser struck Mr. [REDACTED] causing him to fall to the ground. FTO Palazzolo tased Mr. [REDACTED] within three seconds of arriving at the altercation. Almost immediately after FTO Palazzolo's taser discharge, witnesses told the officers that Mr. [REDACTED] was attacked by Male #1 and that FTO Palazzolo tased the wrong person. Nevertheless, Mr. [REDACTED] was placed under arrest for reckless conduct. After a trip

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's non-concurrence letter, and the certificate of meeting.

² The Superintendent agrees with the finding and recommended penalty on Allegation #2 against Officer Hernandez.

³ A more detailed factual summary can be found in the SRI.

to the hospital for the removal of taser prongs, Mr. ██████ was taken to the 10th District police station. He was released without charges approximately three hours later.

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he does not concur with COPA's findings as to Allegations #1 and #2 against FTO Palazzolo, and Allegation #1 against Officer Hernandez. The Superintendent also disagrees with the penalty recommendation for Allegation # 4 against FTO Palazzolo.

C. Applicable Department Policy

1. Taser Use Incidents

The Department Policy in effect at the time of this incident provided that the use of a taser must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a person.⁴ Department Policy authorized the use of a taser on individuals classified as active resisters and assailants, but not passive resisters.⁵

2. Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters to be electronically recorded on the officers' BWC.⁶ Law-enforcement-related encounters include, but are not limited to, calls for service, investigatory stops, seizure of evidence, foot and vehicle pursuits, arrests, use of force incidents, high risk situations, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.⁷ The recording of law-enforcement-related encounters is mandatory.⁸ Officers must activate their BWCs at the beginning of an incident and record the entire incident.⁹ If there are circumstances preventing the activation of the BWC at the beginning of an incident, the officer "will activate the BWC as soon as practical."¹⁰

II. ANALYSIS

A. FTO Palazzolo Used Excessive Force in Tasing Mr. ██████

The Superintendent argues that FTO Palazzolo's taser discharge against Mr. ██████ did not constitute excessive force.¹¹ The evidence contradicts his argument. Specifically, the evidence is uncontradicted that FTO Palazzolo accidentally tased the wrong person. FTO Palazzolo admitted that he inadvertently tased Mr. ██████ and that he had intended to tase Male #1 instead. The BWC footage from the incident shows that FTO Palazzolo discharged his taser within 3 seconds of arriving at the altercation. His hasty discharge undoubtedly contributed to his error. Although FTO Palazzolo claimed that he had given verbal commands

⁴ G03-02-04.II.C (Eff. Oct. 16, 2017)

⁵ G03-02-01.IV (Eff. Oct. 16, 2017)

⁶ S03-14.II.A

⁷ S03-14.III.2

⁸ S03-14.III.1

⁹ S03-14.III.2

¹⁰ S03-14.III.2

¹¹ As a preliminary matter, COPA notes that, in its discussion of Allegation #1 against FTO Palazzolo, it mistakenly characterized Mr. ██████ as an assailant. *See* Summary Report of Investigation, Log # 2019-0003030, at p.8 (May 27, 2022). COPA does not believe Mr. ██████ qualified as an assailant or a resister. COPA has raised this error during its communication with the Superintendent's designees.

for the men to separate prior to discharging his taser, he failed to identify himself as a police officer and failed to take any other steps to ensure that he tased only the intended person and did not endanger innocent bystanders. Thus, FTO Palazzolo's taser discharge against Mr. ██████ was neither objectively reasonable, necessary, nor proportional, because Mr. ██████ posed no threat to FTO Palazzolo or anyone else on scene. For these reasons, FTO Palazzolo's taser discharge was excessive and violated Department Policy.

B. FTO Palazzolo and Officer Hernandez Lacked Probable Cause to Arrest Mr. ██████

The Superintendent contends that FTO Palazzolo and Officer Hernandez had probable cause to arrest Mr. ██████ on scene for reckless conduct. His argument lacks merit. First, Mr. ██████ conduct did not meet the elements of the offense to justify his arrest. Second, the accused officers had information immediately available to them on scene indicating that Mr. ██████ was the victim. As such, they lacked probable cause to arrest Mr. ██████ without further investigation. Based on these facts, COPA maintains that the officers arrested Mr. ██████ without probable cause in violation of Department Policy.

FTO Palazzolo justified Mr. ██████ arrest by claiming that Mr. ██████ conduct endangered the safety of another person. The record contradicts his claim. Specifically, based upon the events FTO Palazzolo and Officer Hernandez observed when they first arrived on scene, they had no probable cause to believe that Mr. ██████ was causing any harm to anyone, let alone great bodily harm or permanent disfigurement.¹² Likewise, the officers had no probable cause to believe that Mr. ██████ recklessly performed any act endangering the safety of another person.¹³ Mr. ██████ was the victim of a violent beating. Immediately upon arrival on scene, the officers' BWC shows Mr. ██████ bent over trying to protect himself from the blows from Male #1 while on the ground. Even once he manages to stand up, Mr. ██████ is attempting to protect his head with his arms while Male #1 punches him. There is no evidence that Mr. ██████ is an aggressor when the officers arrive. Rather, Mr. ██████ appears vulnerable, with his clothing disheveled and his pants sliding down and exposing his buttocks. Nearby bystanders then almost immediately inform the officers that Mr. ██████ was attacked. Mr. ██████ also reiterates to the officers that he was "jumped."

Here, the totality of the circumstances would have indicated to any reasonable officer that although an offense had been committed, Mr. ██████ was not the offender, but the victim. At this point, the officers lacked probable cause to believe that Mr. ██████ had committed a crime. Thus, FTO Palazzolo and Officer Hernandez needed additional information to confirm or dispel their suspicion that Mr. ██████ was the aggressor, which they could have acquired through additional investigation. They failed to obtain such additional information. Instead, they placed Mr. ██████ under arrest without having probable cause. FTO Palazzolo's and Officer Hernandez' arrest of Mr. ██████ was unlawful and violated Department Policy.

C. FTO Palazzolo's Failure to Timely Activate his BWC Warrants a Higher Penalty than the Superintendent Proposes.

FTO Palazzolo failed to timely activate his BWC. In fact, he only activated his camera 90 seconds after he discharged his taser at Mr. ██████. The Superintendent concedes that such activation was untimely, but recommends that FTO Palazzolo receive a reprimand and re-training, instead of the 45-day suspension recommended by COPA. As a Field Training Officer, Palazzolo was responsible for setting an example for Officer Hernandez by following Department Policy. Instead, he activated his BWC nearly 80 seconds later than Officer Hernandez. In addition, his failure to timely activate the BWC resulted in a loss of possibly mitigating evidentiary material. Specifically, FTO Palazzolo claimed that he had issued verbal commands prior to discharging his taser, but, due to his failure to timely activate his BWC, such audio was never

¹² 720 ILCS 5/12-5(a): A person commits reckless conduct "when he or she, by any means lawful or unlawful, recklessly performs an act or acts that: (1) cause bodily harm to or endanger the safety of another person; or (2) cause great bodily harm or permanent disability or disfigurement to another person."

¹³ 720 ILCS 5/12-5(a)

recorded. FTO Palazzolo had ample time and opportunity to activate his BWC but had failed to do so. He has provided no valid justification for his delayed activation. As such, COPA maintains that a 45-day suspension is an appropriate penalty.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's finding and penalty recommendation in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommended finding and penalty of 45 days' suspension for FTO Palazzolo.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability