



Log # 2019-0002289

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On June 21, 2019, the Civilian Office of Police Accountability (COPA) received an Initiation Report from Sergeant Eric W. Diaz of the Chicago Police Department (CPD) reporting alleged misconduct by a member of CPD. ██████████ alleged that on June 21, 2019, during his processing in the 10th District Police Station (District 10), Officer Alex Rubio searched his pockets without justification and inappropriately touched his butt while patting him down. Following its investigation, COPA reached a finding of **exonerated** for the allegation that Officer Rubio searched ██████████ pockets without justification and **not sustained** for the allegation that Officer Rubio inappropriately touched ██████████ butt while patting him down.

II. SUMMARY OF EVIDENCE²

On June 21, 2019, Officers Ashton Smiley and Alex Rubio responded to a call involving a domestic disturbance at ██████████.³ Upon arrival, Officers Smiley and Rubio encountered ██████████ who informed them that both he and his child's mother, ██████████ individually called 911 regarding a domestic dispute.⁴ Officer Smiley then spoke with ██████████ who informed him that she previously reported two domestic disturbances involving ██████████ to CPD and provided Officer Smiley with incident reports as evidence.⁵ After speaking with ██████████ and reviewing a report she presented to him, Officer Smiley stated on body worn camera (BWC) that he recalled responding to a previous domestic disturbance, involving both ██████████ and ██████████ where ██████████ had broken a window and fled the scene before officers arrived.⁶ Officer Smiley asked ██████████ if she wanted officers to arrest ██████████ and she affirmed.⁷ Given ██████████ response, Officer Smiley handcuffed ██████████ and placed him in custody.⁸ Officers Smiley

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 The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including civilian and officer statements to COPA, police reports, and body worn camera footage.

³ Att. 24, pg. 2.

⁴ Att. 12 at 2:10 and 7:10 to 7:30.

⁵ Att. 12 at 2:50 to 5:55.

⁶ Att. 12 at 3:20 to 3:45 and at 6:30.

⁷ Att. 12 at 4:30.

⁸ Att. 12 at 6:08.

and Rubio performed a custodial search of [REDACTED] person prior to handing him over to Officers Elizabeth Herrera and Dennis Shelton for transport to District 10.⁹

Officers Herrera and Shelton transported [REDACTED] to District 10.¹⁰ [REDACTED] was placed in a holding cell while Officers Smiley and Rubio processed his paperwork. While in holding, [REDACTED] requested a supervisor and spoke to Lieutenant Megan Curry.¹¹ [REDACTED] explained to Lt. Curry that he felt like he might have a seizure.¹² Lt. Curry asked if [REDACTED] was epileptic; however, he was not familiar with the term.¹³ [REDACTED] remarked that he only had one seizure in the past and asserted that he was experiencing symptoms similar to that previous incident.¹⁴ Lt. Curry informed [REDACTED] that Emergency Medical Technicians (EMT) were on their way and would take him to the hospital to receive medical attention.¹⁵ When EMTs arrived, Lt. Curry instructed Officer Rubio to escort [REDACTED] to the hospital.¹⁶ Officer Rubio activated his body worn camera and prepared [REDACTED] for transport to the hospital.¹⁷ [REDACTED] was placed in shackles and transported to the hospital in an ambulance, escorted by Officer Rubio.¹⁸

At the hospital, while waiting to be seen by a medical provider, [REDACTED] and Officer Rubio were placed in a waiting room.¹⁹ On Officer Rubio's BWC, [REDACTED] appears agitated while waiting for medical attention and, on several occasions, tells Officer Rubio not to touch him.²⁰ In his statement to COPA, [REDACTED] explained his agitation at the hospital was due to Officer Rubio both searching his pockets without justification and inappropriately touching his butt while patting him down at the station prior to his hospital visit.²¹ Officer Rubio moved out of the waiting room, into the hallway.²² [REDACTED] proceeded to tell a security guard in the hallway that Officer Rubio was treating him inappropriately and that he was in fear for his life.²³ [REDACTED] requested that security call another officer to monitor him while he waited for medical treatment.²⁴ Officer Rubio called for another officer to attend to [REDACTED] while he received medical attention.²⁵ In response to [REDACTED] request, Officer George Gill arrived and attended to [REDACTED] while he was relocated to an examination

⁹ Att. 6 at 4:05. In his statement to COPA, Officer Rubio explained that a custodial search is a thorough search for contraband, including front and back pockets. See Att. 27, pg. 9, lns. 15 to 24 and pg. 10, lns. 1 to 24.

¹⁰ Att. 24, pg. 4 & 5, and Att. 28.

¹¹ Att. 4. This conversation was captured on Lt. Curry's BWC. [REDACTED] did not mention at this time that Officer Rubio touched or grabbed his butt inappropriately.

¹² Att. 4 at 00:40.

¹³ Att. 4 at 1:00 to 1:15.

¹⁴ Att. 4 at 1:15 to 1:45.

¹⁵ Att. 4 at 1:48. [REDACTED] was transported to Mt. Sinai Hospital, see Att. 19.

¹⁶ Lt. Curry's order to Officer Rubio was not captured on BWC, see Att. 8 at 4:15.

¹⁷ Att. 19 & 20.

¹⁸ Att. 8 at 4:45 and Att. 10 at 1:10 to 7:30.

¹⁹ Att. 11.

²⁰ Att. 11 at 00:00 to 13:15.

²¹ Att. 1 at 4:50 to 7:30.

²² Att. 11 at 13:15.

²³ Att. 11 at 13:15 to 13:40.

²⁴ Att. 11 at 20:30.

²⁵ Att. 11 at 26:40.

room.²⁶ [REDACTED] continued to explain to Officer Gill that Officer Rubio went into his pockets unnecessarily and touched his butt while Officer Rubio patted him down at the District 10.²⁷ In his statement to COPA, [REDACTED] refused a complete medical examination and was transported back to District 10.²⁸

III. ALLEGATIONS

Officer Alex Rubio:

1. Officer Rubio conducted a search of [REDACTED] pockets without cause.
- **Exonerated**
2. Officer Rubio touched [REDACTED] on his buttocks without cause.
- **Not Sustained**

IV. CREDIBILITY ASSESSMENT

The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. The investigation did not reveal evidence that caused COPA to question the credibility of the parties involved in this investigation.

V. ANALYSIS²⁹

COPA finds that Allegation 1 against Officer Alex Rubio, that he searched [REDACTED] pockets without cause, is **Exonerated**. In his statement to COPA, Officer Rubio affirmed that he searched [REDACTED] front and back pockets prior to his transport to District 10 as well as to the hospital. When taking an arrestee into custody and/or any other movement of the arrestee while in custody, sworn members are "responsible for conducting a thorough search" of the arrestee.³⁰ Moreover, sworn members are responsible for conducting a "custodial search" of an arrestee in order to "keep contraband and weapons out of jail, to preserve evidence, and to protect the officer."³¹ Therefore, COPA finds by clear and convincing evidence, that Officer Rubio's search of [REDACTED] pockets did not violate CPD Policy.

COPA finds that Allegation 2 against Officer Alex Rubio, that he touched [REDACTED] on his buttocks without cause, is **Not Sustained**. [REDACTED] claimed that Officer Rubio inappropriately touched his butt at the District 10 station, before he was transported to the hospital for medical

²⁶ Att. 5 at 2:45 to 22:10 and Att. 11 at 30:00 to 31:20.

²⁷ Att. 5 at 3:50 to 14:10.

²⁸ Att. 5 at 14:10 to 32:15.

²⁹ For a definition of COPA's findings and standards of proof, see Appendix B.

³⁰ Att. 30, G06-01-02(IV)(B)

³¹ Att. 30, G06-01-02(IV)(A)

treatment.³² However, during his conversation with Lt. Curry, while requesting medical attention and prior to transport to the hospital, ██████ does not mention that he was touched or grabbed inappropriately by Officer Rubio.³³ In addition, Officer Rubio activated his camera while preparing ██████ for transport to the hospital.³⁴ In this footage, EMTs are present in the holding cell while Officer Rubio prepares ██████ for transport. Officer Rubio places shackles on ██████ ankles and assists him from the floor to the EMTs' wheelchair; however, Officer Rubio does not pat down ██████ at this time.³⁵ In his statement to COPA, Officer Rubio denied touching ██████ on his butt inappropriately.³⁶ There is a 25-minute gap in time on available BWC footage when Officer Herrera deactivates her BWC while walking ██████ into District 10 and when Lt. Curry activates her BWC to talk with ██████ at his request.³⁷ In addition, a second brief time gap exists between Lt. Curry deactivating her BWC at the end of her conversation with ██████ and Officer Rubio activating his BWC prior to preparing ██████ for transport to the hospital.³⁸ During its investigation, COPA was unable to corroborate with objectively verifiable evidence either ██████ or Officer Rubio's account of the pat down prior to ██████ transport to the hospital. Therefore, COPA has determined that there is insufficient evidence to prove ██████ allegation by preponderance of the evidence.

Approved:



May 17, 2024

Shannon Hayes
Director of Investigations

Date

³² Att. 1 and Att. 11 at 13:15 to 13:40.

³³ Att. 4.

³⁴ Att. 8.

³⁵ Att. 8.

³⁶ Att. 27.

³⁷ Atts. 4 and 7, see time stamps in the upper right corner of BWC footage, Officer Herrera's footage ends at 15:11:06 and Lt. Curry's begins at 15:36:43.

³⁸ Atts. 4 and 11, see time stamps in the upper right corner of BWC footage, Lt. Curry's footage ends at 15:43:35 and Officer Rubio's begins at 15:40:54.

Appendix ACase Details

Date/Time/Location of Incident:	June 21, 2019 / 10:30 am / 3315 W. Ogden Ave. (District 10)
Date/Time of COPA Notification:	June 21, 2019 / 3:29 pm
Involved Member #1:	Alex Rubio, star # 10904, employee ID# [REDACTED], January 26, 2004, Unit of Assignment 010, Male, Hispanic
Involved Individual #1:	[REDACTED] 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

- G06-01-02: Restraining Arrestees (effective December 8, 2017 to present)³⁹

³⁹ Att. 30.

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.⁴⁰ 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.”⁴¹

⁴⁰ 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).

⁴¹ *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