



Log # 2022-5013

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On November 24, 2022, the Civilian Office of Police Accountability (COPA) received an initiation report alleging misconduct by a member of the Chicago Police Department (CPD).² ██████████ the Complainant, alleged that on November 23, 2022, Officer Jose Hernandez placed his foot on ██████████ head without justification.³ Upon review of the evidence, COPA served an additional allegation that Officer Jose Hernandez pointed his gun at ██████████ without justification. Following its investigation, COPA reached sustained findings regarding the allegation of Jose Hernandez placing his foot on ██████████ head without justification and pointing his gun at ██████████ without justification.

II. SUMMARY OF EVIDENCE⁴

On November 23, 2022, multiple officers, including Officer Hernandez, were dispatched via OEMC to a “person with a recovered, he 79th Street CTA Red Line Platform located at 15 W. 79th St.”⁵ At approximately 9:27 pm, Officer Hernandez entered the Red Line station and walked down a flight of stairs.⁶ Shortly after reaching the next level, Hernandez along with several other officers observed that ██████████ and another officer were struggling in the middle of a corridor.⁷ Officer Hernandez, with his gun in his right hand, rushed towards ██████████ and the officer.⁸ Shortly after, one of the officers said, “he’s got the gun.”⁹ In response, Officer Hernandez placed his foot on ██████████ head.¹⁰ Officer Hernandez then pointed his gun at ██████████ head while the other officers attempted to handcuff and locate ██████████ gun.¹¹ After approximately twenty seconds, Hernandez removed his foot from ██████████ head.¹² ██████████ loaded two-tone Smith & Wesson

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 Att. 19, Initiation Report

³ 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.

⁴ 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, police reports, and an officer interview.

⁵ Att. 17 ██████████ Arrest Report, Page 3

⁶ Att. 5 Jose Hernandez BWC 1:30 to 1:55

⁷ Att. 5 1:55 to 2:00

⁸ Att. 5 1:55 to 2:03

⁹ Att. 5 2:12 to 2:18

¹⁰ Att. 5 2:15 to 2:20

¹¹ Att. 5 2:25 to 2:30

¹² Att. 5 2:16 to 2:36

W40 handgun was recovered and [REDACTED] hands were handcuffed behind his back.¹³ [REDACTED] was eventually transported to the 6th district for processing.¹⁴

III. ALLEGATIONS

Officer Jose Hernandez:

1. Placing his foot on [REDACTED] head without justification
 - Sustained, Violations of Rules 2, 3, 6, 8, 9, and 10
2. Pointing his gun at [REDACTED] without justification
 - Sustained, Violations of Rules 2, 3, 8, 9, 10, and 38

IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any evidence that caused COPA to question the credibility of the officer who provided a statement.

V. ANALYSIS¹⁵

a. Placing his Foot on [REDACTED] Head without Justification

COPA finds Allegation 1, that Officer Jose Hernandez placed his foot on [REDACTED] head without justification is **Sustained**. The CPD's Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. Additionally, CPD policy specifies that all uses of force employed by officers must be "objectively reasonable, necessary, and proportional," depending on the circumstances of the situation.¹⁶

According to Hernandez's statement, Hernandez put his foot on [REDACTED] head to prevent [REDACTED] from looking for his gun.¹⁷ In Hernandez's TRR, Hernandez wrote that he placed his foot "over his head" to prevent further movement.¹⁸ Upon viewing of the BWC footage, COPA found these explanations to be unsatisfactory justifications.¹⁹ When Hernandez placed his foot on [REDACTED] head, [REDACTED] was surrounded by multiple officers and was being handcuffed and

¹³ Att. 5 3:00 to 3:15 and Att. 17, Page 3

¹⁴ Att. 17, Page 3

¹⁵ For a definition of COPA's findings and standards of proof, see Appendix B.

¹⁶ Att. 38 G03-02(III)(B), De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 28, 2023)

¹⁷ Att. Jose Hernandez transcript, Page 9, Lines 9 to 24

¹⁸ Att. 41 Hernandez TRR

¹⁹ Att. 5 2:00 to 3:20

detained.²⁰ When Hernandez pointed his gun at ██████████ was immobilized by the other officers.²¹ Since ██████████ would not have been able to grab his gun, there was no justification for ██████████ to place his foot on ██████████ head. Further, there is no logic behind Hernandez's explanation that stepping on ██████████ head with his foot stopped ██████████ from looking for his gun. ██████████ likely would have known where he placed his gun on his body and therefore wouldn't need to look for it with his eyes.²²

Hernandez placing his foot on ██████████ was not necessary or reasonable as ██████████ was not posing an imminent threat to the officers.²³ Furthermore, Hernandez's particular use of force was not proportional under the totality of the circumstances because ██████████ was immobilized by other responding officers. Therefore, COPA finds Allegation 1 is **Sustained**.

b. Pointing his Gun at ██████████ without Justification

COPA finds Allegation 2, that Officer Jose Hernandez pointed his gun at ██████████ without justification is **Sustained**. According to the CPD Department Notice D19-01, department members "may only point a firearm at a person when it is objectively reasonable to do so under the totality of the circumstances faced by the member on the scene."²⁴ Hernandez told COPA he pointed his gun because ██████████ was armed with a firearm.²⁵ Additionally, Hernandez stated ██████████ had a free right hand and access to this weapon, while could have escalated it to a deadly situation.²⁶ In Hernandez's Tactical Response Report, he indicated that he drew his firearm because he believed that ██████████ was armed with a firearm because of the call for service, the actions of ██████████ and the other officers giving chase.²⁷

However, when Hernandez pointed his gun at ██████████ would not have been able to grab his own weapon.²⁸ A review of BWC footage shows that ██████████ was immobilized by the other officers at the time Hernandez pointed his gun.²⁹ Because ██████████ was immobilized by other responding officers, he was clearly not an imminent threat. Therefore, there was no objectively reasonable justification for Hernandez to point his gun at ██████████. As a result, COPA finds Allegation 2 is **Sustained**.

VI. DISCIPLINARY RECOMMENDATION

²⁰ Att. 5 2:10 to 2:30

²¹ Att. 5 2:10 to 2:30

²² Att. 5 2:10 to 2:30; Att 5 2:20-2:25 one of the officers said that the weapon was in ██████████ pocket and it is very likely that ██████████ would have remembered that he placed his weapon in his pocket

²³ Att. 5 2:00 to 2:30

²⁴ Att. 40 -D19-01 – Firearm Pointing Incidents (effective November 1, 2019 to Present)

²⁵ Att. 37, Page 11, Lines 5 to 9

²⁶ Att. 37, Page 11, Lines 16 to 23

²⁷ Att. 41, Page 2

²⁸ Att. 5 2:10 to 2:30

²⁹ Att. 5 2:10 to 2:30

a. Officer Jose Hernandez

i. Complimentary and Disciplinary History³⁰

Officer Jose Hernandez has received 148 total awards, including 129 honorable mentions and 10 Department commendations. Officer Hernandez has one sustained complaint against him for an operations violation which resulted in a one-day suspension.

ii. Recommended Discipline

COPA understands that Officer Hernandez was responding to a service call for an individual with a gun and tensions were high. Further, COPA acknowledges Officer Hernandez’s significant complimentary history and minimal disciplinary history. However, the serious nature of Officer Hernandez placing his foot on [REDACTED] head and neck area, coupled with Hernandez pointing his gun at an immobilized [REDACTED] have brought discredit upon the Department. Therefore, COPA recommends a Ten (10) Day suspension.

Approved:

[REDACTED]

4-29-2024

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

³⁰ Att. 42.

Appendix ACase Details

Date/Time/Location of Incident:	11/23/2022 / 15 W 79 th St, Chicago, IL 60620
Date/Time of COPA Notification:	11/23/2022 / 12:08 pm
Involved Member #1:	Jose Hernandez / star#15925/ employee# [REDACTED] / Date of Appointment: 09/29/2014 / Unit 640 / Male / 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.

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)
- 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.³¹ 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.”³²

³¹ 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).

³² *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