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David O. Brown
Superintendent of Police

September 1, 2021

Andrea Kersten
Interim Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
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RE: Superintendent's Non-Concurrence with COPA's proposed investigative findings and penalty Complaint Register #1067572
Deputy Chief Daniel O'Shea, Star #27;
Detective Edward McGovern, Star #21390;
Detective Anthony Babicz, Star #20650;
Police Officer Michael Alaniz, Star #13577;
Police Officer Robert Caulfield, Star #11321;
Police Officer Mario Mendoza, Star #13782;
Police Officer Oscar Serrano, Star #2792;
Police Officer John Wrigley, Star #7179; and
Police Officer Justin Homer, Star #10979.

Dear Interim Chief Administrator:

After a thorough review of the above-referenced Complaint Register (CR) file, the Chicago Police Department (CPD) does not concur with the sustained investigative findings or the proposed penalty of suspensions that ranged from sixty (60) to one-hundred-and-eighty (180) days for each CPD member. According to the Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides comments on the following when there is a disagreement as to the penalty.

Summary of Facts

On February 18, 2014, Officer Lara observed [REDACTED] fire his handgun at an unknown male on North Hamlin Avenue near West Ferdinand Street. Officer Lara related to the Office of Emergency Management Communication (OEMC) that he "on viewed" shots being fired. [REDACTED] then turned towards Officer Lara and discharged his firearm at him before entering the backseat of a stolen vehicle (KIA) occupied by [REDACTED] and [REDACTED]. Officer Lara called a "10-1" and reported that there were shots fired at the police. The KIA fled, and officers pursued the vehicle. The KIA traveled to and entered the Eisenhower and Dan Ryan Expressways. During the vehicle pursuit, the KIA struck a CPD vehicle, resulting in some damage to both vehicles, but the vehicle pursuit continued.

At approximately 31st Street on the Dan Ryan Expressway, a marked police vehicle driven by Officer Alaniz with Officers Caulfield and Mendoza as passengers overtook and pulled alongside the KIA. Then, one of

the offenders in the KIA pointed a gun at Officers Caulfield and Mendoza. The officers discharged their firearms and radioed "shots fired by police." The KIA exited the expressway at 35th Street.

The KIA eventually came to a stop after hitting a snowbank and parked vehicle. The three occupants of the KIA were placed into custody and transported in ambulances to the hospital. A firearm was recovered from the KIA. There were no fatalities as a result of the pursuit and no civilian bystanders were struck by the officers' gunfire.

COPA sustained allegations against the CPD members for violation of the Emergency Vehicle Operations – Pursuits directive and proposed disciplinary penalties of suspensions that ranged from sixty (60) to one-hundred-and-eighty (180) days for each CPD member. COPA did not sustain any allegations against the officers' use of force, their force options, or the discharging of their firearms.

Conflicting Review Determinations on the Same Issue

The determination made by COPA conflicted with that of the Traffic Review Board as to whether the vehicle pursuit complied with CPD's policy and directives. On February 27, 2017, Chief Barbara West, Chairperson of the Traffic Review Board, approved the Board's summary of findings that the vehicle pursuit was in compliance with CPD's policy and directives (COPA Attachment #214). Whereas, on June 28, 2021, the Deputy Chief Administrator of COPA approved a summary report of investigation with sustained violations regarding the Emergency Vehicle Operations – Pursuits directive against the above-referenced nine CPD members.

CPD's directive, Special Order S08-03, Traffic Crash/Pursuit Review, issued March 28, 2016, grants to the Traffic Review Board the authority *"to review all applicable motor vehicle pursuits and crashes consistently with the procedures."* Upon review, if the Traffic Review Board finds the vehicle pursuit was not in compliance, they have the authority to take the following actions, as appropriate: initiate a Summary Punishment, initiate a Complaint Register Investigation, or recommend that the affected member attend a one-day refresher vehicle driving course. The Traffic Review Board determined actions taken during the vehicle pursuit were in compliance with CPD orders.

Because CPD members also discharged their firearms, COPA had jurisdiction to investigate the incident to determine whether the officers' use of force was within CPD policy. Although COPA concluded the use of force options were within CPD policy, COPA then proceeded to sustain minor allegations regarding the actions of the officers during the vehicle pursuit.

Conflicting determinations are harmful because they create confusion as to the activities that are accepted and the basis of the review; further, they create potential due process conflicts if, as in this case, it is determined that the officers violated CPD policy and a suspension is recommended. These conflicting determinations by the Traffic Review Board and COPA indicate that the evidence was insufficient to prove by the preponderance the allegations against the CPD members.

Supervisors & Timeliness of the Investigation - Deputy Chief (then-lieutenant) Daniel O'Shea

This investigation took 7 years, 4 months and 10 days-or- 88 months and 10 days from the date COPA arrived on the scene to initiate the investigation to the date the Summary Report was approved. Arbitrators have consistently overturned and expunged any proposed discipline of supervisors when the investigation violates the length of time allowed for investigations in Article 9, Grievance Procedure, Section 9.4 (C) of the collective

bargaining agreements. Investigations cannot take longer than eighteen (18) months unless an arbitrator finds a reasonable basis that caused the delay. Based on the following arbitration decisions, the sole allegation against Deputy Chief, then-lieutenant O'Shea should be dismissed, or in the alternative, an exonerated finding.

In the Matter of the Arbitration between City of Chicago Department of Police and the Policemen's Benevolent & Protective Association of, Illinois, Unit 156 – Sergeants, Sergeant Juan Ortiz, Gr. No. 545-18-025, Complaint Register No. 1082780, Arbitrator George T. Roumell, Jr., set aside the complaint register investigation and the proposed thirty (30) day suspension and expunged the record from Sergeant Juan Ortiz because there was no reasonable basis or cause on the facts for the investigation to exceed eighteen (18) months (Arbitration decided August 18, 2020).

In that case, the mother of a disabled 23-year-old deaf/mute daughter called 911 to report her daughter missing after her daughter did not return from dropping off a sibling at school. The first officer who responded to the assignment did not speak Spanish and requested the assistance of a Spanish-speaking officer. Sergeant Juan Ortiz, the grievant, responded. The mother informed Sergeant Ortiz that her daughter was disabled and that her ex-boyfriend was under investigation for sexually assaulting her and she showed Sergeant Ortiz a valid Order of Protection that her daughter had against her ex-boyfriend. Contrary to CPD directives, Sergeant Ortiz told the mother that she needed to wait until 9 or 10 p.m. because she did not see anyone take her and she did not present any facts that her daughter was in danger. The mother returned to the last location she saw her daughter, asked to view surveillance cameras, and distributed flyers with her daughter's picture. The mother re-contacted the police at 5 p.m. and the responding officers and sergeant began an investigation. The responding sergeant also initiated a complaint register number for the inadequate service provided by Sergeant Ortiz.

The daughter whom the disabled sister dropped off at school informed the investigating officers that the ex-boyfriend was at the school, grabbed her sister by the arm, dragged her through the school courtyard, forced her into a vehicle, and fled the scene with her. The Detectives assigned to the missing incident later searched locations and discovered the ex-boyfriend attempting to leave the back door of his residence with the missing daughter. Detectives took protective custody of the missing daughter; the ex-boyfriend was charged with Kidnapping, Criminal Sexual Assault, and Violation of an Order of Protection. When the administrative investigation was completed, the criminal case against the ex-boyfriend was still pending.

The BIA investigator proposed a twenty-day (20-day) suspension after sustaining several rule violations against Sergeant Ortiz in that he brought discredit to CPD, failed to promote the CPD's efforts, was inattentive to duty, and was incompetent in the performance of duty. Sergeant Ortiz grieved the suspension because the investigation took longer than eighteen (18) months.

The City presented various arguments as to why the investigation exceeded eighteen (18) months, including that the BIA Investigator had the largest caseload in the Section; that the Investigator was assigned for call-outs involving police shootings; that the initiation report listed a different sergeant's name, not Sergeant Ortiz's, whom the Investigator determined responded to the scene; and that the Lieutenant assigned to review the investigation was tasked with the duty of reviewing CR investigations from the Districts and elsewhere, which he previously had not been required to do. Arbitrator Roumell criticized the City's suggestion, as a defense of the delay, that both the Investigator and his Lieutenant supervisor had other pressing duties.

In the end, Arbitrator Roumell did not find the caseload or the additional responsibilities arguments persuasive in establishing a "reasonable basis" in the length of time required to complete the investigation. He

noted that the problem with that position is that the City negotiated 9.4(C) and its eighteen (18) month standard; further, he noted that the BIA lacked a policy "to monitor the length of investigations" in compliance with the required time limit, and thereby, ignored the contract language by assigning other duties and not monitoring the time limits. This decision illustrates that even an investigation into egregious misconduct does not give the City a pass to extend past the time limit of eighteen (18) months. Further, although a criminal case was still pending against the ex-boyfriend, the caseload for the Investigator increased, and the Investigator had other responsibilities, none of these sufficed to create a reasonable basis for the delay.

In the Matter of the City of Chicago Department of Police and Police Benevolent & Protective Association, Chicago Police Sergeants' Association, Grievance No. 545-20-005, Complaint Register No. 1083385, Arbitrator Steven M. Bierig overturned the proposed discipline of a five (5) day suspension for the failure of Sergeant Peter J. McGlynn, Star No. 1734, "to perform the required supervisory actions in conformance with existing directives relative to monitoring and reporting motor vehicle pursuits."

In that case, a Complaint Register was initiated for the actions taken by Police Officers Martin Robin, Star #15821, and Christopher Barajas, Star #7367, who engaged in a vehicle pursuit on October 12, 2015, while assigned to Beat 805. Officers Robin and Barajas initiated a vehicle pursuit after a reported stolen vehicle that they attempted to stop accelerated rapidly away from them. The officers pursued the vehicle with their emergency lights activated; however, the officers did not activate the siren of their vehicle. The officers notified the OEMC of the direction of traffic and observed the vehicle disregard a red light traffic signal at 57th and Western, a red light traffic signal at 55th and Western, and a red light traffic signal at 51st and Western. The officers decreased their speed; however, they continued to follow the direction of the vehicle northbound on Western until they observed a pedestrian struck at 4921 S. Western Ave, where they immediately pulled off from the pursuit and notified EMS to send an ambulance. The pursuit, which lasted one minute and eleven seconds between the time of the attempted vehicle stop and the time the pursuit was stopped at 4921 S. Western, proceeded approximately eight to nine city blocks. The OEMC zone did not classify the event as a traffic pursuit and the pursuit was terminated before a district supervisor was assigned by OEMC to monitor the pursuit.

The only available supervisor in the 008th District on the same watch as Beat 805 was Sergeant McGlynn, who was assigned Beat 820. Although Beat 805 was not directly under the supervision of Sergeant McGlynn, the other sergeant could not monitor the pursuit as they were controlling a crowd scene at the location of a person shot. Sergeant McGlynn reported to the scene of the accident and approved a Recovered Vehicle Supplementary Report for Beat 805. Sergeant McGlynn did not instruct Officers Robin and Barajas to complete a Traffic Pursuit Report.

The Investigator sustained allegations that Officers Robin and Barajas violated CPD General Order G03-03-01, Emergency Vehicle Operations-Pursuits, by pursuing a vehicle when the most serious offense the vehicle is wanted for is theft and failing to self-terminate the traffic pursuit after they observed the fleeing vehicle disregard three red light traffic signals; CPD directives prohibit initiating or continuing a traffic pursuit under either of these circumstances. The Investigator concluded the necessity of immediately apprehending the fleeing suspect did not outweigh the level of inherent danger created by the traffic pursuit, which resulted in a pedestrian being struck by the fleeing vehicle. The failure to complete a Traffic Pursuit report was also a sustained violation. The Investigator further sustained allegations that Sergeant McGlynn failed to perform the required supervisory actions in conformance with existing directives relative to monitoring and reporting motor

vehicle pursuits. The Investigator recommended ten (10) day suspensions for Officers Robin and Barajas and a five (5) day suspension for Sergeant McGlynn.

This complaint register investigation was initiated not on October 12, 2015, the date of the traffic pursuit, but rather on December 15, 2016, when [REDACTED] the pedestrian who was struck by the fleeing vehicle, notified CPD of a civil suit alleging the officers violated Department policies and procedures regarding emergency vehicle operations in pursuing a stolen vehicle. The Investigator completed the investigation for approval on September 5, 2019. From the date the CPD initiated an investigation, 2 years and 8 months, or 32 months and 21 days had passed.

On July 18, 2021, Arbitrator Bierig sustained the grievance because “the Investigation exceeded 18 months in violation of Section 9.4 (C) and therefore, Sgt. McGlynn’s 5-day Suspension is overturned.” This decision illustrates that pending civil litigation does not suffice for the City to meet its burden of proving “reasonable cause” for a delay. Arbitrator Bierig noted that, while such a factor can be considered in determining whether an investigation merits additional time, “civil litigation related to a matter under investigation does not in and of itself necessarily require an extension.” Arbitrator Bierig further stressed that “there must be sufficient evidence of a nexus between the civil litigation and the length of the delay.”

In the Matter of the Arbitration between the Policemen's Benevolent & Protective Association, Union, Grievant: Bryan Topczewski, and the City of Chicago, Chicago Police Department, Grievance No.: 545-19-03, Complaint Register No. 1086744, Arbitrator Peter R. Meyers decided that, because the evidence showed the Investigator’s investigation ended almost one month after the eighteen (18) month timeframe had expired, and there was no reasonable cause for the delay in the disciplinary investigation, the grievance was sustained and the proposed fifteen (15) day disciplinary suspension of the Grievant shall be reversed.

In this Complaint Register investigation, a female sworn member complained that her sergeant referred to black officers as “officers of color,” which she found offensive, and that the sergeant posted multiple offensive, misogynistic, biased, Islamophobic, homophobic, and anti-Semitic memes on his publicly available personal Facebook account. The Investigator ultimately *unfounded* the first allegation; however, they proposed a fifteen (15) day suspension after sustaining the second allegation in that the sergeant brought discredit to CPD, failed to promote the CPD’s efforts, and disobeyed an order in that he violated the social media directives.

The City attempted to identify several circumstances that constituted reasonable causes for the delay in completing the investigation at issue. These circumstances included the absence from duty during the investigation of the Complainant (due to furlough and medical leave), the Investigator (due to furlough and medical leave), and the Grievant, as well as the fact that the Investigator had to coordinate with another investigator looking into separate allegations against the Grievant. The City also pointed to other circumstances, including the Investigator’s overall workload.

Arbitrator Meyers was not persuaded by the City’s defenses. He noted that the Complainant, the Grievant, and Investigator were absent from duty for extended periods while the investigation at issue was open; however, he highlighted that there were similarly lengthy periods when it appears that the Investigator took “few or no affirmative steps to move the investigation forward.” He also noted that the Investigator was not prevented from interviewing the Complainant when the Complainant was scheduled to report to CPD’s Medical Section while she was on medical leave.

Arbitrator Meyers, the Union, and the City all agreed that Section 9.4(C) provides an eighteen (18) month timeframe for the completion of a misconduct investigation that does not involve criminal allegations. Arbitrator Meyers determined that, for purposes of measuring, the start of the eighteen-month timeframe for completing a disciplinary investigation under Section 9.4(C) is the date upon which a matter is assigned to an Investigator and the Investigator formally opens the investigation; the period ends when the Investigator submits a final Summary Report (Arbitration decided August 12, 2020).

Comparable Sustained Complaint Register

One reason why a delayed investigation is prejudicial to CPD members is that, if there is a proposed penalty for sustained misconduct, as in this case (which took 7 years, 4 months and 10 days, or 88 months and 10 days), the penalty is not compared to sustained misconduct that occurred around the same time. In Complaint Register #1086838, COPA investigated an incident where CPD officers engaged in a vehicle pursuit that ended after the pursued vehicle crashed at a gas station located at 55th and Ashland. After the crash, the male suspects attempted to flee from the vehicle. As one of the men was exiting the vehicle, the CPD vehicle struck him. The two officers exited their vehicle and attempted to place the individual into custody; however, the individual resisted, attempted to flee again, and was eventually shot twice by one of the officers. The incident occurred on December 12, 2012, and COPA concluded its investigation on December 20, 2017.

COPA sustained the allegation that the officer driving the patrol vehicle violated the General Order, G03-03-01, Emergency Vehicle Operations – Pursuits. COPA concluded, "When applying the balancing test factors outlined in General Order 03-03-01, the necessity to immediately apprehend the SUV did not outweigh the level of danger created by the vehicle pursuit." COPA also noted that it was rainy and overcast, which caused diminished visibility with wet and slick roads, and the evidence contained in the Detective Supplementary Reports indicated that the officer driving the CPD vehicle told detectives that the pavement was slick and that the Trailblazer fled at a high rate of speed and ran red lights. The in-car camera footage showed the Trailblazer fishtailing at one point and later crashing and the CPD vehicle striking the individual, further suggesting the roads were slick.

In the discipline recommendation memorandum, COPA found that the officer's actions on December 15, 2012, were unreasonable under the circumstances because he "engaged in a high-speed pursuit, through multiple traffic control devices, on a major thoroughfare, in the rain that ended in both the subject vehicle crashing into a crowded gas station" and running over the individual. COPA further presented evidence that other officers who were involved voluntarily ceased their pursuit because of the weather conditions. COPA reasoned that the vehicle pursuit "contributed to the officer-involved shooting death of" the individual. Based on the totality of the circumstances, COPA proposed discipline of a six (6) day suspension.

None of the proposed sustained allegations against the CPD members in Complaint Register #1067572 rise to the severity and tone of the misconduct of Complaint Register #1086838. Also, because the offenders pursued in #1086838 shot a civilian, then turned and fired at the police officer, COPA does not conclude that the officers misapplied the balancing test. If COPA had concluded this investigation in a timely manner, and used #1086838 as a comparable to remain consistent in the application of discipline, the CPD members involved in #1067572 would receive lesser-proposed penalties that would have ranged from a reprimand to two (2) day suspensions.

Imposing harsher punishment on one CPD member than others who committed the same misconduct

Summary Punishment Action Request (SPAR) is an alternative disciplinary procedure to the Complaint Register process for conduct defined as a less serious transgression that is observed by or comes to the attention of a CPD supervisor or command staff member (Special Order S08-01-05, Summary Punishment). A less serious transgression is "an act or omission which warrants prompt and appropriate action but does not require a Log Number." Special Order S08-01-05 lists thirty-four (34) types of misconduct, including, to name a few, being unfit for duty, violating medical roll procedure, failing to comply with the requirements concerning CPD and personal weapons or ammunition, failing to perform assigned tasks, and being inattentive to duty. In Special Order S08-01-05, lesser transgression #27 is the "failure of a sworn member to comply with the requirements outlined in Department directives concerning motor vehicle pursuits when the chairperson of the Traffic Review Board determines that a summary punishment, rather than a Log Number investigation, would best achieve the goals of the Department."

The SPAR Offense Table categorizes offenses by allegation and Description/Penalty and includes mitigating, normal, and aggravating ranges of penalties for the given misconduct. Under the category of Operational Conduct (On Duty), Transgression #27, the Offense "Failure to Comply with the Requirements Outlined in Department Directives Concerning Motor Vehicle Pursuits", includes the penalty range of a Reprimand with mitigating circumstances, a 1-to-2-day suspension under normal circumstances, and a 2-to-3-day suspension under Aggravating circumstances.

Because Complaint Register #1067572 also involved the investigation of a police-involved shooting, Summary Punishment was not a possible option. However, in the end, COPA sustained only misconduct for "failed to terminate a traffic pursuit" and "participated in the tactic of pursuit paralleling," both of which are permissible "less serious transgressions" administered in the SPAR system. Between February 18, 2014, the date of the incident in CR #1067572, and June 28, 2021, the date the summary report was approved, the CPD issued two hundred and ninety (290) SPARs for transgression #27, Non-Compliance with Motor Vehicle Pursuits; of these cases, only three (3) resulted in a 3-day suspension, whereas five (5) resulted in a 2-day suspension, nineteen (19) resulted in a 1-day suspension, and the remaining cases received a disciplinary outcome of either a reprimand or a violation noted.

In the Consent Decree, *State of Illinois v. City of Chicago*, the Final Disciplinary Decision section requires that "COPA and CPD will ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough, and timely fashion, based on the nature of the misconduct. COPA and CPD will also ensure that mitigating and aggravating factors are identified, consistently applied, and documented" (Line 513). The Consent Decree further requires CPD to "use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts" (Line 514).

The proposed penalty of sixty to one-hundred-and-eighty-day (60-180 day) suspensions is not consistent with previous discipline administered by CPD for similar conduct; this inconsistency would have been stark had the investigation been completed in a timely fashion. It should be of no concern to the CPD member whether COPA or BIA is handling the investigation, or whether a Complaint Register or SPAR is used; the question is whether the degree of discipline proposed is reasonably related to the seriousness of the member's proven misconduct and the facts of their complimentary and disciplinary histories.

Involved Officers

Deputy Chief #1: Deputy Chief (then-lieutenant) Daniel O'Shea

In addition to the fact that arbitration decisions overturn and expunge proposed discipline when the requirement to complete the investigation in a timely manner is not met, it is also necessary to show by a preponderance of the evidence that the violation occurred. COPA did not prove by the preponderance that Deputy Chief (then-lieutenant) O'Shea failed to terminate the traffic pursuit in violation of General Order G03-03-01. COPA asserted that, because Deputy Chief O'Shea was operating an unmarked Department vehicle, he should not have remained in the vehicle pursuit when marked units were available. However, the evidence presented indicates that Deputy Chief O'Shea was never the primary unit during the vehicle pursuit; he used his flashing headlights and siren, and, therefore, complied with the General Order.

G03-03-01, V, D, provides that CPD members operating unmarked Department vehicles using flashing headlights and siren may engage in a vehicle pursuit until a marked Department vehicle becomes available to take over the pursuit. The section continues, "The unmarked Department vehicle operator will then withdraw as the primary pursuit unit and, only with the approval of a supervisor assigned to the pursuit, assume the role of secondary pursuit unit."

The investigation revealed that Sergeant Murphy, Beat 1120, authorized three (3) vehicles to continue in the pursuit. Deputy Chief O'Shea stated during his COPA interview that he only saw the offending vehicle when a marked vehicle exited the pursuit at 31st and the Dan Ryan expressway and observed only one marked vehicle in front of him at that point. That statement suggests that he was the third vehicle in the pursuit. No evidence was presented to indicate which three (3) vehicles Sergeant Murphy authorized to continue in the pursuit. Further, the evidence does not indicate that Sergeant Murphy was interviewed or contacted to provide a statement to determine which three (3) vehicles he authorized in the pursuit. Based on Deputy Chief O'Shea's statement, he believed he was one of the three (3) vehicles authorized to be in the pursuit.

In the Traffic Pursuit Supplementary Report, Captain Roger Bay approved Deputy Chief (then-lieutenant) O'Shea's activities during the traffic pursuit. According to Section IV. *Authority and Accountability*, "K. Silence by the assigned supervisor, responsible field lieutenant, and district watch commander will indicate tacit approval and shared responsibility for continuation of the pursuit." Based on the evidence presented, it would be improper to hold Deputy Chief O'Shea in violation of the order; therefore, the findings should be classified as exonerated.

Involved Officer #1: Detective Edward McGovern, Star #21390

Detective McGovern complied with CPD policy and should be exonerated of the one allegation that he failed to terminate the pursuit. COPA inaccurately stated on Page 12 of their Summary Report of Investigation that "A Department member should terminate an active pursuit...whenever a pursued vehicle or pursuing Department vehicle is involved in a property damage traffic crash." COPA cited G03-03-01 as their authority; however, this reading of the order is incorrect. The order states only that officers "should consider terminating" if these factors exist as part of their balancing test.

COPA then states on page 16 that "Det. McGovern, erroneously, believed he did not have to terminate the pursuit because he did not observe significant property damage and believed apprehending the KIA was more critical. Det. McGovern failed to consider he observed a head on collision that would likely result in injury to one or all involved individuals." The judgment of an officer regarding injuries sustained in a crash can

only be discounted if their judgment is determined to be counter to the preponderance of the evidence. COPA took no steps to determine what level of damage to a vehicle would be indicative of "a probability of injury," which is the test for whether a pursuit is no longer authorized for continuance. A review of the damage to the officer's vehicle as well as the fact that the offending vehicle continued to flee indicates it was reasonable for the Detective to make his determination. COPA also failed to reconcile the statement of the officer involved in the accident who stated "I'm fine" on the Zone. In fact, the calm and composed nature of the struck officer who reported her status on the air (Attachment #152) mere seconds after she was struck entirely defeats the validity of this allegation. This officer's subsequent treatment for a back injury is not evidence that was available to Detective McGovern at the time, yet COPA cites it as their only compelling evidence.

Involved Officer #2: Michael Alaniz, Star #13577;

Involved Officer #3: Robert Caulfield, Star #11321; and

Involved Officer #4: Mario Mendoza, Star #13782

COPA sustained one allegation that Officers Alaniz, Caulfield, and Mendoza participated in the tactic of pursuit paralleling in violation of the general order and without having prior authorization to do so. G03-03-01 defines Pursuit Paralleling as "[t]he deliberate tactic of a vehicle operator to mirror on adjacent streets the direction and speed of vehicles actively involved in an authorized pursuit." COPA determined that, because the officers did not seek prior permission to participate in pursuit paralleling and did not receive permission to participate in pursuit paralleling, these officers violated the general order. Not only does the evidence not support that the officers performed pursuit paralleling but also Sergeant G. Murphy, Star #914, and Captain Roger Bay, Star #35, both monitored the pursuit. G03-03-01 specifically informs officers that "silence by the assigned supervisor, responsible field lieutenant, and district watch commander will indicate tacit approval and shared responsibility for continuation of the pursuit" (section IV. *Authority and Accountability*, K.).

The COPA investigator references statements made by Officers Alaniz, Caulfield, and Mendoza admitting that they "turned onto Madison Street to go in the same direction as the KIA and speed up to join the pursuit." The investigator erroneously contends, "Department Policy does not require that an officer go the exact speed of the pursued vehicle." In fact, to be guilty of pursuit paralleling one must "mirror on adjacent streets the direction and speed." To "mirror" the chase, one would have to keep pace with the offending vehicle while traveling on an adjacent street. Caulfield, the driver, did not attempt to keep pace with the fleeing vehicle on an adjacent street; rather, he merely drove on a parallel street, heading in the direction of the pursuit and attempting to "catch up" and make sure that they were in the area when and where the pursuit concluded. A review of Officer Mendoza's statement to IPRA also supports Officer Caulfield's account. Officer Mendoza stated, "So we were pretty much paralleling the actual chase." This statement should not be used out of context, as a review of the remainder of Officer Mendoza's statement also relates that they were "going Eastbound on Madison...the best route for us not to get hit by a squad car, safest route to get to the general area of the pursuit in the event assistance with apprehension was needed." The initial vehicle pursuit began after an offender discharged a firearm at another person and then toward a police officer. As these offenders were extremely dangerous, many officers would likely be needed to successfully apprehend the wanted offenders at the conclusion of the vehicle pursuit. The investigation does not provide any physical evidence other than Officer Mendoza's statement that was taken out of context by the Investigator.

Involved Officer #5: Oscar Serrano, Star #2792

CPD does not concur with the sustained findings or the proposed penalty for Police Officer Oscar Serrano. COPA sustained two allegations against Officer Serrano in that (1) he failed to terminate a traffic pursuit and (2) he used the tactic of caravanning.

COPA failed to support by a preponderance of the evidence that Officer Serrano was required to terminate the pursuit. COPA, in part, cited General Order, G03-03-01, Emergency Vehicle Operations – Pursuits, in that when a traffic crash occurs between the fleeing vehicle and a CPD vehicle and "there is a probability of personal injury," members are prohibited from continuing a vehicle pursuit. However, the General Order also provides that, if only property damage occurs from the traffic crash, then an officer need only consider terminating the pursuit. Officer Serrano asserted the property damage was minor and did not require him to terminate the pursuit, but COPA took the position that, because Officer Serrano had to maneuver around vehicle debris in the street and the front passenger tire from the other CPD vehicle was visibly knocked out of place, Officer Serrano should have known it was likely that personal injury had occurred.

Officer Serrano's judgment regarding potential injuries sustained in a traffic crash can only be discounted if it is determined to be counter to the preponderance of the evidence. COPA took no steps to determine what level of damage to a vehicle would be indicative of "a probability of injury," which is the test used to determine whether a pursuit is no longer authorized for continuance. As revealed by a review of the damage to the officer's vehicle as well as the fact that the offending vehicle continued to flee, it was reasonable for Officer Serrano to make this determination. Further, COPA failed to take into account the statement of the officer involved in the accident. On the Zone, she stated, "I'm fine," and reported her status on the air (Attachment #152). Her calm and composed demeanor mere seconds after she was struck defeats the validity of this allegation entirely. COPA cites as their only compelling evidence this officer's subsequent treatment for a back injury; however, this evidence was not available to Officer Serrano at the time.

Further, evidence demonstrates that Officer Serrano's supervisors approved his actions. In the Traffic Pursuit Report (Attachment #214, Traffic Review Board Summary of Findings), Captain Roger Bay, Star #35, stated that he monitored the vehicle pursuit, applied the balancing test, and approved the continuation of the traffic pursuit because "the severity of the offense committed justified the continuation of the pursuit." In addition, Officer Serrano's sergeant, Sergeant G. Murphy, Star #914, checked the boxes that he approved the authorized activities of caravanning and pursuit paralleling in the Traffic Pursuit Supplemental Report. COPA took the position that there is no evidence that Officer Serrano was verbally informed over the radio transmission by a supervisor that his actions were approved. However, this position is unsupported by G03-03-01, which, in section IV. *Authority and Accountability*, provides that "K. Silence by the assigned supervisor, responsible field lieutenant, and district watch commander will indicate tacit approval and shared responsibility for continuation of the pursuit." Therefore, the findings against Officer Serrano should be exonerated.

Involved Officer #6: John Wrigley, Star #7179;
Involved Officer #7: Justin Homer, Star #10979; and
Involved Officer #8: Detective Anthony Babicz, Star #20650

Officers John Wrigley, Justin Homer, and Detective (then-officer) Anthony Babicz worked as Beat 4171 as a 3-person assignment. COPA sustained the allegation that the officers failed to terminate a pursuit in violation of G03-03-01. The investigator stated, "Sergeant Murphy authorized only three vehicles to continue the pursuit" (COPA Summary Report, pg. 18). While COPA concluded that the officers "did not know what position they were in" when they entered the pursuit, COPA's investigation also determined that at least three other vehicles were ahead of these officers' vehicle, and therefore, they should have terminated their involvement in the pursuit.

Although the COPA investigation concluded that they were not one of the first three pursuit vehicles, it does not show that this information was available to them at the time. In his interview, Babicz stated, "We get on the expressway and we head eastbound. I see at least one squad car some distance ahead of us, and then I can only assume that the offending vehicle is ahead of them." Officer Wrigley provided the same account when asked by the Investigator to identify the position of their vehicle. He also replied, "I don't remember the exact position we were in at the pursuit, at any point in time" (Wrigley, COPA statement, pg. 14). Although Officer Wrigley had just answered that he did not recall the position of their vehicle in the pursuit, the Investigator, knowing that Sergeant Murphy had authorized only three vehicles to remain in the vehicle pursuit, pressed Officer Wrigley with a follow-up question even though the interview was being conducted by COPA 4 years, 7 months, and 9 days or 55 months and 9 days from the date of the incident: "Do you recall being the first vehicle, the second vehicle, the third vehicle?" Officer Wrigley again stated, "I don't recall our exact position."

The statements suggest that the officers believed that they were one of the first three pursuit vehicles and, therefore, in compliance with Sergeant Murphy's order. COPA did not produce any evidence or information to show that Officers Wrigley and Homer and Detective (then-officer) Babicz could or should have known their recollections not to be accurate when questioned more than four years later. Again, the incident occurred on February 18, 2014. Officer Wrigley was not interviewed until September 27, 2018; Officer Homer was not interviewed until January 28, 2021; and Detective Babicz was not interviewed until February 18, 2021. Delaying interviews for not just months but years is an unfair and unreliable practice when the investigative findings then use the interviewees' inability to recall specifics as a basis to sustaining the allegations.

Conclusion

CPD respectfully does not concur with the sustained investigative findings or the proposed penalties. The complaint register should be classified as exonerated for all CPD members. Moreover, CPD revised the vehicle pursuit directives in 2016 and 2019 and is presently updating the directives as part of the reform measures. It would be punitive and without just cause to discipline officers for an incident that occurred in the year 2014 under a CPD policy that has been revised three times in the intervening years.

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department