



Lori E. Lightfoot  
Mayor

Department of Police · City of Chicago  
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. [REDACTED]  
Superintendent of Police

August 24, 2021

Andrea Kersten  
Interim Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4th Floor  
Chicago, IL 60622

RE: Superintendent's Partial Concurrence with COPA's Proposed Penalties  
Complaint Register Number: #2019-0001617  
Officer Joseph Lisciandrello, #19362

Dear Interim Chief Administrator:

After a careful review of the recommendation made by the Investigator in this matter the Chicago Police Department (CPD) concurs with the findings of COPA but does not concur with the penalty recommendation of a suspension of 180 day up to and including separation.

### Relevant Facts

On May 11, 2019 at 3:28 p.m., Officers Robert Rhodes (Officer Rhodes) and Aaron David (Officer David) were patrolling near 15<sup>th</sup> Street and Lawndale Avenue when [REDACTED] ([REDACTED]) approached the driver-side window of their squad car with his hands up and said, "I don't have anything. I'm not from around here." Officer Rhodes noticed a bulge in [REDACTED] right front pocket. For that reason, Officer Rhodes reached through the driver-side window and felt the bulge which, at this point, was protruding. Officer Rhodes observed the handle of a handgun. Officer Rhodes exited the squad car and [REDACTED] fled westbound on 15<sup>th</sup> Street. Officer Rhodes pursued [REDACTED] on foot. Officer Rhodes observed [REDACTED] manipulate the handgun as he ran. On the northeast corner of Lawndale Avenue and 15<sup>th</sup> Street, [REDACTED] turned toward Officer Rhodes and brandished the handgun. Officer Rhodes had no cover and was completely exposed. Consequently, Officer Rhodes discharged his weapon eight times. Officer Rhodes alerted the dispatcher and continued his pursuit of [REDACTED] who fled eastbound in the north alley of 15<sup>th</sup> street. Once in the alley, [REDACTED] again turned toward Officer Rhodes while brandishing the handgun. Therefore, Officer Rhodes discharged his handgun three more times.<sup>1</sup> At this time [REDACTED] eluded Officer Rhodes. The Civilian Office of Police Accountability (COPA) deemed Officer Rhodes' shooting justified, and for this reason COPA does not recommend a penalty for Officer Rhodes.

Meanwhile a multitude of Officers, including Officer Joseph Lisciandrello (Officer Lisciandrello) responded to assist Officers Rhodes and David. Officer Lisciandrello drove to 1421 S. Lawndale Avenue and observed crime scene tape cordoning off Lawndale Avenue between the South alley of Douglas Boulevard and

<sup>1</sup> It is unknown whether any of Officer Rhodes' shots struck [REDACTED]

15<sup>th</sup> Street. At that same location, Officer Lisciandrello exited his squad car and spoke to Officers Patrick Bowery (Officer Bowery) and Jerry Luke (Officer Luke). Sergeant James Vasavid (Sergeant Vasavid) was also putting up crime scene tape nearby. Officer Bowery asked Sergeant Vasavid if the scene was secure and Sergeant Vasavid responded affirmatively. Since Sergeant Vasavid indicated the crime scene was secure and fifteen minutes elapsed since the shots were fired at and by Officer Rhodes, Officer Lisciandrello deactivated his body worn camera (BWC), which had been recording for approximately eight minutes<sup>2</sup>. Officer Luke communicated ██████ suspected flight path to Officer Lisciandrello, and Officer Lisciandrello continued touring the cordoned off area. Officer Lisciandrello observed an open front gate at 1423 S. Lawndale Avenue. Officer Lisciandrello pulled over at that location to investigate the cause of the open gate. During his investigation, Officer Lisciandrello observed a chain-link fence that separated the north gangway of 1423 S. Lawndale Avenue from the South gangway of 1421 S. Lawndale Avenue as well as a four foot nook in the South gangway of 1421 S. Lawndale Avenue. Officer Lisciandrello could not see into the northeast corner of the nook, therefore Officer Lisciandrello extended his head, arm and handgun around the corner.<sup>3</sup> In the northeast corner of the nook, Officer Lisciandrello observed ██████ who raised his right arm and pointed his handgun at Officer Lisciandrello. Officer Lisciandrello discharged his service weapon six times and then leaned back using the outside wall of the nook for cover. Officer Lisciandrello again extended his head as well as his handgun around the corner of the alcove, and again observed ██████ pointing his handgun at him. Officer Lisciandrello discharged his weapon three more times. Officer Lisciandrello alerted the dispatcher and jumped the fence from the north gangway to the south gangway and retrieved ██████ handgun from his right hand. Officer Lisciandrello immediately turned over the handgun to the first responding Sergeant Karl Kruger (Sergeant Kruger). Officer Lisciandrello related to Sergeant Kruger that his BWC was not activated. Sergeant Kruger instructed Officer Lisciandrello to activate his BWC.

Officer Connor Purdy (Officer Purdy), who also responded to the call of shots fired at and by the police, was driving southbound in the alley off Lawndale avenue and heard Officer Lisciandrello's shots. Officer Purdy exited his squad car and jumped the fence at 1423 S. Lawndale. Officer Purdy observed Officer Lisciandrello retrieve ██████ handgun from his right hand.<sup>4</sup>

█████ was pronounced dead at Mount Sinai hospital at 4:07 p.m. The Medical Examiner and COPA, deduced that the gunshot wound to ██████ right arm is consistent with ██████ pointing his handgun at Officer Lisciandrello, because the bullet entered ██████ outer elbow and exited near his armpit.

COPA, exonerated and non-sustained two of the allegations against Officer Lisciandrello leaving one remaining allegation that "Officer Lisciandrello improperly deactivated and/or failed to properly re-activate his BWC while engaged in law-enforcement activities in violation of S03-14, 'Body Worn Cameras'". COPA recommended a penalty of 180 days up to separation for this one remaining allegation. While CPD agrees that COPA has met its burden by a preponderance of evidence it does not agree with the recommended penalty. As set forth below such a severe penalty is not supported by the evidence or precedent.

### **Superintendent Penalty Analysis**

COPA recommends a penalty for Officer Lisciandrello failure to reactivate his BWC that is akin to that of a violation of the Department's Use of Force orders, 180 days up to separation. COPA justifies this severe

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<sup>2</sup> Officer Bowery's BWC captures Sergeant Vasavid affirming that the scene is secure when Officer Bowery asks him the same.

<sup>3</sup> Police and military tactics refer to this technique as slicing the pie.

<sup>4</sup> This is captured on Officer Purdy's BWC.

penalty recommendation by asserting in its Summary Report that because there is no video evidence of the shooting by Officer Lisciandrello there is insufficient evidence to fully evaluate the actions of Officer Lisciandrello. This is simply not correct as COPA concedes in its Summary Report. The Medical Examiner confirmed that the trajectory of the gunshot wound to ██████ right arm is consistent with ██████ pointing his weapon at Officer Lisciandrello. The bullet entered ██████ outer elbow and exited near his armpit, indicating his right arm was raised at the time he was shot. (Atts. 124 and 53). Officer Lisciandrello stated multiple times that ██████ was pointing his weapon at Officer Lisciandrello when he fired. A point that COPA confirms in its Summary Report when it stated “Officer Lisciandrello provided consistent accounts of ██████ actions. Approximately three minutes after Lisciandrello discharged his weapon, he is captured on BWC telling other officers, ‘As soon as I pried [the alcove], he upped his gun.’” He subsequently repeated similar accounts to both detectives and COPA.” (Summary Report at p. 33). This independent corroboration of Officer Lisciandrello’s account combined with his consistent reporting of the events should not be undermined simply because there was no video of the incident.

Despite the aforementioned evidence supporting Officer Lisciandrello’s account of this event, COPA infers that he purposely did not activate his BWC to ensure that his is the only surviving account of the incident. This incendiary inference is wholly unsupported by the evidence presented in this matter and amounts to an unsupported credibility determination made against the Officer. The Summary Report makes clear that Officer Lisciandrello’s failure to activate his BWC is due to his lack of understanding of the governing order. This should be a basis for retraining not such a severe penalty up to possible separation and does nothing to support a finding that it was done purposefully to ensure a lack of evidence.

Although the Department appreciates the importance and gravity of an officer activating and deactivating a BWC as required by S03-14, a suspension of 180 days up to and including separation is far too severe and is not supported by recommendations made by COPA in other cases and in precedent before the Police Board. In fact, although COPA itself has been inconsistent in its recommended penalty for failure to activate or pre-mature deactivation of BWC, it has never before issued such a severe penalty. Below is a summary of a few recent disciplinary recommendations for failure to activate a BWC or early termination of a BWC:

- In Log, No. 2019-0004852 - COPA recommended a 30 day suspension for Officer Lauren Holt #18899 for prematurely deactivating her BWC and for directing profanities at a citizen and a 30 day suspension for Officer Pierre Williams #7632 for failing to timely activate his BWC and for directing profanities at a citizen.
- In COPA’s Summary Report of Investigation for Log No. 2019-0005126, COPA recommended a 10 day suspension for Officer Jaime Acosta #16462 for prematurely deactivating his BWC.
- In Log No. 2020-0003256, COPA recommended a 15-day suspension for sustained allegations that Officer Kerry Pozulp committed misconduct by pushing Colin Boyle with an impact weapon without justification and committed misconduct by failing to activate Body-Worn Camera in compliance with Special Order S03-14
- COPA, in Log No. 2019-0002060 recommended a 10-day suspension for Officer Zachary Nolfi for failure to comply with Department Procedures when a pursuit is initiated and failure to timely activate

his BWC. In this same Log, COPA recommended a 3-day suspension for Officer Alexander Kulisek for failure to timely activate his BWC.

The Consent Decree entered in the matter styled *State of Illinois v. City of Chicago*, No. 17 C 6260 provides requirements of recommended discipline. Of note, paragraph 513 states, "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". The Consent Decree, paragraph 514, further requires the Department to "use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts." The above referenced penalty recommendations as well as the penalty recommendation in this case do not comply with these paragraphs. Moreover, in mitigation it should be considered that Officer Lisciandrello has been with the Department for seven years and during this time has received (1) 2019 Crime Reduction Award, (2) Attendance Recognition Awards; (3) Complimentary Letters; (7) Department Commendations; (2) Emblems of Recognition-Physical Fitness, (78) Honorable Mentions; (1) Life Saving Award, (1) Military Service Award, (1) Problem Solving Award; (1) Recognition/Outside Governmental Agency Award and (2) Special Commendations. Further, Officer Lisciandrello has no sustained CR investigations and one SPAR during the last 5 years. These factors taken into consideration with recommended discipline made in the above-referenced matters support a less significant penalty.

It should be further noted that the Illinois Labor Relations Board recently decided in response to grievances filed by officers, that CPD is required to bargain with its members over discipline related to activation and deactivation of BWC before officers can be disciplined for late activation or early termination. While CPD continues to bargain on this topic, no agreement has been reached.

### **Conclusion**

For the foregoing reasons CPD recommends that Officer Joseph Lisciandrello be suspended for thirty (30) days. The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

Sincerely,

  
David O. Brown  
Superintendent  
Chicago Police Department