

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	April 28, 2020
Time of Incident:	12:16 am
Location of Incident:	34 West 99 th Street
Date of COPA Notification:	April 28, 2020
Time of COPA Notification:	12:30 am

On April 28, 2020, officers responded to a ShotSpotter alert in the vicinity of South Lafayette Avenue and West 99th Street. While en route to the location, ShotSpotter detected additional shots fired in the same vicinity. Officers Joel Gordils and Anthony Fabian arrived in the area first, followed by Lieutenant (Lt.) Ernest Spradley and Officers Kyle Gruba, Steven Kotrba and Timothy Lammert.

Upon arrival at the scene, Officer Gordils observed a civilian, now identified as ██████ exit a vehicle that was parked at 34 W. 99th Street, the address listed on the initial ShotSpotter notification. Officer Gordils approached Mr. ██████ and conducted an investigatory stop, while Lt. Spradley and the other officers searched the area for evidence. During the stop, officers handcuffed Mr. ██████ and searched both his person and his vehicle.

At the conclusion of the stop, the officers were walking back to their respective police vehicles when they observed ██████ near the intersection of South Lafayette Avenue and West 99th Street. ██████ called to the officers, pointed a firearm in their direction, and fled westbound on the north sidewalk of 99th Street. The officers gave chase, and Mr. ██████ again pointed his firearm in their direction. Officer Gruba discharged his weapon one time at Mr. ██████ but did not strike him. Mr. ██████ immediately fell to the sidewalk and officers placed him into custody without further issue. Officer Lammert recovered Mr. ██████ firearm, which was on the ground several feet from where Mr. ██████ fell.

II. INVOLVED PARTIES

Involved Lieutenant #1:	Ernest Spradley, star #444, employee ID ██████, Date of Appointment: October 29, 2001, Lieutenant, Unit 005, DOB: ██████, 1973, Male, Black.
Involved Officer #1:	Kyle Gruba, star #13527, employee ID ██████, Date of Appointment: June 3, 2013, PO, Unit 005, DOB: ██████, 1988, Male, White.
Involved Officer #2:	Joel Gordils, star #8451, employee ID ██████, Date of Appointment: August 29, 2016, PO, Unit 005, DOB: ██████, 1990, Male, White Hispanic.

Involved Officer #3: Anthony Fabian, star #10063, employee ID [REDACTED], Date of Appointment: December 27, 2018, PO, Unit 005, DOB: [REDACTED], 1980, Male, White Hispanic.

Involved Officer #4: Steven Kotrba, star #4477, employee ID [REDACTED], Date of Appointment: November 16, 2017, PO, Unit 005, DOB: [REDACTED], 1995, Male, White.

Involved Officer #5: Timothy Lammert, star # 17995, employee ID [REDACTED], Date of Appointment: November 25, 2013, PO, Unit 005, DOB: [REDACTED], 1987, Male, White.

Involved Individual #1: [REDACTED] DOB: [REDACTED], 1972, Male, Black.

III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department member discharges their firearm. Pursuant to that investigation, COPA makes the following findings and recommendations:

Officer	Allegation	Finding
Lt. Spradley	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Lt. Spradley:</p> <ol style="list-style-type: none"> 1. Failed to properly supervise by allowing Police Officers to handcuff [REDACTED] without justification. 2. Failed to properly supervise by allowing Police Officers to search [REDACTED] vehicle without justification. 3. Failed to immediately notify OEMC and/or ensure that Officer Gruba immediately notified OEMC of the officer-involved firearm discharge. 4. Failed to separate Officer Gruba from other involved members. 5. Failed to properly supervise by allowing Police Officers to discuss the firearms discharge incident with one another. 	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Exonerated</p>
Officer Gruba	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Officer Gruba:</p> <ol style="list-style-type: none"> 1. Discharged his firearm at or near Police Officer(s) Joel Gordils and/or Steven Kotrba, without justification. 2. Failed to immediately notify OEMC regarding his firearm discharge. 3. Discussed the incident with other Police Officers in violation of G03-06(VII)(A). 	<p>Exonerated</p> <p>Sustained</p> <p>Exonerated</p>

	4. Failed to timely activate and/or improperly deactivated his body worn camera in violation of S03-14.	Sustained
Officer Gordils	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Officer Gordils:</p> <ol style="list-style-type: none"> 1. Handcuffed [REDACTED] without justification. 2. Searched [REDACTED] vehicle, without justification. 3. Failed to issue [REDACTED] an investigatory stop receipt. 4. Failed to complete an investigatory stop report related to [REDACTED] 5. Discussed the firearm discharge incident with other Police Officer(s) in violation of G03-06(VII)(B). 6. Interviewed witnesses in violation of G03-06(VII)(B)(4). 7. Failed to timely activate and/or improperly deactivated his body worn camera in violation of S03-014. 	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Unfounded</p> <p>Exonerated</p> <p>Exonerated</p> <p>Sustained</p>
Officer Fabian	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Officer Fabian:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] vehicle, without justification. 2. Interviewed witnesses in violation of G03-06(VII)(B)(4). 3. Failed to timely activate and/or improperly deactivated his body worn camera in violation of S03-014. 	<p>Sustained</p> <p>Exonerated</p> <p>Sustained</p>
Officer Kotrba	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Officer Kotrba:</p> <ol style="list-style-type: none"> 1. Searched [REDACTED] vehicle, without justification. 2. Failed to timely activate and/or improperly deactivated his body worn camera in violation of S03-014. 	<p>Sustained</p> <p>Sustained</p>
Officer Lammert	<p>It is alleged that on or about April 28, 2020, at approximately 12:16 am, at or near 34 W. 99th St., Officer Lammert:</p> <ol style="list-style-type: none"> 1. Failed to preserve the crime scene by removing the firearm of the arrestee in violation of G04-02(III). 2. Interviewed witness(es) in violation of G03-06(VII)(B)(4). 3. Discussed the firearm discharge incident with other Police Officers in violation of G03-06(VII)(B). 4. Handcuffed [REDACTED] without justification. 5. Searched [REDACTED] vehicle, without justification. 6. Failed to timely activate and/or improperly deactivated his body worn camera in violation of S03-014. 	<p>Sustained</p> <p>Sustained</p> <p>Exonerated</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
 2. Rule 3: Prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals.
 3. Rule 5: Prohibits the failure to perform any duty.
 4. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.
 5. Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.
 6. Rule 10: Prohibits the inattention to duty.
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General Orders

1. G03-02, Use of Force (effective February 29, 2020 – April 15, 2021)
 2. G03-02-03, Firearm Discharge Incidents - Authorized Use and Post-Discharge Administrative Procedures (effective February 29, 2020 – April 15, 2021)
 3. G03-06, Firearm Discharge and Officer-Involved Death Incident Response Investigation (effective February 29, 2020 – April 15, 2021)
 4. G04-02, Crime Scene Protection and Processing (effective January 14, 2019 – present)
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Special Orders

1. S03-14, Body Worn Cameras (effective April 30, 2018 – present)
 2. S04-13-19 Investigatory Stop System (effective July 10, 2017 – present)
 3. S11-03-01 Annual Prescribed Weapon Qualification Program (effective January 13, 2016 – present)
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State Laws

1. 50 ILCS 706/10-20(11)- Law Enforcement Officer-Worn Body Worn Camera Act

V. INVESTIGATION¹

This summary utilized information from several different sources: CPD body-worn cameras, 911 calls, police reports, and witness interviews.

On April 28, 2020, ShotSpotter detected shots fired in the vicinity of South Lafayette Avenue and West 99th Street, specifically, four (4) rounds fired at 12:00:24 am near 34 W. 99th Street. While officers were en route to the location, there was a second ShotSpotter notification in

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

the same vicinity,² specifically, two (2) rounds fired at 12:01:01 am near 9900 South State Street.³ Three police units responded to the call; the responding Department members were dressed in full uniform and arrived at the scene in one marked police vehicle and two unmarked police vehicles.⁴

a. Initial Response

Officer Joel Gordils and Officer Anthony Fabian were the first officers to arrive in the area, at approximately 12:04:15 am. Upon arrival, Officer Gordils observed ██████ ██████ exit a vehicle parked in the driveway of 34 W. 99th Street, then walk southbound in the yard.⁶ Officer Gordils approached Mr. ██████ who stated he lived at the address and had just exited his own vehicle. Mr. ██████ acknowledged he heard the shots fired but denied he saw anything.⁷ Officer Gordils did a pat down search of Mr. ██████ and escorted him back toward Mr. ██████ vehicle.⁸ At approximately 12:05:23, Lieutenant Ernest Spradley arrived on scene⁹ and at about 12:05:30,¹⁰ Officer Kyle Gruba, Officer Steven Kotrba, and Officer Timothy Lammert arrived to assist and search the area for evidence.¹¹

Officer Gordils asked Mr. ██████ for consent to search his vehicle, but Mr. ██████ repeatedly said no.¹² Officer Gordils, however, believed he had sufficient justification to search the vehicle without Mr. ██████ consent. The officer explained that Mr. ██████ was the only person outside at the location of the shots fired, it was within minutes of the ShotSpotter notification, Mr. ██████ had just exited the vehicle, and the vehicle had dark tints on the windows, preventing officers from seeing inside.¹³ After Mr. ██████ refused to open his vehicle's doors, Officer Gordils and Officer Lammert handcuffed Mr. ██████¹⁴ Numerous officers then searched Mr. ██████ vehicle for a weapon.¹⁵ Officer Gordils took Mr. ██████ key fob, unlocked the vehicle doors, and searched the driver's side door, under the driver's seat, in the middle console, and in the glove box.¹⁶ Officer Kotrba conducted a "visual inspection" of the passenger's side, looking under the passenger seats and cupholders.¹⁷ Officer Lammert, based on his particular training, checked the compartment located underneath the front passenger seat.¹⁸ The officers did not recover a firearm or other

² Attachments 72, 100, 86, 87, 101, 93, 105, 96, 103.

³ Attachments 54, 55.

⁴ Attachments 28, 29, 31-34, 68, 82, 84, 72, 100, 86, 87, 101, 93, 105, 96, 103, 111, 119.

⁵ Mr. ██████ refused to provide a statement or cooperate with COPA's investigation. Attachment 106.

⁶ Attachments 47, 83, 86, 87, 101, 90, 102.

⁷ *Id.*

⁸ *Id.*

⁹ Attachment 57, p. 20; Attachment 58.

¹⁰ Attachment 38.

¹¹ Attachments 72, 100, 86, 87, 101, 93, 105, 96, 103, 111, 119. Civilian witnesses confirmed they saw at least one marked squad car and several uniformed officers searching the area. Attachments 28, 29, 31-34, 68, 82, 84.

¹² Attachments 47, 86, 87, 101, 90, 102, 96, 103.

¹³ Attachments 47, 86, 87, 101. Lt. Spradley and Officers Fabian, Lammert and Kotrba also asserted the same reasons for searching Mr. ██████ vehicle. Attachments 93, 105, 96, 103, 111, 119.

¹⁴ Attachments 47, 86, 87, 101, 96, 103. Officer Gordils stated that, in addition to his reasons for searching Mr. ██████ vehicle, he handcuffed Mr. ██████ for safety reasons, as Mr. ██████ was pulling away and might attempt to flee. Attachment 101, Page 30 lines 15-21.

¹⁵ Attachments 38, 42, 47, 50, 86, 87, 101, 90, 102, 93, 105, 96, 103, 111, 119.

¹⁶ Attachment 101, page 13 lines 5-10 and page 33 lines 6-11.

¹⁷ Attachment 105, page 22 line 9 – page 23 line 7.

¹⁸ Attachment 103, page 22 lines 4-18. Attachment 105, page 22 lines 15-17.

evidence from the vehicle.¹⁹ After the search, Officer Gordils requested dispatch run a name check, using Mr. [REDACTED] driver's license number.²⁰ When the name check came back clear and showed Mr. [REDACTED] lived at the address, the officers released him, at approximately 12:15 am.²¹

b. Observation of [REDACTED]

After the officers concluded the investigatory stop of Mr. [REDACTED] Lt. Spradley returned to his vehicle and drove north on Lafayette Avenue, then westbound in the alley.²² As the remaining officers were walking back to their respective vehicles, [REDACTED] was walking westbound on 99th Street with a gun in his hand.²³

Officer Gruba heard someone yell, "hey, boss."²⁴ When Officer Gruba looked to see who it was, he observed Mr. [REDACTED] standing at the intersection of South Lafayette Avenue and 99th Street with his right hand extended out, pointing a black handgun in his direction. Officer Gruba took cover behind a police vehicle and removed his firearm from its holster.²⁵ Officers Gordils, Fabian, and Kotrba then heard Mr. [REDACTED] yell words to the effect of, "fuck you, motherfuckers."²⁶ Mr. [REDACTED] pointed his firearm toward the officers,²⁷ then fled westbound on 99th Street. The officers gave chase, indicating they engaged in a foot pursuit over the radio.²⁸

As Mr. [REDACTED] fled westbound on the sidewalk, Officer Gruba and two civilian eyewitnesses, [REDACTED] and [REDACTED] observed Mr. [REDACTED] turn and point his firearm at the officers pursuing him.²⁹ Officer Gruba discharged his firearm one time at Mr. [REDACTED] but did not strike him.³⁰ Simultaneously, Mr. [REDACTED] fell, face forward, dropping the handgun on the sidewalk.³¹ Officers Gordils and Kotrba handcuffed Mr. [REDACTED] while Officer Lammert recovered the handgun that lay near Mr. [REDACTED] feet.³² An officer radioed that Mr. [REDACTED] was in custody and a weapon was recovered.³³

c. Physical Evidence

The firearm recovered from Mr. [REDACTED] was a black Hi-Point Model C9, 9mm semi-automatic pistol with one round in the chamber and one round in the magazine (both headstamped

¹⁹ Attachments 38, 42, 47, 50, 86, 87, 101, 90, 102, 93, 105, 96, 103, 111, 119.

²⁰ Attachments 81.

²¹ Attachments 36, 38, 42, 47, 50, 83, 86, 87, 101, 90, 102.

²² Attachments 111, 119.

²³ Attachments 28, 29, 82, 33, 34, 36, 72, 100, 86, 87, 101, 93, 105, 96, 103, 120.

²⁴ Attachment 100, page 22, line 11 and page 23, line 18. Attachment 120, page 13.

²⁵ Attachments 72, 100. Officer Lammert did not see Mr. [REDACTED] at the intersection but saw Officer Gruba take cover and heard someone yell "gun." Attachments 96, 103. Officer Gruba also heard someone yell, "gun." Attachment 100, page 77 line 17.

²⁶ Attachments 86, 87, 101, 90, 102, 93, 105.

²⁷ Attachments 72, 100, 86, 87, 101, 90, 102, 93, 105.

²⁸ Attachments 36, 39, 72, 100, 86, 87, 101, 90, 102, 93, 105, 96, 103, 111, 119, 81.

²⁹ Attachments 28, 29, 82, 32, 68, 84, 72, 100.

³⁰ Attachments 72, 100.

³¹ Attachments 68, 84, 72, 100, 86, 87, 101, 93, 105.

³² Attachments 39, 43, 48.

³³ Attachment 81. Note: Officer Gordils also notified OEMC there was a Firearm Pointing Incident. Attachments 36, 81.

“FC 9MM LUGER”).³⁴ Evidence Technicians (ETs) also recovered four (4) expended shell casings from the street at 30 West 99th Street,³⁵ and two (2) expended shell casings from the street at 16 West 99th Street (all headstamped “FC 9MM LUGER”).³⁶ The Chicago Police Department Forensics Firearms Laboratory determined all six expended shell casings were fired by Mr. [REDACTED] weapon.³⁷

Officer Gruba’s firearm was a Glock Model 17, 9mm semi-automatic pistol containing seventeen (17) rounds (all headstamped “WIN 9MM LUGER +P”).³⁸ One (1) expended shell casing, also headstamped “WIN 9MM LUGER +P,” was recovered from the parkway grass at 32 W. 99th Street.³⁹ The Chicago Police Department Forensics Firearms Laboratory determined the expended shell casing was fired by Officer Gruba’s weapon.⁴⁰

d. Post Incident Activity

Lt. Spradley, who left the scene approximately one minute prior to the shooting, returned as officers placed Mr. [REDACTED] in handcuffs.⁴¹ At 12:16:26 am, Officer Gordils notified OEMC he had a pointing incident.⁴² Officers Gordils and Fabian then escorted Mr. [REDACTED] to their police vehicle, searched him, and placed him in the rear seat.⁴³ At that point, Lt. Spradley asked what happened.⁴⁴ Officer Gruba responded he discharged his firearm, while several other officers confirmed everyone was okay. In particular, they checked on Officer Lammert, who tripped during the incident and injured his hand.⁴⁵ At 12:17:05 am, Lt. Spradley notified OEMC there was an officer-involved shooting but no one was injured.⁴⁶ Some officers on scene continued to be confused, believing that Mr. [REDACTED] fired his handgun, but Officer Gruba corrected them. Officer Gruba then provided a public safety statement regarding the incident to Lt. Spradley.⁴⁷

Officer Gordils asked Mr. [REDACTED] and an unknown male and female, now standing with Mr. [REDACTED] whether they were okay and knew Mr. [REDACTED].⁴⁸ At approximately 12:25 am, a supervisor directed Officers Gordils and Fabian to interview Mr. [REDACTED] and [REDACTED]. [REDACTED] The officers spoke to the witnesses for approximately five minutes

³⁴ Attachment 25, page 1.

³⁵ *Id.* at page 17.

³⁶ *Id.* at page 15.

³⁷ Attachment 21.

³⁸ Attachment 25, page 5.

³⁹ *Id.* at page 19.

⁴⁰ Attachment 21.

⁴¹ Attachments 111, 119.

⁴² Attachment 36 at 2:30. Attachment 81 at 15:11.

⁴³ Attachments 48, 86, 87, 101, 90, 102. Mr. [REDACTED] asked the officers why he was going to jail, stating he did not shoot at the officers. Attachment 48 at 1:50-1:57.

⁴⁴ Attachments 36, 39, 43, 48, 72, 100, 86, 87, 101, 90, 102, 93, 105, 96, 103, 111, 119.

⁴⁵ Attachments 36, 39,

⁴⁶ Attachments 72, 100, 81, 111, 119.

⁴⁷ Attachment 36.

⁴⁸ Attachment 48 at 3:07 – 3:21.

and stated detectives would follow up with them.⁴⁹ Eventually, Lt. Spradley separated Officer Gruba from the other officers, instructing him to sit in Sergeant Davey's vehicle.⁵⁰

VI. LEGAL STANDARD

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.⁵¹ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department 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."⁵²

a. Investigatory Stops

A person is seized for purposes of an investigatory stop when an officer has, by physical force or show of authority, restrained a citizen's freedom of movement so the person believes they are not free to leave.⁵³ The following factors may indicate a seizure without the person attempting to leave: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests.⁵⁴ In conducting an investigatory stop, officers may use force if necessary to effectuate the stop, so long as their actions are reasonable.⁵⁵

⁴⁹ Attachments 49, 51, 86, 87, 101, 90, 102, 111, 119.

⁵⁰ Attachments 72, 100, 111, 119.

⁵¹ 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 has found to be more probably true than not.").

⁵² *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

⁵³ *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *People v. Thomas*, 198 Ill. 2d 103, 111 (2001); *People v. Lee*, 2018 IL App (3d) 170209, P23. See also S04-13-09.II.A.

⁵⁴ *United States v. Mendenhall*, 446 U.S. 544, 553 (1980).

⁵⁵ *United States v. Weaver*, 8 F.3d 1240, 1244 (7th Cir. 1993).

The purpose of an investigatory stop is, as its name suggests, to allow police officers to investigate the circumstances that provoke suspicion and either confirm or dispel suspicions.⁵⁶ The scope of the investigation must be reasonably related to the circumstances that justified the police interference and the investigation must last no longer than is necessary to effectuate the purpose of the stop.⁵⁷

The investigatory stop must be justified at its inception and the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the governmental intrusion upon the constitutionally protected interests of the private citizen.⁵⁸ The officers' conduct in performing an investigatory stop is judged based on an objective standard requiring consideration of whether "the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate."⁵⁹ Further, the validity of the stop is evaluated based on "the totality of the circumstances—the whole picture."⁶⁰ Although reasonable articulable suspicion is a less demanding standard than probable cause, an officer's suspicion must amount to more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity.⁶¹

Moreover, courts have found that the following are relevant factors in determining whether, under the totality of the circumstances, the police have reasonable suspicion to justify an investigatory stop:⁶² a person's presence in a high crime area; a person's evasive⁶³ or "bizarre"⁶⁴ behavior, particularly unprovoked flight from the police; or a person's nervous or furtive actions.⁶⁵ None of these factors standing alone will provide the police with reasonable articulable suspicion.⁶⁶ However, a combination of one or more of these factors may suffice.⁶⁷

⁵⁶ *People v. Fasse*, 174 Ill. App. 3d 457, 460-61 (4th Dist. 1988).

⁵⁷ *People v. Ross*, 317 Ill. App. 3d 26, 31 (1st Dist. 2000).

⁵⁸ *People v. Timmsen*, 2016 IL 118181 at ¶9 (quoting *Terry*, 392 U.S. at 20-21).

⁵⁹ *People v. Timmsen*, 2016 IL 118181 at ¶9 (quoting *Terry*, 392 U.S. at 21-22).

⁶⁰ *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

⁶¹ *People v. Timmsen*, 2016 IL 118181 at ¶9 (quoting *Terry*, 392 U.S. at 27).

⁶² *People v. Harris*, 2011 IL App (1st) 103382 at ¶ 12 (citing *Illinois v. Wardlow*, 528 U.S. 119 (2000) (area known for "heavy narcotics trafficking" plus the individual's "unprovoked flight upon noticing the police" established reasonable suspicion to stop the individual under *Terry*)); *People v. Leggions*, 382 Ill. App. 3d 1129, 1134 (4th Dist. 2008) (citing ██████ v. Texas, 443 U.S. 47, 52).

⁶³ See e.g. *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975) (a driver's obvious attempts to evade officers is an appropriate factor in deciding reasonable suspicion); *Florida v. Rodriguez*, 469 U.S. 1, 6 (1984) (a person's "strange movements" in his attempt to evade police officers contributed to a finding of reasonable suspicion); *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (a person's evasive route through an airport can be highly probative in a reasonable suspicion analysis).

⁶⁴ *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 23.

⁶⁵ *People v. Harris*, 2011 IL App (1st) 103382 at ¶ 12; *People v. F.J.*, 315 Ill. App. 3d 1053, 1058 (1st Dist. 2000) (officer's observation that a person placed an unknown object in his or her pocket, without more, does not justify the inference that the person is involved in criminal activity).

⁶⁶ *People v. Bloxton*, 2020 IL App (1st) 181216, ¶ 21.

⁶⁷ *Illinois v. Wardlow*, 528 U.S. 119, 123-124 (2000) (flight plus presence in a high-crime area constituted reasonable suspicion); *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 23 (high crime area plus defendant's "bizarre conduct" constituted reasonable suspicion).

b. Investigatory Stop Reports and Receipts

The Investigatory Stop System tracks investigatory stops,⁶⁸ requiring officers to complete Investigatory Stop Reports (ISRs) which include data about the detained subject(s) and a statement of the facts justifying the detention. Additionally, upon the completion of an investigatory stop that involves a protective pat down or any other search, officers are required to provide the subject a completed Investigatory Stop Receipt listing the officer's name and the reason for the stop.

c. Pat Downs

Even if an investigative stop is warranted based on a reasonable suspicion that criminal activity is afoot, a police officer needs additional justification to conduct a subsequent pat down. A protective pat down is defined as a "limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area."⁶⁹ Department policy, together with applicable law, provides that investigating officers must have a reasonable belief that the citizen is armed and dangerous to justify a protective pat down for possible weapons.⁷⁰

d. Vehicle Searches

Warrantless searches are *per se* unreasonable under the Fourth Amendment, subject only to a few specific and well-defined exceptions.⁷¹ These exceptions apply to vehicles because courts have held that people have a diminished expectation of privacy in vehicles.

First, police may perform a warrantless vehicle search incident to a recent occupant's arrest only if: (1) the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or (2) it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."⁷²

Second, under the "automobile exception,"⁷³ an officer may search a vehicle in the small subset of cases where the officer has probable cause to believe that evidence of a crime might be found in the vehicle.⁷⁴

Third, "an officer may search the passenger compartment of a car, including areas where a weapon might be hidden, if the officer has 'a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the

⁶⁸ S04-13-09.

⁶⁹ S04-13-09(II)(B).

⁷⁰ S04-13-09(VI)(1); *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 19; 725 ILCS 5/108-1.01

⁷¹ *Arizona v. Gant*, 556 U.S. 332, 338 (2009).

⁷² *Arizona v. Gant*, 556 U.S. at 343.

⁷³ See e.g., *United States v. Paige*, 870 F.3d at 702-3; *United States v. Edwards*, 769 F.3d at 514; *People v. Contreras*, 2014 IL App (1st) 131889, p. 28; *People v. Jones*, 215 Ill. 2d 261, 271 (2005).

⁷⁴ See *Arizona v. Gant*, 556 U.S. at 343; see also *United States v. Paige*, 870 F.3d 693, 702-3 (7th Cir. 2017); *United States v. Edwards*, 769 F.3d at 514.

officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.”⁷⁵

e. Use of Deadly Force

The Department’s “highest priority is the sanctity of human life.”⁷⁶ Department policy dictates that “[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.”⁷⁷ The use of deadly force must be objectively reasonable, necessary, and proportional under the totality of the circumstances faced by the officer.⁷⁸ Department policy recognizes that Department members must “make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”⁷⁹

Thus, a Department member may use deadly force only to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. A threat is imminent when it is objectively reasonable to believe that:

- a. the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. the subject has the means or instruments to cause death or great bodily harm; and
- c. the subject has the opportunity and ability to cause death or great bodily harm.”⁸⁰

When using deadly force, Department members are prohibited from firing into crowds.⁸¹ However, the prohibition does not preclude the discharge of a firearm directed at a specific person who is near or among other people, but the discharge must be necessary based on the specific circumstances confronting the sworn member, and the member must have identified the appropriate target prior to firing and taken precautions to minimize the risk that others will be struck.⁸²

When using any force, Department members will use de-escalation techniques to prevent or reduce the need for force, when it is safe and feasible under the totality of the circumstances.⁸³ This includes continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety.⁸⁴ The requirement to continually assess the situation means officers must determine (1) if any use of force is necessary; (2) the authorized force option based on the totality of the circumstances; (3) if the seriousness of the situation requires an immediate response or whether the member can deploy other force options or the Force

⁷⁵ *Michigan v. Long*, 463 U.S. 1032, 1049-51 (1983).

⁷⁶ G03-02(II)(A).

⁷⁷ G03-02(III)(C)(3).

⁷⁸ G03-02(III)(B).

⁷⁹ G03-02(II)(D).

⁸⁰ G03-02(III)(C)(2).

⁸¹ G03-02-03(II)(D)(4).

⁸² G03-02-03(II)(D)(4).

⁸³ G03-02-01(II)(B).

⁸⁴ G03-02-01(II)(B).

Mitigation Principles; and (4) if the level of force employed should be modified.⁸⁵ Officers must also use continual communication, tactical positioning, and time as a tactic to avoid or minimize the need for force.⁸⁶

f. Responsibilities Following a Firearms Discharge

For any firearm-discharge incident, the discharging member must immediately notify OEMC of the firearm discharge, including providing all relevant information and requesting additional resources.⁸⁷

The involved member, as well as any witness members⁸⁸, will not discuss the facts of the incident **with any other involved members or witnesses**, until interviewed by COPA.⁸⁹ The involved member, as well as any witness members, will remain separate from and avoid any contact with any other involved or witness members until released by the street deputy/designated incident commander.⁹⁰ Responding officers will identify and secure witnesses to the extent reasonably possible and lawfully permitted.⁹¹

In the absence of exigent circumstances, a crime scene will be protected until it is completely processed for physical evidence. Evidence will NOT be disturbed prior to processing, unless it is absolutely necessary to preserve life or to protect the evidence from loss or damage.⁹² When an officer determines there is a compelling reason to handle evidence, they will wear fresh rubber gloves.⁹³ When physical evidence is moved or disturbed prior to being processed, the involved member will immediately notify the Bureau of Patrol Supervisor and responding Bureau of Detectives or Forensic Services personnel, and detail the circumstances in the appropriate case report.⁹⁴

For firearms discharge incidents, the reviewing supervisor will immediately proceed to the scene and assume command and oversight until relieved by a higher ranking supervisor or the street deputy.⁹⁵ The supervisor will ensure that the public safety investigation is conducted and the incident scene is secured, including the identification of any victims, offenders, witnesses, and evidence.⁹⁶ The reviewing supervisor also will ensure that involved and witness members remain separate from each other, including during transport, and that they are monitored to avoid any contact or communication.⁹⁷ Finally, the supervisor will ensure that witnesses and other persons

⁸⁵ G03-02-01(II)(F).

⁸⁶ G03-02-01(III).

⁸⁷ G03-06(V)(A).

⁸⁸ Policy defines “witness members” as those who did not discharge a firearm, but who observed or were present during the incident.

⁸⁹ G03-06(VII)(A) and (B)(bold in original).

⁹⁰ G03-06(VII)(A) and (B).

⁹¹ G03-06(VI)(D)(4).

⁹² G04-02(III)(D). G03-06 indicates that Department personnel will follow G04-02 when investigating firearm discharge incidents.

⁹³ G03-04(III)(E).

⁹⁴ G03-04(III)(F).

⁹⁵ G03-06(VI)(C)(1).

⁹⁶ G03-06(VI)(C).

⁹⁷ G03-06(VII)(C)(2).

who may have relevant information are made available to the on-scene street deputy and COPA for on-scene interviews.⁹⁸

g. Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, Department policy mandates that members record all law-enforcement-related activities on their body worn cameras (“BWCs”).⁹⁹ The recording of law-enforcement-related encounters is mandatory, not discretionary.¹⁰⁰ Law-enforcement-related activities include, but are not limited to, calls for service, arrests, use of force incidents, investigatory stops, high risk situations, seizure of evidence, interrogations, searches, statements made by individuals in the course of an investigation, requests for consent to search, any encounter with the public that becomes adversarial after the initial contact, and any other instance when enforcing the law.¹⁰¹ Officers must activate their BWCs at the beginning of an incident and record the entire incident. 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.”¹⁰²

VII. LEGAL ANALYSIS AND CONCLUSIONS

In making the findings discussed herein, COPA evaluated the credibility of the accused Department members as well as the civilian witnesses to this incident. 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. As discussed in more detail throughout, COPA finds that for the most part, the officers’ factual statements are materially true, although their explanations for acting were not always objectively reasonable or their perceptions supported by evidence. However, Lt. Spradley most significantly misperceived the incident, including his estimates of time, his perceptions of the threat posed by bystanders, and his recollection of what he discussed with the officers.

a. It Was Reasonable For Officers Gordils And Fabian To Stop Mr. ██████

An officer may temporarily detain and question an individual when they have reasonable suspicion that the person has committed, is committing, or is about to commit a criminal offense.¹⁰³ Here, Officers Gordils and Fabian arrived at the intersection of 99th Street and Lafayette Avenue less than five minutes after the initial ShotSpotter alert. They immediately observed Mr. ██████ exit his vehicle, which was parked in the driveway of 34 West 99th Street – the address of the initial ShotSpotter alert.¹⁰⁴ The officers told COPA they did not see any other civilians in the immediate vicinity, which their BWC videos corroborate. Additionally, when Officer Gordils approached Mr.

⁹⁸ G03-06(VII)(C)(3).

⁹⁹ S03-14(II)(A).

¹⁰⁰ S03-14(III)(A)(1).

¹⁰¹ S03-14(III)(A)(2).

¹⁰² S03-14(III)(A)(2).

¹⁰³ S04-13-09(II)(A).

¹⁰⁴ Although Mr. ██████ did not provide a statement to COPA, Officer Gordils’ BWC video corroborates the officers’ accounts.

█████ and asked to speak with him, Mr. █████ initially continued walking towards his house, though he responded that he heard the shooting but did not see it. Under these circumstances, COPA finds the officers had reasonable articulable suspicion to conduct an investigatory stop of Mr. █████¹⁰⁵

b. Officers Gordils And Lammert Handcuffed Mr. █████ Without Justification.

The BWC evidence shows that Officer Gordils made contact with Mr. █████ conducted a protective pat down, and walked Mr. █████ back to his vehicle. Officer Gordils then repeatedly asked Mr. █████ to unlock the vehicle so officers could search it, but Mr. █████ refused. After approximately three minutes, Officers Gordils and Lammert placed Mr. █████ in handcuffs for the duration of the investigatory stop.

Officers Gordils and Lammert asserted they could handcuff Mr. █████ for officer safety. Officer Gordils explained he believed Mr. █████ might attempt to flee because he was pulling away and being evasive. Officer Lammert added that Mr. █████ was being deceptive, combative, and was pacing. However, the officers outnumbered Mr. █████ six to one, so handcuffing was not needed to control the scene. Additionally, by the time the officers handcuffed Mr. █████ they knew he did not have a firearm. The BWC evidence shows that Officer Gordils conducted a protective pat down of Mr. █████ well before he placed him in handcuffs. Officer Gordils indicated he thought Mr. █████ had a “bulge” in his sweatshirt pocket; however, when Mr. █████ raised his hands in the air, his shirt pulled tight against his body and it was clear there was no bulge in his pocket.¹⁰⁶ Additionally, by raising his hands, Mr. █████ fully exposed his waistband, showing he did not have a firearm in his waist. It was not until after these observations that Officers Gordils and Lammert handcuffed Mr. █████

Additionally, the BWC videos suggest the officers were less concerned with their safety than they indicated to COPA. Officer Gordils allowed Mr. █████ to move around and use his cell phone throughout the encounter. Indeed, the officers did not handcuff Mr. █████ until he repeatedly refused to unlock his vehicle or give the officers permission to search it. The evidence indicates the officers lost patience attempting to obtain Mr. █████ consent to search his vehicle – after approximately three minutes and seven requests. When it was clear Mr. █████ would not unlock his vehicle, Officers Gordils and Lammert placed him into handcuffs.

The preponderance of the evidence demonstrates that the officers’ handcuffing of Mr. █████ for a purpose unrelated to the initial stop was unreasonably intrusive under the totality of circumstances. Therefore, COPA finds Officers Gordils and Lammert handcuffed Mr. █████

¹⁰⁵ For a ShotSpotter alert to rise to reasonable suspicion, a subject’s mere presence in the area of the alert is not sufficient, they must act suspiciously or provide other evidence of involvement in the shots fired. *Compare United States v. Rickmon*, 952 F.3d 876, 880 (7th Cir. 2020) (finding reasonable suspicion based on a ShotSpotter alert and 911 calls of shots fired, where officers responded within five minutes and the subject’s car was the only one in the area); *United States v. Jones*, 2021 U.S. Lexis 17756 (D.C. Cir. June 15, 2021) (finding reasonable suspicion based on a ShotSpotter alert and multiple 911 calls where officers arrived a minute and a half later, the subject was only person on the street, and he was walking away from the scene); *with People v. D.L.*, 2017 IL App (1st) 171764 (finding no reasonable suspicion where officers arrived about a minute after multiple 911 calls of shots fired and saw a subject two blocks from the area, walking on the sidewalk); *United States v. Carter*, 2020 U.S. Dist. Lexis 121181 (Dist. D.C. July 10, 2020) (finding no reasonable suspicion where officers responded to a ShotSpotter alert and stopped three men they believed were the only people on the street, without any individualized suspicion of wrongdoing).

¹⁰⁶ Attachment 47 at 1:42.

without justification, in violation of Rules 2, 3, and 8. As a result, Allegation 1 against Officer Gordils and Allegation 4 against Officer Lammert are **sustained**.

c. Lt. Spradley Failed To Properly Supervise By Allowing The Officers To Handcuff Mr. ██████ Without Justification.

As discussed above, COPA finds the officers handcuffed Mr. ██████ without justification. Lt. Spradley admitted he saw Mr. ██████ in handcuffs and did not know the reason for the handcuffing. He admitted he never asked the officers what they were doing or provided them any instructions. Additionally, Lt. Spradley could not recall whether he spoke to Mr. ██████. Officer Lammert's BWC video confirms Lt. Spradley did not engage with the officers or Mr. ██████ regarding the investigatory stop, and Lt. Spradley was standing close when the officers talked about and handcuffed Mr. ██████.

Therefore, COPA finds by a preponderance of the evidence that Lt. Spradley knew or should have known that the officers were handcuffing Mr. ██████ without justification. Department rules state that supervisors have the "responsibility for the performance of all subordinates placed under them and while they can delegate authority and functions to subordinates, they cannot delegate responsibility. They remain answerable and accountable for failures or inadequacies on the part of their subordinates."¹⁰⁷ As a result, Allegation 1 against Lt. Spradley is **sustained** as a violation of Rules 2, 3 and 10.

d. Officers Gordils, Fabian, Kotrba, and Lammert Searched Mr. ██████ Vehicle Without Justification.

It is undisputed that the officers searched Mr. ██████ vehicle for a firearm without his consent or a warrant. Officers may only conduct a warrantless, non-consensual search, if it falls under a well-drawn exception. In this case, the officers provided two bases that they believed justified the search. The first was Mr. ██████ proximity to the shots fired and his connection to the car, including the fact that Mr. ██████ was exiting the car when officers arrived. The second reason to search was officer safety, so that Mr. ██████ did not retrieve a firearm from the car as the officers tried to walk away. This seems to imply the officers believed they had authority to search the vehicle to conduct a "protective sweep." However, none of these theories provide a reasonable basis under these circumstances.

First, the officers did not have probable cause that the vehicle would contain contraband to make an arrest. As discussed above, the officers stopped Mr. ██████ as part of a shots fired investigation. They stated they searched Mr. ██████ vehicle for the same reasons they stopped and handcuffed Mr. ██████ – he was outside, alone, at the location of the first ShotSpotter alert, within minutes of the alert, and he had just exited his vehicle.¹⁰⁸ Additionally, Mr. ██████ did not want to speak with the officers, and he told them he wanted to go inside his house. The officers subsequently added that the tint on the windows of Mr. ██████ vehicle was darker than allowed by law, preventing them from seeing inside the vehicle. At most, this would provide reasonable

¹⁰⁷ Rules and Regulations of the Chicago Police Department, Article IV(B).

¹⁰⁸ The BWC videos corroborate Officer Gordils' account that Mr. ██████ exited his vehicle, which was parked at the location of the initial ShotSpotter alert, when the officers arrived. Mr. ██████ spoke with the officers and explained he heard gunshots but did not see anyone fire a weapon. He also identified himself as the owner of the vehicle and a resident of the location prior to officers searching his vehicle.

suspicion that Mr. ██████ was involved in the shooting. Because there was no probable cause that Mr. ██████ was involved in the shooting, there was no probable cause that he had a firearm in his vehicle for an arrest, and the officers were precluded from searching Mr. ██████ vehicle on those grounds.¹⁰⁹

Second, the officers did not have a reasonable basis to perform a protective sweep of the vehicle. Protective searches are only permitted where an officer possesses a reasonable belief that a suspect is dangerous and may gain immediate control of weapons from inside the vehicle.¹¹⁰ In this case, it was unreasonable for the officers to believe that Mr. ██████ posed such a danger that they needed to search the vehicle for a firearm, just as it was unreasonable for them to believe that Mr. ██████ was dangerous and necessitated handcuffing. The BWC videos and testimonial evidence show that Mr. ██████ while verbally uncooperative and evasive at times, generally complied with the officers' commands. Officer Gordils also admitted he saw no indication that Mr. ██████ had hidden a firearm, or any other object, inside the vehicle.¹¹¹ Additionally, the only reason Mr. ██████ could have potentially gained control of a firearm in the vehicle is because Officer Gordils escorted Mr. ██████ back to the vehicle. However, this cannot justify the search, because officers are not permitted to orchestrate an encounter with a civilian in such a manner that would justify a warrantless search of the civilian's vehicle.¹¹²

COPA finds that when the officers searched Mr. ██████ vehicle, they did not have probable cause to believe he was involved in the shots fired incident, justification to perform a protective sweep, or any other basis to conduct a warrantless, non-consensual search of the vehicle. Therefore, the preponderance of the evidence shows that Officers Gordils, Fabian, Kotrba, and Lammert searched Mr. ██████ vehicle without justification, in violation of Rules 2, 3 and 6. As a result, Allegation 2 against Officer Gordils, Allegation 5 against Officer Lammert, and Allegation 1 against Officers Kotrba and Fabian are all **sustained**.

e. Lt. Spradley Failed To Properly Supervise By Allowing The Officers To Search Mr. ██████ Vehicle Without Justification.

As discussed above, the officers searched Mr. ██████ vehicle without justification. Lt. Spradley admitted he observed the officers search the vehicle, and the BWC videos corroborate that Lt. Spradley was present when the vehicle was searched. Lt. Spradley further admitted he did not provide any instructions to the officers, nor did he ask them any questions about their actions. He was also present for long enough to know that Mr. ██████ was cooperative, so he should have known the officers had no basis to search the vehicle. He also should have heard Mr. ██████ loudly

¹⁰⁹ Further demonstrating the lack of probable cause, COPA notes that Mr. ██████ identified himself as the vehicle's owner and a resident of the location before the officers conducted the search. By this point, Officer Gordils had already searched Mr. ██████ person with negative results. He or another officer should have run Mr. ██████ name or license plate number through LEADS, or asked OEMC to do the same. Mr. ██████ provided the officers enough information to verify his statement that he was a resident and witness, not the suspected shooter. However, none of the officers sought confirmation from OEMC until after they searched Mr. ██████ vehicle.

¹¹⁰ *Michigan v. Long*, 463 U.S. 1032 (1983).

¹¹¹ *People v. Smith*, 2015 IL App (1st) 131307 (finding a protective sweep was improper because the defendant was compliant, and there was no evidence to support that he made furtive gestures to hide a firearm).

¹¹² *People v. Stehman*, 203 Ill.2d 26, 41-42 (2002) (finding a search incident to arrest was unconstitutional where officers waited to arrest a defendant on a warrant until they knew he would be driving so they could justify a search of his vehicle).

and repeatedly refusing to consent to a search. For these reasons, COPA finds Lt. Spradley knew or should have known the officers did not have sufficient justification to search Mr. [REDACTED] vehicle, and he had a duty to prevent and/or stop the unlawful search. Therefore, Allegation 2 against Lt. Spradley is **sustained** as a violation of Rules 2, 3, and 10.

f. Officer Gordils Completed An Investigatory Stop Report But Failed To Provide Mr. [REDACTED] With An Investigatory Stop Receipt

After an officer conducts an investigatory stop, he or she is required to complete an Investigatory Stop Report (ISR) regarding the encounter.¹¹³ In this case, it is undisputed that Officer Gordils' detention of Mr. [REDACTED] constituted an investigatory stop. Officer Gordils asserted he completed an ISR, and COPA located a copy of the report during Officer Gordils' statement; therefore, Allegation 4 against Officer Gordils is **unfounded**.

Department policy also requires officers to provide an Investigatory Stop Receipt at the conclusion of any stop that involves a protective pat down or other search.¹¹⁴ Officer Gordils admitted he both conducted a pat down of Mr. [REDACTED] and searched Mr. [REDACTED] vehicle. He stated he intended to provide Mr. [REDACTED] with a receipt but did not do so because the incident with Mr. [REDACTED] occurred. While COPA acknowledges the interaction between Mr. [REDACTED] and the officers began less than a minute after the investigatory stop of Mr. [REDACTED] concluded, the BWC videos show Officer Gordils returned Mr. [REDACTED] driver's license, told Mr. [REDACTED] to have a good day, turned to walk toward his vehicle, and deactivated his BWC, all prior to any officer noticing Mr. [REDACTED]. Furthermore, Officer Gordils stated he noticed Mr. [REDACTED] when he was walking back to his vehicle, *after* concluding the stop of Mr. [REDACTED].

Based on the evidence, COPA finds Officer Gordils did not give Mr. [REDACTED] a receipt, did not ask Mr. [REDACTED] if he wanted a receipt, and was not walking back to his vehicle to obtain a receipt. Therefore, COPA finds the preponderance of the evidence establishes that Officer Gordils failed to issue Mr. [REDACTED] an investigatory receipt, in violation of Rules 5 and 6, and Allegation 3 is **sustained**.

g. Officer Gruba's Use of Deadly Force was Authorized under Department Policy.

COPA finds by a preponderance of the evidence that it was objectively reasonable for Officer Gruba to believe that Mr. [REDACTED] posed an imminent threat of death or great bodily harm. Officer Gruba stated that Mr. [REDACTED] twisted his waist so his shoulder, upper body, and head were turned back toward the officers, then he pointed his gun in the officers' direction. Officer Gruba stated he believed Mr. [REDACTED] was going to shoot and kill him or Officer Kotrba.¹¹⁵ None of the other officers saw Mr. [REDACTED] point the firearm; however, Officers Gordils and Fabian were running through a yard and may not have had a view of Mr. [REDACTED] and Officer Lammert

¹¹³ S04-13-19(III)(C).

¹¹⁴ S04-13-19(VIII)(A)(3).

¹¹⁵ Officer Gruba's BWC video captures the pursuit and shooting in the buffer, but there is no audio from this portion of the incident. The officer's camera is moving too much to clearly capture all of Mr. [REDACTED] actions and whether he was holding a firearm; however, when the video is slowed down, it does appear to show Mr. [REDACTED] raising his arm up behind him as he runs on the sidewalk.

had tripped and fallen behind. Importantly, civilian eyewitnesses Mr. [REDACTED] and Mr. [REDACTED] stated that Mr. [REDACTED] pointed the firearm at the officers as he fled. Indeed, Mr. [REDACTED] demonstrated to detectives how Mr. [REDACTED] turned towards the officers with the firearm in his right hand, and he stated this occurred at the same location where Mr. [REDACTED] fell. The eyewitness statements clearly corroborate Officer Gruba's account of the shooting. As a result, COPA finds it was objectively reasonable for Officer Gruba to believe Mr. [REDACTED] posed an imminent threat.

First, COPA finds that Mr. [REDACTED] actions were immediately likely to cause death or great bodily harm to Officer Gruba or others unless action was taken. Even though officers are not permitted to shoot someone merely because they are fleeing with a gun, Mr. [REDACTED] directly threatened the officers with his firearm.¹¹⁸ He raised the firearm in his right hand and pointed it at officers, which reasonably indicated he was prepared to fire.

Second, Mr. [REDACTED] had the means or instruments to cause death or great bodily harm. The officers all stated they saw Mr. [REDACTED] armed with a firearm, as did eyewitnesses Mr. [REDACTED] and Mr. [REDACTED]. Additionally, [REDACTED] and [REDACTED] confirmed that Mr. [REDACTED] had the firearm earlier in the night and had committed the initial shooting. Therefore, even though Officer Lammert improperly recovered Mr. [REDACTED] firearm, there is sufficient evidence to corroborate that Mr. [REDACTED] possessed it.

Third, Mr. [REDACTED] had the opportunity and ability to cause death or great bodily harm. At least four officers—Officer Lammert appeared to be trailing behind—were within yards of Mr. [REDACTED] when he turned and pointed his firearm in their direction. The officers' accounts are corroborated by Officer Gruba's BWC video and the statement of Mr. [REDACTED]. At this distance, Mr. [REDACTED] could have easily shot the officers.

Moreover, Officer Gruba's use of force was a reasonably necessary as a last resort. At the time Officer Gruba fired, he was standing on the street corner without any obvious options for cover. Officers Gordils and Kotrba were also both exposed, and Officer Gruba said he fired, at least in part, to protect those officers. Even if Officer Gruba had been able to take cover, his partners were still exposed, and thus it was necessary to use deadly force to protect them.

However, Officer Gruba's inability to find cover arises from his failure to comply with de-escalation and force mitigation principles related to tactical positioning. This policy requires officers to create distance between themselves and potential threats to prevent or reduce the need for force. In this case, Officer Gruba and the other officers did not effectively use tactical

¹¹⁶ COPA notes that Officer Lammert spoke with Mr. [REDACTED] and potentially tainted his statement by asking him leading questions. However, Mr. [REDACTED] clearly stated that he observed Mr. [REDACTED] pointing a gun, and he also provided extensive detail about the incident, beyond what Officer Lammert stated in his leading questions.

¹¹⁷ Approximately seven and a half minutes prior to the shooting, BWC video captured Mr. [REDACTED] speaking briefly with Officer Gruba about the initial shots fired incident. This corroborates Mr. [REDACTED] statement that he was on his front porch during the incident, right in front of where Mr. [REDACTED] was eventually shot.

¹¹⁸ See *Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001) (holding there is no requirement that an officer wait until a shot is fired in his or her direction before employing deadly force to protect himself or herself); *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013) (“[A]n officer does not possess the unfettered authority to shoot a member of the public simply because that person is carrying a weapon. Instead, deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is threatened with the weapon.”) (emphasis in original).)

positioning; instead, they ran headlong after Mr. ██████ despite the fact that he pointed a firearm at them. However, under the totality of the circumstances, it was reasonable for the officers to believe that Mr. ██████ needed to be apprehended immediately. Mr. ██████ was at a scene where shots had already been fired, pointing his firearm at officers, and yelling profanities and/or threats. The officers reasonably concluded that Mr. ██████ needed to be apprehended before he injured anyone, and thus it was not safe to attempt to slow down the incident or use other de-escalation techniques.

Finally, COPA finds that Officer Gruba's use of deadly force was proportional to the threat Mr. ██████ posed. Even though Mr. ██████ never fired at the officers, it was reasonable to believe he posed a *threat* that he was going to use deadly force; thus, Officer Gruba's use of deadly force was proportional to that threat.¹¹⁹

h. Officer Gruba Did Not Unreasonably Discharge His Firearm at or near Officers Gordils and Kotrba

Even where deadly force is otherwise justified based on an imminent threat posed by a subject, officers are prohibited from firing at someone who is near or among other people unless deadly force is necessary and the officer has identified the appropriate target and taken precautions to minimize the risk that others will be struck. In this case, Officer Gruba's video shows that Officer Gordils and Kotrba were in the vicinity of Mr. ██████ at the time Officer Gruba fired. (See Figure 1, below.) The evidence is clear and convincing that Officer Gruba took reasonable precautions to avoid hitting his two partners.

Officer Gruba stated that he was standing in the parkway when he fired, and Mr. ██████ was also in the grass, moving towards the sidewalk, which is consistent with his video. He further stated that he could see Officers Kotrba and Gordils, knew where they were, and he had a clear shooting lane. Additionally, Officer Gruba added that as a left hander, he was fanning to his left (and away from Officer Kotrba, whom he estimated to be three feet to his right) when he discharged his weapon. Officer Gruba's explanation is consistent with his BWC video. Additionally, for the reasons described, the specific conditions presented by Mr. ██████ did pose an imminent threat to the officers.

Therefore, COPA finds the evidence is clear and convincing that Officer Gruba identified the appropriate target and took reasonable precautions to minimize the risk to his partners, and Allegation 1 against Officer Gruba is **exonerated**.

¹¹⁹ See G03-02(III)(B)(3) (stating that officers may use greater force than a subject uses and proportionality is based upon the threat the subject poses).



Figure 1. Screenshot from Officer Gruba's BWC video showing his approximate location and viewpoint at the time he fired.

i. Officer Lammert Failed to Preserve the Crime Scene

Department policy states that, unless there are exigent circumstances, Department members will protect a crime scene until it has been processed. Per General Order G04-02, “[e]vidence will not be disturbed prior to processing, unless it is absolutely necessary to preserve life or to protect the evidence from loss or damage.”¹²⁰ When a Department member does handle or recover any evidence, the member will wear fresh rubber gloves for each item.¹²¹ Officer Lammert admitted he picked up Mr. [REDACTED] firearm with his bare hand, which was bleeding profusely, and placed the firearm inside his pants pocket before the scene was processed. He explained that Officer Gordils told him to recover the firearm for officer safety. Additionally, Officer Lammert was concerned the firearm was loaded, was located near Mr. [REDACTED] shooting hand, and civilians were starting to come outside. Although Officer Lammert admitted he did not see any civilians at the time he recovered the firearm, Officer Gordils confirmed he told Officer Lammert to retrieve the firearm because he saw civilians in a nearby gangway, and he was afraid they might attempt to take the firearm. Officer Kotrba also heard Officer Gordils mention people were coming outside, but he did not see anyone. The officers' BWC videos do not show any civilians outside at the time Officer Lammert recovered the firearm. Residents did exit their homes soon after Mr. [REDACTED] was placed into custody, but no one approached the officers or the location of the firearm on the ground.

While it is understandable the officers were more cautious and concerned for their safety after Mr. [REDACTED] ambushed them, neither Officer Lammert nor the other officers could articulate

¹²⁰ G04-02(III)(D).

¹²¹ G04-02(III)(E).

a specific threat that required Officer Lammert to pick up Mr. [REDACTED] firearm rather than simply stand guard over it. At the time Officer Lammert recovered the firearm, Mr. [REDACTED] was under the control of Officers Gordils and Kotrba and no longer presented a threat. Additionally, there is no evidence any civilians moved towards the officers or the firearm, or failed to comply with the officers' instructions. There were also five officers on scene at the time of the shooting, and Lt. Spradley returned immediately thereafter, so the officers had the personnel to properly guard the firearm.

Therefore, based on the totality of the circumstances, COPA finds there were no exigent circumstances requiring Officer Lammert to recover the weapon, and Officer Lammert did not provide any other compelling reason for his actions.¹²² As a result, Allegation 1 against Officer Lammert is **sustained** as a violation of Rules 5 and 6.

j. Officer Gruba Failed To Immediately Notify OEMC Of A Firearm Discharge

Department policy provides that when an officer discharges his firearm, he must **immediately** notify the Office of Emergency Management and Communications, providing all relevant information.¹²³ Officer Gruba admitted he did not make the notification over the radio because he was in shock, but he stated he did notify Lt. Spradley, who made the notification minutes later. BWC video and OEMC radio transmissions confirm Officer Gruba's account. While it is understandable that an officer would not notify OEMC while actively involved in the situation, here the evidence shows Officer Gordils was able to notify OEMC of a pointing incident *before* Officer Gruba notified Lt. Spradley that he discharged his weapon. Therefore, COPA finds the preponderance of the evidence establishes that Officer Gruba failed to immediately notify OEMC of his firearm discharge. As a result, Allegation 2 against Officer Gruba is **sustained** as a violation of Rules 5 and 6.

k. Lt. Spradley Failed To Immediately Notify OEMC And/Or Ensure That Officer Gruba Immediately Notified OEMC Of The Firearm Discharge

Lt. Spradley stated he did not know about the shooting immediately, but he made the notification within a reasonable time (two minutes) and it was one of the first things he did after Officer Gruba informed him he fired his weapon. However, BWC video shows that after Officer Gruba notified Lt. Spradley of the discharge, Lt. Spradley acknowledged the notification, inquired if everyone was okay, and appeared to look for evidence—all before he notified OEMC that this was an officer-involved shooting. Lt. Spradley also acknowledged to COPA that he did not know it was an officer-involved shooting before he spoke to Officer Gruba, so he was aware that Officer Gruba had not notified OEMC. Despite this, Lt. Spradley did not tell Officer Gruba to make the notification—to relate that he discharged his firearm along with his star number and information to OEMC.

As a supervisor, Lt. Spradley has a duty to ensure that his subordinates perform their responsibilities. Here, he neither ensured that Officer Gruba performed his duties, nor took on that

¹²² It should be noted that Officer Lammert erroneously believed it was acceptable to recover the firearm because it was captured on his BWC, but he did not activate his camera until after he recovered firearm.

¹²³ G03-06(V)(A)(emphasis added).

responsibility himself. Therefore, the preponderance of the evidence establishes that Allegation 3 against Lt. Spradley is **sustained** as a violation of Rules 3, 5 and 6.

l. Lt. Spradley Failed To Separate Officer Gruba From The Witness Members

According to Department policy, the reviewing supervisor will ensure the involved member and witness members remain separate, including being transported to the station or hospital separately.¹²⁴ Lt. Spradley stated that before he could separate the officers, he had to gather information on what happened, who fired, and whether there was still an active hostile situation or danger to the officers. Then, when Lt. Spradley located a secure vehicle, he instructed Officer Gruba to wait in the vehicle apart from his partners.

However, the BWC videos contradict Lt. Spradley's description of the post-incident scene. The videos show that, when Lt. Spradley returned to the scene, Mr. [REDACTED] was already in custody and there were no other people in the immediate vicinity, so there was no indication of a hostile situation. Additionally, Lt. Spradley knew within seconds that Officer Gruba discharged his weapon. However, he did not separate Officer Gruba from his partners, but instead allowed Officer Gruba to remain near the witness members long after the scene was secure. During this time, Officers Lammert and Gruba briefly discussed the incident in front of Lt. Spradley, and the lieutenant asked Officer Gruba questions about the shooting while he was in the presence of the witness officers. Thereafter, the videos show Lt. Spradley instructed Officer Gruba to stand guard over his casing, effectively allowing him to remain with the witness members for approximately eight minutes after the shooting. Eventually, a sergeant arrived at the scene and Lt. Spradley related that Officer Gruba needed to wait in the sergeant's vehicle.¹²⁵

The policy sets forth a clear requirement that shooting officers remain separate from one another, as well as any witnesses. This is to ensure the integrity of investigations. By allowing Officer Gruba to remain with the other officers, Lt. Spradley violated the policy and inadequately supervised Officer Gruba and the witness members. Therefore, COPA finds Allegation 4 against Lt. Spradley is **sustained** as a violation of Rules 3, 5, and 6.

m. The Members' Communications With Each Other After The Incident Were Permissible Public Safety Statements.

COPA finds that the members' communications with one another after the shooting were authorized under Department policy. The policy prohibits involved and witness members from discussing the facts of the incident, but it specifically excludes communications "for officer or public safety (e.g., identifying criminal acts, tactical information), including during the completion of the public safety investigation."¹²⁶ In this case, the officers asserted their conversation in the moments after the shooting fell within the public safety exception, as initially not all of the members knew Officer Gruba discharged his firearm, and thereafter they were checking to make sure everyone was okay. The BWC videos support this characterization, revealing there was significant confusion as to whether Mr. [REDACTED] or Officer Gruba fired the shot. Almost

¹²⁴ G03-06(VII)(C)(2).

¹²⁵ Attachment 53, Davey AXON_Body_2_Video_2020-04-28_0022 at 0:35.

¹²⁶ G03-06(VII)(A)(4)(a).

immediately, Officer Gruba told Officer Lammert he discharged his weapon.¹²⁷ Officer Lammert acknowledged him and appeared to avoid talking about the incident. However, the other witness members did not appear to immediately hear Officer Gruba's announcement, and Officer Gordils continued to repeat that Mr. [REDACTED] fired the shot for several minutes after the shooting. Other than Officer Gruba saying Mr. [REDACTED] pointed a firearm at him, which was part of the public safety statement to Lt. Spradley, the officers did not discuss the details of the incident.

Similarly, COPA finds that Lt. Spradley's communications with Officer Gruba and the other members took place in the context of the public safety investigation. When Lt. Spradley returned to the scene, he did not know there was an officer-involved shooting. He had to gather information on what happened, who fired, and whether there was still an active hostile situation or further danger to the officers. Because the prohibition on member communications applies only to officer-involved shootings and deaths, Lt. Spradley could not reasonably be expected to ensure the members did not communicate about the incident until he knew that Officer Gruba, and not Mr. [REDACTED] had fired the shot.

For these reasons, COPA finds there is clear and convincing evidence the members' post-incident communications did not violate Department policy. Therefore, Allegation 3 against Officers Gruba and Lammert and Allegation 5 against Officer Gordils and Lt. Spradley are **exonerated**.

n. Officers Gordils and Fabian Were Instructed To Interview Witnesses [REDACTED]

[REDACTED] and [REDACTED]

Following the incident, Officer Gordils and Fabian interviewed witnesses [REDACTED] and [REDACTED] Mr. [REDACTED] and [REDACTED]. However, the evidence establishes that the officers conducted the interview at the direction of a supervisor. BWC video captured a supervisor talking to Officers Gordils and Fabian, then pointing toward [REDACTED] and [REDACTED] who were standing outside their house. The two officers then walked over to the witnesses, activated their BWCs, and asked them what they saw.

Additionally, Officers Gordils and Fabian told COPA they were the assigned "paper car" for the ShotSpotter notification, and they conducted the interviews as part of that responsibility. The officers' accounts are corroborated by the BWC footage, which captured several sergeants discussing who should complete the paperwork for the incident. Initially, the sergeants did not appear to realize that Officers Gordils and Fabian, though not Officer Gruba's partners, were witnesses to the officer-involved shooting and thus could not do the paperwork for either the ShotSpotter notification or the shooting. However, after Officers Gordils and Fabian completed the interviews, another unit was assigned as the paper car. Thereafter, the officers did not interact with the [REDACTED] or any other civilian witnesses. Although Officers Gordils and Fabian could have informed their superiors they were witnesses, and were thus prohibited from interviewing other witnesses, COPA does not find their actions were unreasonable given the confusion on scene and lack of adequate supervision. Therefore, Allegation 6 against Officer Gordils and Allegation 2 against Officer Fabian are **exonerated**.

¹²⁷ Attachment 36 at 2:14 minutes.

o. Officer Lammert Improperly Interviewed Eyewitness [REDACTED]

Officer Lammert also conducted a brief interview of civilian eyewitness [REDACTED]. Unlike Officers Gordils and Fabian, who interviewed witnesses at the direction of a supervisor, Officer Lammert conducted this interview on his own. Approximately 35 minutes after the shooting, Officer Lammert approached Mr. [REDACTED] on his front porch and asked if he saw anything.¹²⁸ This was an unnecessary policy violation, as by this time there were many officers on scene who were not witnesses to the shooting who could have approached Mr. [REDACTED]. Additionally, Officer Lammert's BWC video shows he asked Mr. [REDACTED] significantly leading questions, including, "When you saw [Mr. [REDACTED] when he ran up on us, did you see that the gun was in his hand?"¹²⁹ Mr. [REDACTED] responded affirmatively, and he later clarified that he saw Mr. [REDACTED] raise the gun in the officers' direction. However, COPA remains troubled that Officer Lammert told Mr. [REDACTED] that Mr. [REDACTED] was holding a firearm *before* Mr. [REDACTED] had an opportunity to provide that information himself. For these reasons, COPA finds that Officer Lammert interviewed a witness in violation of Department policy and without a reasonable basis for doing so; therefore, Allegation 2 against Officer Lammert is **sustained** as a violation of Rules 2, 3, and 6.

p. Officers Gruba, Gordils, Fabian, Kotrba, and Lammert Failed to Comply with the Department's BWC Policy.

COPA finds that a preponderance of the evidence establishes that none of the five officers fully complied with the Department's BWC policy. Pursuant to the policy, officers must activate their cameras at the beginning of all law-enforcement related activities. Responding to a ShotSpotter notification is a law-enforcement-related activity. Moreover, responding to a scene where shots had just been fired is certainly a "high risk situation," which should have alerted the officers of the need to activate their cameras. The officers should also have been aware that they could encounter people fleeing from the scene, another enumerated activity requiring BWC activation. For any of these reasons, all of the officers should have activated their cameras before they arrived at 99th and Lafayette. Thereafter, COPA finds it was reasonable for the officers to deactivate their cameras when they concluded their interaction with Mr. [REDACTED].¹³⁰ However, the officers were required to reactivate their cameras when they pursued Mr. [REDACTED] and Officer Gruba shot at him, or as soon thereafter as practical. They were not permitted to deactivate their cameras until Lt. Spradley, the highest-ranking on-scene Bureau of Patrol supervisor, determined the scene was secure.¹³¹ Lt. Spradley announced the scene was secure over the radio at 12:19:12 am,¹³² though he did not explicitly state that officers could deactivate their cameras.

Of all the officers present, Officer Gordils came the closest to complying with the policy. However, he was late in activating his camera, thereby missing part of his interaction with Mr. [REDACTED]. Officer Gordils' recording establishes that he did not activate his camera until about 15

¹²⁸ Attachment 41 at 2:02.

¹²⁹ Attachment 41 at 2:18-2:22.

¹³⁰ Under the specific requirements of the policy, the officers should not have deactivated until they left the scene; however, COPA finds that since the officers believed they had completed the ShotSpotter investigation, it was reasonable to deactivate at that time.

¹³¹ See S03-14(III)(B)(1)(a)(4).

¹³² Attachment 81 at 17:52.

seconds after he exited his vehicle. At that time, he had already begun approaching Mr. [REDACTED] and portions of their discussion may have been missed. Officer Gordils did, however, keep his camera activated for the entirety of the stop. As for the portion of the encounter with Mr. [REDACTED] Officer Gordils did not activate his BWC until almost a minute after the shooting, by which point he had already handcuffed Mr. [REDACTED] and begun walking him to a squad car. COPA acknowledges that the foot pursuit started as soon as Mr. [REDACTED] appeared on scene, and it may not have been not feasible for Officer Gordils to activate his camera immediately. Additionally, after Officer Gordils handcuffed Mr. [REDACTED] he appeared to touch his camera in an attempt to activate the recording,¹³³ albeit unsuccessfully. Thus, COPA finds that he reasonably attempted to activate his BWC as soon as practical. However, Officer Gordils prematurely turned off his camera after the shooting, when he was still actively looking for evidence and engaged in law-enforcement-related activities. Therefore, because Officer Gordils activated his camera at least 15 seconds late as part of the initial encounter, and because he prematurely deactivated his camera after the shooting, COPA finds by a preponderance of the evidence that he violated the Department's BWC policy, and Allegation 7 is **sustained** as a violation of Rules 5 and 6.

Officer Fabian's BWC usage also failed to comply with Department policy. Despite arriving in the same vehicle as Officer Gordils, Officer Fabian activated his camera over two and a half minutes later than his partner. By this point, the officers had initiated the investigatory stop of Mr. [REDACTED] and attempted to obtain consent to search his vehicle. Officer Fabian did, however, keep the camera activated for the remainder of the encounter with Mr. [REDACTED] and he deactivated at the same time as Officer Gordils. Officer Fabian also failed to activate his camera throughout the entire encounter with Mr. [REDACTED] though he explained that his camera fell off his vest at the beginning of the foot pursuit.¹³⁴ Because Officer Fabian untimely activated his camera at the beginning of the incident, COPA finds Allegation 3 is **sustained** as a violation of Rules 5 and 6.

Officer Gruba also untimely activated his camera as part of the encounter with Mr. [REDACTED]. His video indicates he was already searching in the weeds alongside Lafayette Avenue when he activated his camera. More crucially, Officer Gruba prematurely terminated his recording without any basis for doing so. He deactivated as he and Officer Kotrba walked behind Mr. [REDACTED] garage at approximately 12:10:58 am. Officer Gruba told COPA he was done with the investigation; however, Officer Gordils continued to speak with Mr. [REDACTED] for at least four minutes afterwards, while Officer Gruba remained on scene.¹³⁵ Moreover, the buffer period of Officer Gruba's second BWC video shows that he and Officer Kotrba continued to search 99th Street for casings without their cameras activated. Therefore, the preponderance of the evidence establishes Officer Gruba failed to comply with S03-14, and Allegation 4 is **sustained** as a violation of Rules 5 and 6.

Officer Kotrba untimely activated his BWC after he had been on scene for at least 40 seconds. Additionally, as with Officer Gruba, Officer Kotrba prematurely deactivated his camera while in the alley behind Mr. [REDACTED] garage, before the investigatory stop was finished and prior to searching for shell casings on 99th Street. More significantly, Officer Kotrba did not reactivate

¹³³ Attachment 48 at 0:42.

¹³⁴ This is corroborated by a responding officer's BWC video, which captured Officer Fabian recovering his camera from the grass approximately three minutes after the shooting. Attachment 53, Hasanovic AXON_Body_2_Video_2020-04-28_0018 at 00:10.

¹³⁵ Policy dictates that a law-enforcement related activity has concluded when the member cleared the assignment or he leaves the scene, neither of which had yet occurred. S03-14(III)(B).

his camera for a full two minutes after the shooting. In the initial moments after the incident, he assisted in taking Mr. [REDACTED] into custody, and it was reasonable for him to not activate at this time. However, Officer Kotrba waited more than a minute after he handcuffed Mr. [REDACTED] before he began recording, during which time he had full opportunity to activate his BWC. Therefore, the preponderance of the evidence is that he untimely activated and prematurely deactivated his camera during both incidents, and Allegation 2 against him is **sustained** as a violation of Rules 5 and 6.

Officer Lammert also prematurely deactivated his camera during the investigatory stop of Mr. [REDACTED] approximately four minutes before Officer Gordils completed the stop. At that time, Officer Lammert was still standing near Mr. [REDACTED] vehicle as Officer Gordils interacted with Mr. [REDACTED]. Officer Lammert then remained on scene, and the buffer period for his second BWC recording captures him walking back to the driveway and searching the ground for evidence. As with the other officers, COPA finds it was reasonable that Officer Lammert did not reactivate his camera during the foot chase. However, it was unreasonable for Officer Lammert to wait nearly a minute after Mr. [REDACTED] was in custody before he began recording. Officer Lammert's untimely reactivation meant that his BWC did not capture the audio from the period when he recovered Mr. [REDACTED] firearm, thus hampering COPA's ability to investigate his claim that neighbors were threatening the scene. Therefore, COPA finds the preponderance of the evidence shows that Officer Lammert failed to comply with S03-14, and Allegation 6 is **sustained** as a violation of Rules 5 and 6.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS¹³⁶

a. Lieutenant Ernest Spradley

COPA has considered Lt. Spradley's complimentary history, his lack of prior disciplinary action, and his more than 21 years of service to the Department in mitigation. However, as the only supervisory member on scene during the incident, Lt. Spradley bears the most responsibility for violating the Fourth Amendment rights of Mr. [REDACTED]. Additionally, Lt. Spradley failed to follow Department policies applicable to post-incident shooting scenes, which required him to ensure that Officer Gruba notified OEMC of his firearm discharge and remained separate from the witness members. Lt. Spradley's inaction constituted a flagrant dereliction of duty and reflected a lack of engagement with the officers under his command. Accordingly, COPA recommends he receive a **29-day suspension**.

b. Officer Kyle Gruba

COPA has considered Officer Gruba's complimentary history, his minimal disciplinary history,¹³⁷ and his more than nine years of service to the Department in mitigation. Although COPA has found that Officer Gruba's firearm discharge complied with Department policy, he committed several procedural violations during the incident, including failing to notify OEMC and failing to properly record on his BWC. These violations serve to undermine public trust and

¹³⁶ Attachments 121-122 include all of the accused members' complimentary and disciplinary histories.

¹³⁷ Officer Gruba received a reprimand for failing to follow inventory procedures in April 2021.

confidence in the Department. Accordingly, COPA recommends Officer Gruba receive a **5-day suspension**.

c. Officer Joel Gordils

COPA has considered Officer Gordils' complimentary history, lack of disciplinary action, and more than five years of service to the Department in mitigation. However, apart from Lt. Spradley, Officer Gordils bears the most culpability for violating Mr. ██████ rights. Officer Gordils was the primary officer who detained Mr. ██████ improperly placed him in handcuffs, and searched his vehicle without justification. He also committed multiple procedural violations during the incident, including failing to provide Mr. ██████ an investigatory stop receipt and failing to timely activate and deactivate his BWC. Officer Gordils' violations are made worse by the fact that he set an example for his partner, Officer Fabian, who was a probationary police officer with only 14 months of experience at the time of the incident. Accordingly, COPA recommends Officer Gordils receive a **15-day suspension**.

d. Officer Anthony Fabian

COPA has considered Officer Fabian's complimentary history, lack of disciplinary action, and inexperience as an officer in mitigation. Officer Fabian participated in the unjustified search of Mr. ██████ vehicle and failed to timely activate his BWC. Accordingly, COPA recommends Officer Fabian receive a **5-day suspension**.

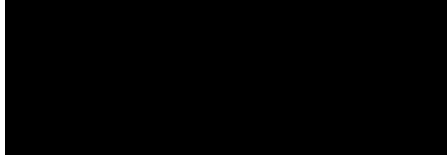
e. Officer Timothy Lammert

COPA has considered Officer Lammert's complimentary history, lack of disciplinary action, and more than eight years of service to the Department in mitigation. However, Officer Lammert assisted Officer Gordils in handcuffing Mr. ██████ and searching his vehicle, both violations of Mr. ██████ Fourth Amendment rights. Officer Lammert also violated Department policies regarding the recovery of evidence, procedures for interviewing witnesses, and BWC activations. These are serious violations that serve to undermine public trust and confidence in the Department. Accordingly, COPA recommends Officer Lammert receive a **15-day suspension**.

f. Officer Steven Kotrba

COPA has considered Officer Kotrba's complimentary history, lack of disciplinary action, and more than four years of service to the Department in mitigation. Officer Kotrba participated in the unjustified search of Mr. ██████ vehicle and failed to timely activate his BWC. Accordingly, COPA recommends Officer Kotrba receive a **5-day suspension**.

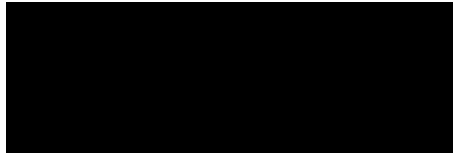
Approved:



4/29/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date



4/29/2022

Andrea Kersten
Interim Chief Administrator

Date