

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 17, 2018
Time of Incident:	11:35 pm
Location of Incident:	██████████ ██████████ Chicago, IL
Date of COPA Notification:	December 18, 2018
Time of COPA Notification:	12:19 am

On the evening of December 17, 2018, Officers Michael Scanlon #15504 and Roberto Garduno #9138 observed two male subjects, now identified as ██████████ and ██████████ entering a stolen Mustang parked near 77<sup>th</sup> Street and May Street. The officers alerted OEMC,<sup>1</sup> and a police helicopter that was in the vicinity and began tracking the Mustang. The officers followed at a distance, without their emergency lights activated, at speeds of less than 42 MPH. The Mustang crashed at 73<sup>rd</sup> Street and Ada Street, where both subjects exited the vehicle and fled on foot. The officers located the Mustang, split up, and began to search for the subjects on foot. When Officer Scanlon reached the 1200 block of W. 72<sup>nd</sup> Place, he observed ██████████ standing on the sidewalk manipulating what appeared to be a heavy object in his front hoodie pocket.<sup>2</sup> Officer Scanlon drew his weapon and approached ██████████ who started running eastbound on 72<sup>nd</sup> Place, ignoring the officer’s commands to show his hands and get on the ground.

Officer Scanlon pursued ██████████ into the east gangway of ██████████ ██████████ where ██████████ attempted to jump a chain-link fence. Officer Scanlon reached ██████████ at the fence and grabbed ██████████ hooded sweatshirt with his left hand, while also holding his flashlight in his left hand and his firearm in his right hand. As ██████████ continued trying to jump the fence, the top portion of the fence collapsed, causing Officer Scanlon’s right arm to become caught on its prongs. ██████████ grabbed Officer Scanlon’s right arm and pulled it downward, attempting to break the officer’s grip on his weapon. ██████████ then struck the weapon with a closed fist, causing it to discharge one time. Officer Scanlon reported that the discharge was unintentional, and the bullet did not strike anyone. After the discharge, ██████████ broke free from Officer Scanlon’s grip and fled northbound through a yard. Assisting units located ██████████ and placed him into custody, and he was charged with attempting to disarm a peace officer and receiving or possessing a stolen vehicle.

COPA’s investigation determined that the firearm discharge resulted from ██████████ attempts to disarm Officer Scanlon. COPA reached Not Sustained findings in relation to Officer Scanlon’s handling of his firearm and for failing to timely activate his Body Worn Camera.

<sup>1</sup> Office of Emergency Management and Communications

<sup>2</sup> This object was later found to be two baby bottles containing unknown pink and red liquids.

**II. INVOLVED PARTIES**

Involved Officer #1:	SCANLON, Michael; Star #15504; Employee ID # [REDACTED]; Date of Appointment: October 31, 2016; Police Officer; Unit of Assignment: 006; DOB: [REDACTED] 1995; Male; White.
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1991; Male; Black.

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Michael Scanlon #15504	1. It is alleged that on December 17, 2018, at approximately 11:35 pm, in the vicinity of [REDACTED] [REDACTED] Officer Scanlon was inattentive to duty in that his weapon discharged unintentionally, in violation of Rule 10.	Not Sustained
	2. It is alleged that on December 17, 2018, at approximately 11:35 pm, in the vicinity of [REDACTED] [REDACTED] Officer Scanlon failed to activate his Body Worn Camera in a timely manner, in violation of Special Order S03-14.	Not Sustained

**IV. APPLICABLE RULES AND LAWS**

Rules
<ol style="list-style-type: none"> <li>1. Rule 10: Inattention to duty.</li> <li>2. Rule 13: Failure adequately to secure and care for Department property.</li> </ol>
Special Orders
<ol style="list-style-type: none"> <li>1. S03-14, "Body Worn Cameras" (Effective Date: April 30, 2018).</li> </ol>

## V. INVESTIGATION<sup>3</sup>

### a. Interviews

In a statement to COPA on December 28, 2018, Officer Michael Scanlon #15504<sup>4</sup> stated on the date and time of the incident, he was on duty, in civilian dress, and assigned to the 6<sup>th</sup> District Robbery Team (Beat 652). He was driving a marked SUV and his partner, Officer Roberto Garduno, was the passenger. The officers were on patrol near 77<sup>th</sup> Street and May Street when Officer Scanlon noticed an illegally parked gray Mustang bearing Illinois dealer plates. He recognized the Mustang as a vehicle that had repeatedly fled from tactical officers in the 4<sup>th</sup> and 6<sup>th</sup> Districts over the past two to three months. A LEADS<sup>5</sup> check revealed that both the dealer plates and the Mustang were reported stolen. The officers briefly surveilled the Mustang but began to return to the district because their shift was ending. As Officer Scanlon took a left onto 77<sup>th</sup> Street from May Street, he observed a male, now known to be ██████ exit an apartment building at approximately ██████ and open the driver's side door of the Mustang. Officer Garduno told Officer Scanlon that he saw a second individual get into the passenger's side of the Mustang.

Officer Scanlon drove around the block and began to drive behind the Mustang, calling out its location over the radio. He did not attempt to curb the vehicle and did not activate his emergency equipment. As he followed the Mustang at what he described as a normal speed,<sup>6</sup> Police Helicopter #1 (PH1) came over the radio and announced that it had identified the Mustang.<sup>7</sup> Officer Scanlon slowed down and allowed the helicopter to track the Mustang. He continued to drive in the general direction of the helicopter and heard PH1 announce that both offenders had fled from the Mustang near 72<sup>nd</sup> Place and Ada Street. When the officers arrived at the location, Officer Scanlon observed the Mustang stopped in the middle of the alley. Both of its doors were open, and the vehicle was now unoccupied. Officers Scanlon and Garduno decided to split up to look for the offenders, and Officer Scanlon dropped Officer Garduno off on Loomis Boulevard, approximately one block west of the Mustang.

Officer Scanlon returned to the location of the Mustang and exited the police vehicle. The helicopter was tracking the offenders' location and direction of flight, so Officer Scanlon followed its orbit<sup>8</sup> on foot. He proceeded eastbound in the alley, then northbound through a vacant lot. When he reached 72<sup>nd</sup> Place, he observed ██████ standing on the sidewalk, approximately eight houses to his east. Officer Scanlon recognized ██████ as the same person he saw enter the stolen Mustang. According to Officer Scanlon, "[T]here was, like, a heavy object in his front hoodie pocket, and he was manipulating, like, as if he was trying to keep it in there, whatever object was in there. At that point, I believed he was armed."<sup>9</sup>

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<sup>3</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>4</sup> Atts. 39, 64.

<sup>5</sup> Law Enforcement Agencies Data System

<sup>6</sup> The GPS records indicate that the police vehicle was driving between 17 and 42 MPH during this period.

<sup>7</sup> Police Helicopter #1 (PH1) was airborne due to another unrelated incident.

<sup>8</sup> The term "orbit" refers to the helicopter flying in circles above the location of the fleeing offenders.

<sup>9</sup> Att. 64, pg. 26, line 23 – pg. 27, line 3.

Officer Scanlon drew his weapon and began to approach ██████ who did not notice the officer until he was approximately four car lengths away. Officer Scanlon announced his office and told ██████ to show his hands and get on the ground, but ██████ took off running with both hands in his front hooded sweatshirt pocket. Officer Scanlon held his weapon in his right hand and his flashlight in his left hand as he pursued ██████ into the east gangway of ██████. When ██████ attempted to jump the six-foot chain link fence at the end of the gangway, Officer Scanlon reached and grabbed ██████ hooded sweatshirt with his left hand. Officer Scanlon stated he planned to put ██████ on the ground in a prone position, then re-holster his weapon and perform emergency handcuffing. He did not want to holster his weapon prior to detaining ██████ because he believed him to be armed. ██████ however, continued efforts to jump the fence, causing it to collapse. According to Officer Scanlon, ██████ “ends up falling over the gate, and I’m still holding on to him. So, at that point I go airborne with him on top of the fence.”<sup>10</sup> Officer Scanlon was caught on top of the fence, his right arm “impaled”<sup>11</sup> by its prongs. He continued to hold onto ██████ hooded sweatshirt with his left hand, but he could not move his right arm, which was still holding his weapon.

Officer Scanlon stated ██████ turned to face him, then grabbed the officer’s right arm and pulled it in a downward direction, attempting to break Officer Scanlon’s grip on his weapon. ██████ next tried to break Officer Scanlon’s grip on his sweatshirt. When those actions were unsuccessful, ██████ let go of Officer Scanlon, raised his right arm, and “he tomahawks with his right hand onto the barrel of my weapon. And I’m impaled still at that point, so I can’t move it. And once he strikes it down, the gun discharges.”<sup>12</sup> Officer Scanlon stated ██████ struck his weapon with a closed fist, using full force, and he believed that ██████ was attempting to disarm him. He stated that the discharge of his weapon was unintentional, and he later learned the bullet did not strike anyone. Officer Scanlon did not know if his finger was on the trigger at the time of the discharge. He recalled, “I remember it was on the slide, and then, as the whole struggle — and I don’t know what happened. When he came down, it just went off.”<sup>13</sup> Similarly, Officer Scanlon could not tell if any part of ██████ right hand was inside the trigger guard. The incident, he stated, happened too quickly.

After the discharge, Officer Scanlon released his grip on ██████ sweatshirt, and ██████ fled northbound through the yard. As ██████ ran, Officer Scanlon saw a baby bottle containing a pink liquid, suspect promethazine, fall from ██████ front sweatshirt pocket. He realized that the baby bottle was the item that was weighing ██████ pocket down during the foot pursuit. After Officer Scanlon untangled himself from the fence, he looked down to grab his radio and noticed his body worn camera (BWC) was flashing green.<sup>14</sup> He immediately activated the camera, located his flashlight and radio, and announced “shots fired by police” over the air. Officer Scanlon stated that by the time he freed himself from the fence, other units had placed ██████ into custody in a nearby yard.

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<sup>10</sup> Att. 64, pg. 33, lines 7-10.

<sup>11</sup> Att. 64, pg. 34, line 8; pg. 35, lines 2-8.

<sup>12</sup> Att. 64, pg. 35, lines 1-4. Officer Scanlon said that in terms of use of force classifications, ██████ “went from resisting to an assailant.” Att. 64, pg. 49, line 7.

<sup>13</sup> Att. 64, pg. 37, lines 4-7.

<sup>14</sup> A green flashing light means a BWC is not activated.

When COPA investigators questioned Officer Scanlon about his BWC activation, he stated he believed his camera was recording until he saw the flashing green light after the firearm discharge. He thought he activated his BWC when he was in his vehicle, driving behind the Mustang, as he anticipated the subjects would bail from the vehicle and flee on foot. Officer Scanlon acknowledged the BWC makes a beeping sound when it is activated, but he stated he was in a “high stress moment,”<sup>15</sup> simultaneously driving and calling out the direction of the Mustang, and he did not notice that he did not hear the beeping sound.

In a **statement to COPA on January 7, 2019, Officer Roberto Garduno #9138**<sup>16</sup> stated on the date and time of the incident, he and Officer Scanlon were on routine patrol near 77<sup>th</sup> Street and May Street. Officer Garduno explained that he and his partner were part of the 06 Robbery Team that was created to address the vehicular hijackings that were occurring in the district. While they were driving around, Officer Scanlon pointed out an illegally parked vehicle with dealer plates (the Mustang), which Officer Scanlon stated was the same vehicle that “had been taking off from other police officers.”<sup>17</sup> Officer Garduno ran the Mustang’s plate number on his PDT<sup>18</sup>, and it came back lost/stolen. He then exited the police vehicle and approached the Mustang to see if anyone was inside, and no one was. Officer Garduno took down the VIN, returned to the police vehicle, and ran the VIN through his PDT. The vehicle also came back as stolen. The officers surveilled the Mustang for several minutes, then decided to return to the district because their shift was ending.

As the officers drove past the Mustang, Officer Garduno observed a black male, now identified as ██████ opening the passenger’s side door of the Mustang. Officer Garduno alerted his partner, who stated he also saw someone enter the vehicle. The officers began to follow the Mustang and radioed a request for an assist unit, but they decided not to activate their emergency equipment or curb the vehicle until backup arrived. When the Mustang turned northbound onto Aberdeen Street, it increased in speed, and Officer Garduno used his PDT to alert OEMC there was an emergency. The dispatcher requested the assistance of PH1, and Officers Garduno and Scanlon were instructed to fall back when PH1 located the Mustang.

As the officers drove in the general direction of the helicopter, they heard PH1 announce that the Mustang had crashed, and two male subjects were fleeing on foot. Officer Scanlon dropped Officer Garduno off near Ada Street and 73<sup>rd</sup> Street, and Officer Garduno began to search for the subjects on foot. He and Officer Scanlon had separated, and he did not observe Officer Scanlon’s foot pursuit of ██████ or hear the gunshot. After another unit located and detained ██████ Officer Garduno tentatively identified him as the passenger of the Mustang based on his height and clothing. Additionally, Officer Garduno noted there was ice cream all over ██████ jacket, and he saw ice cream spilled inside the crashed Mustang.<sup>19</sup>

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<sup>15</sup> Att. 64, pg. 46, lines 14-15.

<sup>16</sup> Atts. 46, 63.

<sup>17</sup> Att. 63, pg. 12, lines 3-4.

<sup>18</sup> Portable Data Terminal

<sup>19</sup> ██████ later confirmed to the arresting officers that ██████ was the passenger of the Mustang. Att. 5, pg. 2. COPA investigators attempted to reach ██████ at three different addresses; however, he did not respond to their requests for an interview. Atts. 38, 51.

In a telephonic interview with COPA on December 19, 2018, witness ██████ stated he is a resident of ██████ at ██████. On the date and time of the incident, ██████ was looking out of his bedroom window, which faces 72<sup>nd</sup> Place. He observed a young man, now identified as ██████ running eastbound down the street. An officer wearing a protective vest, tan pants, and possibly a black sweatshirt was pursuing ██████ on foot. ██████ stated he did not see either ██████ or the officer holding a firearm, but he did not get a good look at both of their hands. When ██████ reached the front of ██████, ██████ heard the officer yell, “Stop, police!” The officer chased ██████ into the gangway on the east side of the residence, and ██████ lost sight of them. He then heard one or two gunshots. After the incident, ██████ went outside and saw a pink or red gym shoe lying in the gangway that he had not seen there prior to the incident.

On December 19, 2018, COPA investigators conducted a canvass<sup>21</sup> of the area near ██████. Although investigators did not locate any witnesses to the foot pursuit or the accidental discharge, ██████ reported he saw the Mustang driving westbound on 73<sup>rd</sup> Street at a high rate of speed, being followed by a police car.

COPA investigators attempted to take the statement of ██████; however, the Cook County Public Defender’s Office, which represented ██████ in his criminal case related to this incident, denied COPA’s request for a statement. After ██████ criminal case was resolved, COPA investigators attempted to contact him at Jacksonville Correctional Center, but he did not respond to COPA’s request for a statement.<sup>23</sup>

#### b. Digital Evidence<sup>24</sup>

COPA obtained and reviewed the BWC video of Officer Scanlon<sup>25</sup> relative to this incident. The video begins as Officer Scanlon is running eastbound on 72<sup>nd</sup> Place, holding his weapon in his right hand and his flashlight in his left hand. He reaches ██████ and turns northbound into the east gangway. As Officer Scanlon makes his way through the brush, his flashlight illuminates the back of a male figure, now identified as ██████ who is attempting to jump the chain link fence that encloses the residence’s backyard. Officer Scanlon reaches the fence and a struggle ensues, but the video does not clearly capture what is occurring. At the end of the struggle, Officer Scanlon and ██████ are on opposite sides of the fence, which has partially collapsed. The video does not capture the sound of the gunshot, as the first thirty seconds of video do not contain audio.

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<sup>20</sup> Att. 30, pg. 7. ██████ declined to provide a formal statement to COPA.

<sup>21</sup> Att. 30.

<sup>22</sup> Atts. 37, 50, 68.

<sup>23</sup> COPA investigators also made numerous attempts to contact ██████ including by phone, certified mail, and first class mail, but he did not respond. Atts. 38, 51.

<sup>24</sup> The relevant BWC video, helicopter video, third-party video, and OEMC radio transmissions are available on COPA’s website at <https://www.chicagocopa.org/case/1092023>. COPA obtained and reviewed approximately 34 videos in the course of this investigation; however, only Officer Scanlon’s BWC video captures the firearm discharge.

<sup>25</sup> Att. 23.

██████ flees northbound as Officer Scanlon activates his BWC<sup>26</sup> and calls out shots fired by police. Within seconds, another unit broadcasts that ██████ is in custody. Officer Scanlon locates them in a vacant lot on 72<sup>nd</sup> Street, where he tells Sgt. Sean Carroll, “He fucking grabbed my gun and I fucking shot.”<sup>27</sup> Sgt. Carroll, who appears to be unaware of the discharge, asks when this occurred. Officer Scanlon responds, “When we were hopping the fucking fence, and I fucking, I let a round loose. That’s why I’m asking if he’s shot.”<sup>28</sup> At Sgt. Carroll’s direction, Officer Scanlon gets into a squad car and turns off his BWC.

The **BWC video of Sgt. Sean Carroll**<sup>29</sup> begins approximately five seconds after the firearm discharge. The video shows Sgt. Carroll exit his vehicle and approach the vacant lot at 1235 W. 72<sup>nd</sup> Street. He draws his weapon and shines his flashlight on ██████ who is walking northbound in the vacant lot. Sgt. Carroll instructs ██████ to get on the ground, but ██████ continues walking toward Sgt. Carroll with his hands in the air. Other officers take ██████ to the ground and place him into custody. The video then captures Officer Scanlon’s statements to Sgt. Carroll, documented above.

The **BWC video of Officer Garduno**<sup>30</sup> does not capture the foot pursuit, the firearm discharge, or the apprehension of ██████ or ██████. The video shows Officer Garduno, alone on foot, searching the area for the subjects. When another unit reports ██████ is in custody, Officer Garduno radios that the person he saw enter the Mustang was a male black, six feet tall, wearing a black jacket and blue jeans. The dispatcher states the person in custody is a male black wearing a black hooded sweatshirt and blue jeans. Officer Garduno approaches an unidentified officer in a police SUV and states, “We got the driver I think, that’s the guy I saw get in the car. I don’t know what the other one looks like.”<sup>31</sup> He reports he is going to find his partner and terminates his recording.

COPA obtained and reviewed the **video from Police Helicopter 1 (PH1)**<sup>32</sup> relative to this incident. The video begins when PH1 observes the Mustang at approximately 78<sup>th</sup> Street and Aberdeen Street, and the dispatcher tells Beat 652 (Officers Scanlon and Garduno) to let PH1 take over. PH1 follows the Mustang until it crashes into a parked pickup truck on Ada Street. The infrared video shows the two occupants of the Mustang exiting the vehicle, but PH1 is unable to identify their location and advises the officers to follow the helicopter’s orbit. The video captures both subjects running in the alley, then turning into a vacant lot. They split up, at which point PH1 focuses solely on the driver, now identified as ██████. When PH1 sees Officer Scanlon approaching ██████ location, he advises, “If there’s an officer running eastbound in the middle of the street, your guy’s right in front of you.”<sup>33</sup> The video shows ██████ who appears to be walking slowly

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<sup>26</sup> At the time an officer activates his BWC, the previous 30 seconds of video is stored without audio.

<sup>27</sup> Att. 23 at 11:43:00 pm. Citations to the BWC refer to the timestamp on the videos. While the timestamps appear in Universal Coordinated Time (UTC), this report translates the times to Central Standard Time (CST).

<sup>28</sup> Att. 23 at 11:43:07 pm.

<sup>29</sup> Att. 25. Additionally, COPA obtained and reviewed eight BWC videos recorded by other responding officers who assisted in the apprehension of ██████ and ██████. None of the videos capture the foot pursuit or the firearm discharge.

<sup>30</sup> Att. 24.

<sup>31</sup> Att. 24 at 11:42:51 pm.

<sup>32</sup> Att. 43.

<sup>33</sup> Att. 43 at 00:45:45.

down the sidewalk, begin running as Officer Scanlon emerges from a vacant lot and gives chase. Initially, Officer Scanlon appears to be approximately six-house lengths away from ██████ but he quickly closes the distance to approximately two-house lengths.

Officer Scanlon pursues ██████ northbound into a gangway, where ██████ jumps onto a fence. As Officer Scanlon reaches ██████ the helicopter orbits and a house obstructs the view so that the physical interaction between the two men is not captured on video. Approximately five seconds later, PH1 reacquires visual of ██████ who is now on the other side of the fence, running through a yard. PH1 directs three squad cars to ██████ location, and the video shows multiple officers converging on and apprehending ██████ PH1 then attempts to locate the passenger of the Mustang, to no avail.

COPA obtained and reviewed the **security camera video from ██████ ██████**<sup>34</sup>, which is located on the southeast corner of 72<sup>nd</sup> Place and Ada Street. Three of the residence's security cameras face south or southwest, toward the intersection of Ada Street and the south alley of 72<sup>nd</sup> Place. At 11:37:43 pm, all three cameras capture the Mustang turning northbound onto Ada Street and colliding with a pickup truck parked on the west side of the street. Almost immediately, the Mustang comes to a stop, and both the driver and the passenger exit the vehicle and run eastbound in the alley. At 11:39:15 pm, a marked squad car drives northbound on Ada Street and stops next to the Mustang. An officer wearing a protective vest and a light-colored sweatshirt, now identified as Officer Scanlon, exits the driver's side of the vehicle. He crosses Ada Street and runs eastbound in the alley, out of view of the cameras.

The **Office of Emergency Management and Communications (OEMC) Event Queries**<sup>35</sup> and **Zone 8 Radio Transmissions**<sup>36</sup> contain essentially the same information as the helicopter video summarized above.

### c. Physical Evidence

According to the **Inventory Sheets**<sup>37</sup>, items recovered from the east gangway of ██████ ██████ include a black ski mask, a pink Nike right shoe, and a piece of ripped black clothing attached to the top fence spike. Additionally, two baby bottles containing red and pink fluids were recovered from the rear yard of the residence. At Area Central, evidence technicians processed Officer Scanlon's Glock Model 17 Gen4, 9X19 semi-automatic pistol (Serial #BCPU626). The weapon, which had a 17-round capacity magazine, was found to have 16 live rounds in the magazine and one live round in the chamber (all "Win 9mm Luger +P").

The **Evidence Technician (ET) Photographs**<sup>38</sup> include images of the firearm discharge scene in the east gangway of ██████ ██████. The photos reveal that the gangway ends at the rear of the house, where a chain link fence encloses the backyard. The top portion of the fence is collapsed, supported only by a make-shift wooden pole. There are two baby bottles, a red Nike right shoe, and a black ski mask on the ground nearby.

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<sup>34</sup> Att. 31.

<sup>35</sup> Atts. 12-13. There are no 911 calls from this incident.

<sup>36</sup> Att. 48.

<sup>37</sup> Att. 18.

<sup>38</sup> Atts. 56-58.

At Area Central, ETs photographed Officer Scanlon, [REDACTED] and [REDACTED]. The photos show lacerations to Officer Scanlon's right inner arm and left knee, and his grey sweatshirt and pants are torn in multiple locations. [REDACTED] is wearing a left Nike shoe that appears to match the right Nike shoe recovered from the scene.



Figure 1. Photo showing the partially collapsed fence in the east gangway of [REDACTED] [REDACTED]

A **Breathalyzer Test**<sup>39</sup> taken by Officer Scanlon at 3:31 am on December 18, 2018, revealed that his B.A.C.<sup>40</sup> was .000. Officer Scanlon also submitted to a urine drug test on the same date, which produced negative results.

#### d. Documentary Evidence

The **Tactical Response Report (TRR)**<sup>41</sup> completed by Officer Scanlon indicates he was on-duty, in plainclothes, and alone at the time of the incident. The report states Officer Scanlon was conducting an investigatory stop and pursuing/arresting [REDACTED] for violation of 625 ILCS 5/4-103(a)(1) (receiving or possessing a stolen vehicle). [REDACTED] did not follow verbal directions, stiffened, pulled away, fled, and physically attacked Officer Scanlon without a weapon. The report states [REDACTED] struck Officer Scanlon, pushed, grabbed, and wrestled with him, and attempted to obtain the officer's weapon. Officer Scanlon responded with member presence, verbal direction

<sup>39</sup> Atts. 47, 60.

<sup>40</sup> Breath Alcohol Concentration.

<sup>41</sup> Att. 16.

and control techniques, by grabbing [REDACTED] and by discharging his firearm one time. The report lists the discharge as unintentional. Officer Scanlon sustained minor contusions and lacerations during the incident.

The **Arrest Report for [REDACTED]** states Officers Kizer #15307 and Smith Jr. #15292 arrested [REDACTED] at 11:41 pm on December 17, 2018, at [REDACTED]. He was charged with attempting to disarm a peace officer and receiving or possessing a stolen vehicle.<sup>43</sup> According to the narrative, when Officer Scanlon attempted to place [REDACTED] into custody, [REDACTED] “attempted to disarm the officer by striking downward on the officer’s service weapon with a closed fist.” The report also notes that [REDACTED] has a previous conviction for resisting or obstructing a peace officer.

The **Arrest Report for [REDACTED]** states he was arrested for Criminal Trespass to Vehicle but was released without charging. The narrative indicates that officers stopped [REDACTED] at 73rd Street and Racine Avenue, based on the radio description of a male black, six feet tall, wearing a black jacket and blue jeans. Additionally, [REDACTED] location and direction of travel matched the last-known location that PH1 provided for the second offender. Officer Garduno conducted a show-up of [REDACTED] and tentatively identified him as the person he saw enter the Mustang, based on his height, jacket, and pants.<sup>45</sup> The report also states [REDACTED] identified [REDACTED] as the passenger of the Mustang.

The **Detectives’ Supplementary Reports for RD #JB557816/Interference with Public Officer—Resist/Obstruct/Disarm Officer**<sup>46</sup> contain the detectives’ notes from their interview with [REDACTED] who related essentially the same account of the incident that he provided to COPA investigators. Detectives also canvassed along the path of the foot pursuit, but they did not locate any additional witnesses or video of the incident, other than the video they recovered from [REDACTED]. None of the supplementary reports include statements made by Officer Scanlon related to the discharge.

The **PDT messages**<sup>47</sup> indicate Beat 652 conducted a LEADS check of Illinois license plate # [REDACTED] (the dealer plate on the Mustang) at 10:52 pm on December 17, 2018. The results revealed that the license plate was reported stolen from South Chicago Dodge Chrysler on October 16, 2018. At 11:09 pm, Beat 652 ran the Mustang’s VIN through LEADS, which revealed that

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<sup>42</sup> Att. 4.

<sup>43</sup> Additionally, [REDACTED] had an outstanding warrant for assault out of McClean County.

<sup>44</sup> Att. 5.

<sup>45</sup> COPA acknowledges that Officer Garduno’s identification of [REDACTED] contradicts his statement, captured on BWC, that he believed the person in custody ([REDACTED] was the same individual he saw entering the Mustang, and he did not know what the other subject looked like. However, [REDACTED] jacket matched the description that Officer Garduno gave over the radio, while [REDACTED] hooded sweatshirt did not. Additionally, Officer Garduno informed COPA that he saw the passenger enter the Mustang, and [REDACTED] admitted [REDACTED] was the passenger. Therefore, based on the information and evidence gathered during this investigation, including Officer Garduno’s description, PH1’s partial tracking of [REDACTED] and [REDACTED] apparent confirmation that [REDACTED] was the passenger, COPA did not engage in a Fourth Amendment analysis related to [REDACTED] seizure and arrest.

<sup>46</sup> Atts. 8-9, 61. There is apparently no “final” Detective Supplementary Report for RD # JB557816/Interference with Public Officer—Resist/Obstruct/Disarm Officer or RD #JB557869/Law Enforcement Non-Fatal Firearm Discharge/Unintentional Discharge/No Injury. In a report dated April 11, 2019, CPD detectives stated their investigation “will remain suspended pending the findings of the COPA investigation.” Att. 62, pg. 3.

<sup>47</sup> Att. 17.

Avis Rental Company reported the vehicle stolen from Greensboro, North Carolina on August 16, 2018.

**Crime Scene Processing Report #387348**<sup>48</sup> documents the processing of the traffic crash scene (at 7360 S. Ada Street) and the accidental discharge scene (at [REDACTED] [REDACTED]). The report notes that a forensic investigator (FI) raked the leaves and brush in the side and rear yard of [REDACTED] [REDACTED] as well as the gangway of [REDACTED] Place, but was unable to locate the fired cartridge case. At Area Central, the FI recovered Officer Scanlon's weapon and photographed both Officer Scanlon and [REDACTED]. The officer had scratches on his right forearm and left leg, and his sweatshirt and pants were torn in multiple locations. The report describes [REDACTED] apparel as a black leather jacket, gray jeans, a pink Nike left shoe, and no shoe on his right foot.

The **Criminal Court Docket Report for [REDACTED] [REDACTED]** shows he was charged by indictment, 19CR0105601, with one count of Disarming a Peace Officer, 720 ILCS 5/31-1A(A), a Class 1 Felony, and one count of Receiving/Possessing/Selling a Stolen Vehicle, 625 ILCS 5/4-103(A)(1), a Class 2 Felony. On December 30, 2019, [REDACTED] pled guilty to Receiving/Possessing/Selling a Stolen Vehicle and was sentenced to three years' incarceration, with 379 days credit, and two years mandatory supervised release. The charge of disarming a police officer was dismissed, *nolle prosequi*.

## VI. LEGAL STANDARD

### a. Accidental Discharge

An allegation of an accidental firearm discharge is evaluated under Chicago Police Department Rules 13 and 38. Rule 13 prohibits the failure to adequately secure or care for Department property. Rule 38 prohibits the unlawful or unnecessary use or display of a weapon. An accident would be an occurrence beyond the officer's control that resulted in the discharge of his or her service weapon. Where an officer accidentally discharges his or her firearm in the process of a seizure, the discharge is analyzed based on whether the officer's prior police conduct leading up to that accidental discharge was objectively reasonable.<sup>50</sup>

### b. Body Worn Camera

Department Members' use of Body Worn Cameras is governed by Special Order S03-14. Pursuant to that order, officers are required to activate their body worn cameras whenever they are engaged in a law enforcement encounter, a duty which is mandatory not discretionary.<sup>51</sup> Any member who knowingly fails to properly comply with the directive is subject to departmental discipline.<sup>52</sup>

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<sup>48</sup> Att. 34.

<sup>49</sup> Att. 66.

<sup>50</sup> See *Johnson v. City of Milwaukee*, 41 F.Supp. 2d 917 (E.D. Wis. Feb. 25, 1999)(citing *Estate of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993)).

<sup>51</sup> Special Order S03-14(III)(A).

<sup>52</sup> *Id.* at (II)(A).

The order requires officers to activate their camera at the beginning of an incident and record the entire incident for all “law enforcement related activities” which is defined to include, but is not limited to: (a) calls for service; (b) investigatory stops; (c) traffic stops; (d) traffic control; (e) foot and vehicle pursuits; (f) arrests; (g) use of force incidents; (h) seizure of evidence; (i) interrogations; (j) searches, including searches of people, items, vehicles, buildings, and places; (k) statements made by individuals in the course of an investigation; (l) requests for consent to search; (m) emergency driving situations; (n) emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene; (o) high-risk situations; (p) any encounter with the public that becomes adversarial after the initial contact; (q) arrestee transports; and (r) any other instance when enforcing the law.

**c. Standard of Proof**

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** is evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *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 been found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, 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. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and convincing is 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.” *Id.* at ¶ 28.

**VII. LEGAL ANALYSIS**

- a. **The preponderance of the evidence demonstrates that Officer Scanlon did not intentionally discharge his firearm, and his conduct leading up to the discharge was not unreasonable.**

**1. Officer Scanlon did not intentionally discharge his firearm.**

The preponderance of the evidence supports that Officer Scanlon did not intentionally discharge his firearm. COPA finds credible Officer Scanlon's statement that his weapon discharged when ██████ "tomahawked" his right hand and weapon, which were caught on top of the fence. While firearms only rarely discharge from an impact alone, Officer Scanlon acknowledged that ██████ strike may have pushed his own finger off the firearm's slide and onto the trigger, or that ██████ finger or hand may have gone inside the trigger guard.

The evidence is consistent with Officer Scanlon's explanation of the event. Following the incident, the fence was partially collapsed, and material matching ██████ clothing was stuck to the top of a fence spike. ██████ right shoe and Officer Scanlon's radio were on the ground on opposite sides of the fence. Officer Scanlon had cuts and scrapes on his right forearm and left knee, and his clothing was torn in multiple locations. Additionally, while there is no audio, Officer Scanlon's BWC video depicts what appears to be a scuffle between the two men. All of this is consistent with Officer Scanlon's account of the incident.

Additionally, even though Officer Scanlon's statement that "he fucking grabbed my gun and I fucking shot"<sup>53</sup> appears to indicate he had agency in firing the weapon, the statement does not rule out an accidental discharge. In light of the other evidence, COPA does not find that this word choice, at a time of high stress, contradicts the explanation that Officer Scanlon provided to COPA after he had time to process what happened. Thus, even though COPA does not know the exact cause of the discharge, whether it be ██████ hand, Officer Scanlon's hand, or a mere misfire from the impact, the preponderance of the evidence shows that it was not an intentional act by Officer Scanlon, but instead caused by ██████ conduct in striking Officer Scanlon's hand and weapon.<sup>54</sup>

**2. The preponderance of the evidence does not demonstrate that Officer Scanlon's conduct leading to the firearm discharge was unreasonable.**

COPA finds Officer Scanlon did not act unreasonably leading up to or during the discharge of his firearm. Officer Scanlon indicated he drew his weapon because ██████ was manipulating a heavy object in his front sweatshirt pocket. While the object was later determined to be a baby bottle, it was not unreasonable for Officer Scanlon to believe it was a weapon. Since it was reasonable to infer the object was a weapon, it was also reasonable for Officer Scanlon to have drawn his firearm during the foot pursuit.

Additionally, Officer Scanlon articulated to COPA a reasonable and coherent plan for how he intended to safely secure ██████ He said he intended to grab ██████ and put him on the ground in a prone position, then re-holster his weapon and conduct emergency handcuffing. COPA finds

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<sup>53</sup> Att. 23 at 11:43:00 pm.

<sup>54</sup> COPA acknowledges that the State's Attorney's Office dismissed the charge of Attempting to Disarm a Police Officer. However, this appears to have been done pursuant to a plea agreement, since ██████ pled to a different felony on the same date. Moreover, in light of the different, and stricter, burden of proof in a criminal case against ██████ that dismissal is not dispositive in this case, where the preponderance of the evidence standard applies. For the reasons set forth herein, COPA finds that the preponderance of the evidence demonstrates ██████ struck Officer Scanlon's weapon.

that at this point, ██████ was an active resister who fled from Officer Scanlon in an attempt to avoid physical control and/or defeat arrest.<sup>55</sup> Thus, Officer Scanlon was permitted to use force to control ██████ including holding techniques and takedowns, as well as other greater force. The force that Officer Scanlon attempted to use, in grabbing and taking down ██████ was proportionate to ██████ level of resistance.

However, the fence collapsed from ██████ weight, pulling Officer Scanlon's right arm and weapon over the top of the fence. As discussed above, the evidence corroborates Officer Scanlon's statement that his firearm was in a vulnerable position due to the unintended and unanticipated collapse of the fence. ██████ then switched from an active resister to an assailant when he "tomahawked" Officer Scanlon's firearm. It would be unreasonable to expect Officer Scanlon to have avoided the discharge, considering the totality of the circumstances.

Based on the above reasons, the preponderance of the evidence does not show that Officer Scanlon intentionally discharged his weapon or that he acted unreasonably in attempting to subdue ██████. However, due to the serious risk of harm inherent in any unintentional discharge and no evidence of a weapon malfunction, there is not clear and convincing evidence to exonerate the allegation. Therefore, COPA finds that Allegation #1 is **Not Sustained**.

**b. Officer Scanlon did not knowingly fail to activate his body worn camera.**

COPA finds that Officer Scanlon did not knowingly fail to comply with the department directive on body worn cameras. The Department's "Body Worn Camera" directive, S03-14, requires members to activate their BWCs at the beginning of an incident and to record the entire incident for all law enforcement-related activities. However, the order only provides for the imposition of discipline upon an officer who "*knowingly* fails to comply with this directive."<sup>56</sup>

Here, Officer Scanlon was required to activate his BWC when he began following the Mustang, and certainly no later than the beginning of the foot pursuit.<sup>57</sup> Officer Scanlon told COPA investigators that, at the time, he believed he activated his BWC while he was driving behind the Mustang, in anticipation of exiting the vehicle for a foot pursuit. He stated he did not realize his BWC was not recording until he looked down to pick up his radio after his weapon discharged and saw his camera was flashing green.

COPA finds Officer Scanlon's explanation plausible. While it is an officer's responsibility to follow the BWC directive and ensure his or her camera is properly activated, this situation presented rare extenuating circumstances in which it was difficult for Officer Scanlon to notice his camera was not activated. At the time that Officer Scanlon believed he activated his BWC, he was simultaneously driving and calling out the location of the Mustang. He was not only tasked with driving, which required him to focus on the road, but he was navigating based on the position of the helicopter, which required him to look skyward as well. Likewise, when Officer Scanlon exited

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<sup>55</sup> See General Order GO3-02-01(IV)(B)(2)

<sup>56</sup> Special Order S03-14 (II)(A) (emphasis added).

<sup>57</sup> It is arguable that the beginning of this incident was earlier, when Officer Scanlon observed ██████ entering the stolen Mustang. At the latest, however, Officer Scanlon was required to activate his BWC when he observed ██████ standing on 72<sup>nd</sup> Place and the foot pursuit began.

the vehicle, he was focused on both the street and the sky, looking for the Mustang’s occupants while following the path of the helicopter and attempting to run where the pilot directed. In these circumstances, Officer Scanlon’s failure to notice his BWC was not activated was not unreasonable. The entire incident, from the time the officers called in the fleeing Mustang until the time the firearm discharge occurred, lasted approximately three and a half minutes, which is not a significantly long amount of time.

Given *these specific circumstances*, COPA finds it reasonable that Officer Scanlon failed to notice his BWC did not make the beeping sound that occurs when it begins recording. Moreover, Officer Scanlon stated he activated his BWC as soon as he realized it was not recording, and the video confirms he did look down to pick up his radio immediately prior to the camera’s activation.

In light of this evidence, COPA finds that Officer Scanlon did not comply with the directive and there is not clear and convincing evidence to exonerate. However, in light of the fact that Officer Scanlon provided a reasonable explanation for failing to activate his BWC or notice this failure, there is not a preponderance of evidence that he *knowingly* failed to timely activate his BWC. COPA finds that Allegation #2 is **Not Sustained**.

**VIII. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Officer Michael Scanlon #15504	1. It is alleged that on December 17, 2018, at approximately 11:35 pm, in the vicinity of [REDACTED] [REDACTED] Officer Scanlon was inattentive to duty in that his weapon discharged unintentionally, in violation of Rule 10.	Not Sustained
	2. It is alleged that on December 17, 2018, at approximately 11:35 pm, in the vicinity of [REDACTED] [REDACTED] Officer Scanlon failed to activate his Body Worn Camera in a timely manner, in violation of Special Order S03-14.	Not Sustained

Approved:



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Angela Hearts-Glass  
*Deputy Chief Investigator*

8-27-2020

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Date



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Sydney R. Roberts  
*Chief Administrator*

8-27-2020

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Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	8
<b>Major Case Specialist:</b>	Steffany Hreno
<b>Supervising Investigator:</b>	Sherry Daun
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass