

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incidents:	December 11, 2020
Time of Incident One:	10:45 pm
Location of Incident One:	3326 W. Irving Park Road, Chicago, IL 60618
Time of Incident Two:	11:10 pm
Location of Incident Two:	3337 W. Irving Park Road, Chicago, IL 60618
Time of Incident Three:	11:15 pm
Location of Incident Three:	2800 W. Irving Park Road, Chicago, IL 60618
Date of COPA Notification:	December 11, 2020
Time of COPA Notification:	11:15 pm

Off-duty Officer Kevin Bunge parked his white Jeep Grand Cherokee in front of 3326 W. Irving Park Road and remained inside the vehicle while listening to a Podcast related to military action in Fallujah. Approximately 8 minutes and 20 seconds after Officer Bunge parked the Jeep, a red Hyundai Elantra, driven by [REDACTED] and occupied by [REDACTED] parked directly behind the Jeep. Approximately 2 minutes and 45 seconds later, Officer Bunge exited the Jeep, drew his weapon, took a shooting stance, and approached the Hyundai with his firearm pointed at the vehicle. As Officer Bunge approached the Hyundai, he discharged his weapon once through the driver's window, striking [REDACTED] in the right index and ring fingers. [REDACTED] reversed his vehicle east bound on W. Irving Park Road. As the Hyundai reversed, Officer Bunge discharged his weapon a second time, striking the front wheel well fender. The Hyundai reversed on W. Irving Park Road until N. Sawyer Avenue, the Hyundai then turned north on N. Sawyer Avenue, and after approximately 6 minutes arrived at the 7-Eleven located at 2800 W. Irving Park Road. Upon arrival at the 7-Eleven, [REDACTED] and [REDACTED] for the first time, exited the vehicle entered the store. Simultaneously to the Hyundai's retreat, Officer Bunge holstered his weapon entered his Jeep and drove to his nearby residence, where after approximately 18-minutes after discharging his weapon, he contacted the Office of Emergency Management and Communications (OEMC) to report that he discharged his weapon at a red Honda Civic after hearing rapid gunfire and observing the driver pointing a firearm at him.

During the initial Department response, Officer Bunge relayed to Sergeant Michael Grassi, that while he was seated in the Jeep, he heard gunshots and exited the Jeep to investigate. Once outside of the Jeep, Officer Bunge observed a male wearing a redshirt with a "flat top" haircut holding a firearm standing next to the vehicle parked directly behind him. As he approached the male, the male entered the driver's seat of the vehicle and pointed a firearm at him. Officer Bunge responded by discharging his weapon twice towards the vehicle.

COPA's investigation revealed that at no time did any occupants of the Hyundai exit the vehicle, and that Officer Bunge's account of events was not supported by the evidence. Additionally, COPA's investigation revealed that the only reported gunfire was related to Officer Bunge's weapon discharges. Further COPA's investigation revealed there were no indications that either [REDACTED] or [REDACTED] were ever armed with any weapons, to include a firearm. Finally, COPA's investigation revealed procedural violations, detailed below, by Officers Bunge, Davis Murillo, Michael McInerney, and Marco Leon.

II. INVOLVED PARTIES

Involved Officer #1:	Officer Kevin Bunge / Star#12973 / Employee ID#[REDACTED] / DOA: March 5, 2013 / Unit: 025/376 / Male / White.
Involved Officer #2:	Officer Davis Murillo / Star#18710 / Employee ID#[REDACTED] / DOA: April 26, 2004 / Unit: 017 / Male / Hispanic.
Involved Officer #3:	Officer Michael McInerney / Star#6377 / Employee ID#[REDACTED] / DOA: October 17, 2011 / Male / White.
Involved Officer #4:	Officer Marco Leon / Star#8238 / Employee ID#[REDACTED] / DOA: December 5, 2005 / Male / Hispanic.
Involved Individual #1:	[REDACTED] / Male / Hispanic.
Involved Individual #2:	[REDACTED] / Male / Hispanic.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Kevin Bunge ¹	1. Discharging your weapon at [REDACTED] without justification, in violation of General Order G03-02.	Sustained
	2. Discharging your weapon at a moving vehicle, without justification, in violation of General Order G03-02-03.	Sustained
	3. Failing to timely report the discharge of your firearm to OEMC and/or the Department in violation of General Order G03-06.	Sustained

¹ On March 17, 2021, Officer Bunge was arrested and charged for this incident under 21CR0579201. As a result of his arrest, his Firearm Owner Identification (FOID) card was revoked. Atts. 97 and 103.

	4. Failing to register your 9-millimeter SIG Sauer P365 bearing serial number [REDACTED] with the Department in violation of Uniform and Property Order U04-02.	Sustained
	5. Failing to annually qualify with your 9-millimeter SIG Sauer P365 bearing serial number [REDACTED] in violation of Uniform and Property Order U04-02.	Sustained
	6. Making a misleading, incomplete, and/or inaccurate account of his interaction with Jomner [REDACTED] causing the arrest of Jomner [REDACTED]	Sustained
Officers Davis Murillo and Michael McInerney	1. Failing to timely activate your Body Worn Camera, in violation of Special Order S03-14.	Sustained
Officer Marco Leon	1. Handcuffing [REDACTED] without justification.	Exonerated
	2. Leaving [REDACTED] handcuffed for excessive period of time, without justification.	Exonerated
	3. Failing to document [REDACTED] detention in an Investigatory Stop Report.	Sustained
Officer Michael McInerney	2. Handcuffing [REDACTED] without justification.	Exonerated
	3. Leaving [REDACTED] handcuffed for excessive period of time, without justification.	Exonerated
	4. Failing to document [REDACTED] detention in an Investigatory Stop Report.	Sustained

IV. APPLICABLE RULES AND LAWS

General Orders:

G03-02 – Use of Force – effective February 29, 2020 to April 14, 2021.

G03-02-03 – Firearm Discharge Incidents – Authorized Use and Post-Discharge Administrative Procedures – effective February 29, 2020 to April 14, 2021.

Special Orders :

S03-14 – Body Worn Cameras – effective April 30, 2018 to present.

Investigatory Stop System – effective July 10, 2017 to present.

Uniform and Property Orders:

U04-02 – Department Approved Weapons and Ammunition – effective February 29, 2020 to May 6, 2021.

V. INVESTIGATION²**a. Interviews**

In an **Electronic Recorded Interview³** (ERI) with the Department on December 11, 2021, ██████████ relayed that he was driving his red Hyundai Elantra to a party in East Chicago, Indiana but encountered issues with the global positions system (GPS) directions on his passenger's, ██████████ phone. To address the phone issue ██████████ elected to park the vehicle on the north curb of the westbound lanes of W. Irving Park Road behind a parked white Jeep near N. Kimball Avenue.⁵ While both ██████████ and he were seated in the vehicle with the windows rolled up, ██████████ observed a black male exit the driver's seat of the Jeep and approach his vehicle while yelling and pointing a firearm towards him and shot at him several times.⁶ He estimated that the man shot at him four times. In response to the gunshots, ██████████ placed the vehicle in reverse and fled eastbound on W. Irving Park Road. As the vehicle reversed the man shot at him again, he estimates two more times.⁷ He was hit during the first set of shots.

Once at N. Sawyer Avenue, ██████████ fled north and made his way to and parked at Horner Park.⁸ While he was driving ██████████ realized that he had been shot in the right hand and ██████████ contacted 911 to report the shooting.⁹ While parked at Horner Park ██████████ observed a white Jeep and believed it was the same vehicle the black male had exited.¹⁰ ██████████ drove to the 7-Eleven located at 2800 W. Irving Park Road. Upon arrival at the 7-Eleven, both ██████████ and he entered the store and asked the clerk to call 911 and report the shooting.¹¹ Both ██████████ and ██████████ remained in the store until Department members arrived.

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Atts. 21 and 105.

⁴ After reviewing the ERI, COPA determined there was no need for an additional interview of ██████████

⁵ Att. 105, pgs. 9 to 11, 13, 28.

⁶ *Id.*, pg. 11

⁷ *Id.*, pgs. 11 and 12.

⁸ Horner Park is enclosed by the North Branch of the Chicago River, N. California Avenue, W. Irving Park Road, and W. Montrose Avenue.

⁹ Att. 105, pg. 22.

¹⁰ *Id.*, pg. 19. COPA's determined that this white Jeep was in fact not related to this incident.

¹¹ *Id.*, pg. 20.

██████████ explained his view of the black male was obscured by the rain and fog on the windows.¹² ██████████ described the black male's demeanor as angry but could not understand what he was yelling.¹³ ██████████ was clear at no time was ██████████ or he armed with any weapons, to include a firearm.¹⁴ Finally, the ERI documented that ██████████ was wearing a dark camouflage pullover sweatshirt with the word "DRIP" in white lettering written across the front, a red undershirt, dark pants, black socks, and black shoes at the time of the incident.¹⁵

In an ERI¹⁶ with the Department on December 11, 2021, ██████████ relayed essentially the same information as ██████████. However, ██████████ relayed that he never saw the black male with a firearm but did hear three to four gunshots.¹⁸ ██████████ confirmed that neither ██████████ nor he were armed with any weapons, to include firearms.¹⁹ Finally, the ERI documented that ██████████ was wearing a brown leather jacket, black shirt, and black jeans.²⁰

On the night of the incident, **Officer Bunge was interviewed by CPD detectives.**²¹ The detective report summarized the interview, and stated that Officer Bunge relayed that while traveling home from work, he parked his vehicle on the westbound travel lanes along the north curb near 3320 W. Irving Park Rd. and was listening to a podcast about a battle that occurred in Fallujah when he heard muffled rapid-fire gunshots from outside of his vehicle. Officer Bunge exited his vehicle, observed a red car parked directly behind him and a Hispanic male wearing a red "hoodie" with a "flat-top" hair style entering the driver's seat. Officer Bunge approached the red vehicle while stating "Police, who's shooting? Who's shooting?"²² As Officer Bunge approached closer to the vehicle, he observed both a front seat passenger and driver occupying the vehicle, and the driver raising his arm holding a pistol pointed it towards Officer Bunge. Fearing for his life, Officer Bunge discharged his weapon at the driver. The red vehicle reversed east bound on W. Irving Park Rd. and turned northbound on to a side street. Officer Bunge checked the area for any victims or additional suspects but did not locate any. Officer Bunge entered his vehicle, returned to his residence, parked in his garage, and contacted OEMC to report his weapon discharge. Officer Bunge relayed that upon the arrival of on-duty Department members he showed Sgt. Grassi the location of the incident and completed a "show-up"²³ at the 7-Eleven where he positively identified the passenger of the red vehicle by the shape of his face. Finally, Officer Bunge relayed that he was a disabled veteran who was medically discharged from the United States Marine Corps and is currently receiving counselling and is on medication.²⁴

¹² *Id.*, pg. 26.

¹³ *Id.*, pgs. 17 and 18

¹⁴ *Id.*, pg. 22.

¹⁵ Att. 21 from 32:27 to 33:30.

¹⁶ Atts. 22 and 104.

¹⁷ After reviewing the ERI, COPA determined there was no need for an additional interview of ██████████

¹⁸ Att. 104, pgs. 11 and 12.

¹⁹ *Id.*, pg. 8.

²⁰ Att. 22 at 02:58.

²¹ Att. 93, pgs. 38 and 39.

²² *Id.*, at pg. 38.

²³ A "show up" is a field investigative technique that is used when a suspect is located in close proximity and time to an alleged crime and is presented to a victim or witness to assist in determining if the detained person is an offender.

²⁴ Officer Bunge's Synoptic Report details the presence of Alprazolam metabolites. Att. 91, pg. 18.

Officer Bunge was scheduled for a statement²⁵ on March 16, 2021 at 11:00 am; however, on March 15, 2021, Officer Bunge's attorney, [REDACTED], contacted COPA and informed COPA that Officer Bunge would not be attending the statement because of Officer Bunge's imminent arrest. Additionally, [REDACTED] relayed that even if Officer Bunge attended the scheduled statement, Officer Bunge would have asserted his right to remain silent in accordance with the Fifth Amendment to the Constitution of the United States.²⁶ Further, on March 22, 2021, COPA attempted to reschedule Officer Bunge for a statement, Grace informed COPA Officer Bunge would not be providing a statement and that even if Officer Bunge attended a statement, Officer Bunge would have asserted his right to remain silent in accordance with the Fifth Amendment to the Constitution of the United States.²⁷

In a **statement to COPA**,²⁸ on February 1, 2021, **Accused Officer Davis Murillo** stated that he responded to 3337 W. Irving Park Rd. in response to a radio call of an officer involved shooting. Officer Murillo acknowledged that upon his arrival he interacted and conversed with Officer Bunge prior to activating his BWC and that Department policy required him to activate his BWC prior to the interaction.²⁹ Officer Murillo explained that his failure to timely activate his BWC was because he believed he had activated it prior to interacting with Officer Bunge.³⁰

In a **statement to COPA**,³¹ on February 1, 2021, **Accused Officer Michael McInerney** stated that he responded to 3337 W. Irving Park Rd. in response to a radio call of an officer involved shooting. Officer McInerney acknowledged that upon his arrival he interacted and conversed with Officer Bunge prior to activating his BWC.³²

Additionally, Officer McInerney relayed that after the arrival of Sgt. Grassi, he was informed that [REDACTED] and [REDACTED] were possible offenders and that Officer Leon and he responded to the 7-Eleven located at 2800 W. Irving Park Rd. as additional security officers.³³ Upon his arrival at the 7-Eleven, Officer McInerney assisted Officer Leon with handcuffing [REDACTED] and escorting him to the rear seat of a marked unit on scene.³⁴

Officer McInerney explained his failure to timely activate his BWC was because he believed he had already activated it.³⁵ Additionally, Officer McInerney explained that he determined [REDACTED] needed to be detained because [REDACTED] was in a vehicle that matched the description of being involved in an officer involved shooting, that Sgt. Grassi advised that the occupants of the vehicle at 7-Eleven may possibly be offenders in the shooting,

²⁵ Officer Bunge's statement was coordinated with his attorney, [REDACTED]. Additionally, COPA provided [REDACTED] with the notification of charges for Officer Bunge.

²⁶ Att. 99.

²⁷ See Note CO-0081170.

²⁸ Atts. 88 and 100.

²⁹ Att. 100, pg. 8.

³⁰ *Id.*

³¹ Atts. 83 and 101.

³² Att. 101, pgs. 8 and 9.

³³ *Id.*, pg. 10.

³⁴ *Id.*, pg. 11.

³⁵ *Id.*, pg.

and because both [REDACTED] and [REDACTED] initially briefed members that the person who had shot at them was a black male, when in fact Officer Bunge is a white male.³⁶ Further, after [REDACTED] was detained, Officer Bunge completed a “show-up” and positively identified [REDACTED] as being involved.³⁷ Officer McInerney relayed he was unaware of how long Rameriz-Mendez was detained in handcuffs and was surprised he was handcuffed for almost two hours.³⁸ Finally, Officer McInerney explained that he did not complete an Investigatory Stop Report (ISR) because [REDACTED] information was detailed in other reports and possibly an arrest report.³⁹

In a **statement to COPA**,⁴⁰ on February 1, 2021, **Accused Officer Marco Leon** stated that he initially responded to 2800 W. Irving Park Rd. in response to reports of a shooting, and upon his arrival he interacted with [REDACTED] who relayed that a black male had shot at [REDACTED] and him.⁴¹ Officer Leon explained [REDACTED] was not aggressive or threatening.⁴² After speaking to [REDACTED] Officer Leon responded to 3337 W. Irving Park Rd. in response to reports of an officer involved shooting. Officer Leon relayed essentially the same information as Officer McInerney as it related to his return and subsequent actions at 2800 W. Irving Park Rd.

Additionally, Officer Leon explained that he determined [REDACTED] needed to be detained because he was in a vehicle that matched the description of being involved in an officer involved shooting, Sgt. Grassi advised that the occupants of the vehicle may possibly be offenders in the shooting,⁴³ the concern he was possibly armed, and because both [REDACTED] and [REDACTED] initially briefed members that the person who had shot at them was a black male, when in fact Officer Bunge is a white male.⁴⁴ After [REDACTED] was detained Officer Bunge completed a “show-up” and positively identified [REDACTED] as an occupant of the vehicle.⁴⁵ Officer Leon relayed that he did not know how long [REDACTED] was in handcuffs, but that it was a long period of time, in part because there was a need to wait for orders on what to do with [REDACTED] after he was detained.⁴⁶ Finally, Officer Leon relayed he did not complete an ISR because he was merely detaining [REDACTED] on behalf of the detectives and that a case report was completed which would have contained the needed documentation.⁴⁷

³⁶ *Id.*, pg. 13.

³⁷ *Id.*, pgs. 13 and 14.

³⁸ *Id.*, pg. 14.

³⁹ *Id.*, pg. 15.

⁴⁰ Atts. 85, 86 and 102.

⁴¹ Att. 102, pg. 9.

⁴² *Id.*, pg. 8.

⁴³ COPA Notes that Officer Leon explained that Sgt. Grassi did not order him to detain [REDACTED] but it is his practice is to detain individuals once they are identified as possible offenders. *See* Att. 102, pg. 11.

⁴⁴ *Id.*, pgs. 14 and 15.

⁴⁵ *Id.*, pgs. 15 and 16.

⁴⁶ *Id.*, pg. 16.

⁴⁷ *Id.*, pg. 18.

b. Digital Evidence

Third Party⁴⁸ and **Police Observation Device**⁴⁹ (POD) footage depicts Officer Bunge's white Jeep Cherokee turning west on to W. Irving Park Rd. from N. Christiana Ave.⁵⁰ The Jeep parks on the northside of W. Irving Park Rd. facing westbound.⁵¹ After approximately 8-minutes and 20-seconds, [REDACTED] red Hyundai Elantra is seen traveling west bound on W. Irving Park Rd. and parks directly behind the Jeep along the north curb.⁵² After approximately 2-minutes and 45-seconds, Officer Bunge exits the Jeep, draws his weapon, takes a shooting stance, and approaches the Hyundai with his firearm pointed at the vehicle.⁵³ As Officer Bunge approaches the driver's door of the Hyundai, the Hyundai reverses east in the west bound lanes.⁵⁴ As the vehicle reverses, a muzzle flash is seen from Officer Bunge's weapon.⁵⁵ After discharging his weapon, Officer Bunge holsters his weapon, approaches the Jeep, walks around the front of the Jeep, enters the Jeep, and returns to his residence.⁵⁶ Once the Hyundai reaches N. Sawyer Ave. it turns right and proceeds forward on N. Sawyer Ave. As the Hyundai flees, the occupants call 911 and report the shooting.⁵⁷

After approximately 6-minutes, the Hyundai arrives at the 7-Eleven and both [REDACTED] and [REDACTED] exit the Hyundai and enter to the store.⁵⁸ Once in the store both [REDACTED] and [REDACTED] speak to the clerk, who calls 911.⁵⁹ Upon the arrival of Department members, both [REDACTED] and [REDACTED] exit the store and speak to the members.⁶⁰

The footage clearly shows that while the red Hyundai was parked behind the white Jeep no occupants exit or enter the red Hyundai.

Four **911 calls**⁶¹ were received and corresponding **Event Queries**⁶² were generated. The first call was received at 10:48 pm from an unidentified female, who relayed she heard two gunshots near 3320 W Irving Park Rd.⁶³ The second call was received at 10:52 pm from [REDACTED] who relayed his friend had been shot in the hand by an unknown person near N. Kimball

⁴⁸ Atts. 8, 36, 37, 68, 74 to 81 and 89.

⁴⁹ Atts. 64 to 66.

⁵⁰ Att. 8 at 11:35:56; Att. 65 at 10:35; Att. 89 at 23:34:15.

⁵¹ Att. 8 at 11:36:14; Att. 65 at 10:35; Att. 68 at 10:46:07; Att. 89 at 23:34:30.

⁵² Att. 8 at 11:44:34; Att. 65 from 10:43 to 10:44; Att. 68 at 10:54:16.

⁵³ Att. 8 from 11:47:22 to 47:37; Att. 68 from 10:57:11

⁵⁴ Att. 8 from 11:47:37 to 47:42; Att. 65 at 10:47; Att. 68 at 10:57:12

⁵⁵ Att. 8 at 11:47:41.

⁵⁶ Att. 8 from 11:47:42 to 48:43; Att. 68 at 10:57:31; Att. 23:46:55. Att. 89 at 23:46:55. COPA reviewed video from a business across from Officer Bunge's apartment complex, the white Jeep did not leave the complex prior to police units arriving. Att. 89 at 23:46:55-00:09:26.

⁵⁷ As the Hyundai flees, the occupants call 911 and report the shooting. See Att. 35 and discussion of 911 calls below.

⁵⁸ Att. 66 at 10:54; Att. 36 from 22:38:51 to 22:39:31; Att. 74 at 00:00:03; Att. 75 at 00:00:03; Att. 76 at 00:00:10; Att. 77 at 00:00:07; Att. 78 at 00:00:05

⁵⁹ Att. 66 at 10:55; Att. 74 at 00:00:04; Att. 75 at 00:00:04; Att. 78 at 00:00:06; Att. 76 at 00:00:00

⁶⁰ Att. 66 at 10:58; Att. 36 from 22:42:43 to 22:42:54; Att. 74 at 00:00:30; 00:00:21; Att. 76 at 00:00:20; Att. 77 at 00:00:19; Att. 78 at 00:00:29.

⁶¹ Atts. 25 to 30.

⁶² Att. 2.

⁶³ Att. 2, pgs. 1 to 16; Att. 25.

Ave. and W. Irving Park Rd.⁶⁴ The third call was received at 10:57 pm from the clerk at the 7-Eleven, who relayed a male entered the store and reported a being shot in the hand.⁶⁵

The final call was received at 11:01 pm from Officer Bunge, who relayed that while off-duty he was driving his vehicle near W. Irving Park Rd. and N. Christiana Ave. when a red Honda Civic pulled behind him and “let off a few shots” that sounded like “automatic gunfire,”⁶⁶ which caused him to believe he was being shot at and prompted him to exit his vehicle. Upon exiting his vehicle, he approached the red Civic with his weapon drawn.⁶⁷ Officer Bunge observed the windows were fogged and believed the driver, Hispanic male with a “flattop” haircut “upped a pistol” at him which prompted him to discharge one round prior to the vehicle fleeing.⁶⁸ The four Event Queries detail essentially the same information provided from the four 911 calls and that the shooter was described as a black male wearing all black in a white Jeep.⁶⁹

Body Worn Camera⁷⁰ (BWC) and **In-Car Camera**⁷¹ (ICC) footage depicts Department members responding to the 7-Eleven and speaking with [REDACTED] and [REDACTED]. Officer Leon speaks with [REDACTED] who appears to describe the incident, and then begins speaking with [REDACTED].⁷² Officer Murillo also speaks extensively with [REDACTED].⁷³ The two victims relay they were in the west bound lanes of W. Irving Park Rd. near Kimball Ave. trying to use their GPS when an unknown person, in white Jeep, shot at them for no reason.⁷⁴

Simultaneously, additional Department members search the 3300 block of W. Irving Park Rd. for evidence of the shooting. While members are searching the area, a radio transmission is heard related to an officer involved shooting near 3337 W. Irving Park Rd.⁷⁵

Officers Murillo and McInerney respond to 3337 W. Irving Park Rd. Officers Murillo and McInerney speak to Officer Bunge.⁷⁶ Shortly after their arrival, Sgt. Grassi arrives at the location and speaks to Officer Bunge, who relays he was parked on W. Irving Park Rd. when a red vehicle parked behind him. Once the red car was parked Officer Bunge heard shots, exited his vehicle, pulled out his star, and saw a male with a red “hoodie” and “flattop” standing outside of the red vehicle. The male ran to the red car and entered the vehicle. Officer Bunge approached the vehicle and saw the male point a gun at him. Officer Bunge responded by discharging one round from his weapon and the red vehicle fled in reverse.⁷⁷ Officer Bunge escorts Sgt. Grassi to the scene of the

⁶⁴ Att. 2, pg. 17; Atts. 26 and 27.

⁶⁵ Att. 2, pg. 18; Atts. 28 and 29.

⁶⁶ Att. 30 at 00:26, 01:19 and 01:54.

⁶⁷ Att. 2, pgs. 21 to 22; Att. 30.

⁶⁸ Att. 30 at 02:15 and 02:53.

⁶⁹ *Id.*, pg. 3.

⁷⁰ Atts. 9 to 23, 41 and 92.

⁷¹ Atts. 42 to 44.

⁷² [REDACTED] is wearing a dark sweatshirt with apparent camo print. [REDACTED] has on a dark leather jacket and a red and white beanie.

⁷³ Neither Officer Leon nor Murillo have their cameras activated, so the only audio comes from the cameras of other nearby officers.

⁷⁴ Att. 9 from 10:58 to 11:30; Att. 10 from 02:00 to 03:05; Att. 13 from 00:00 to 03:50; Att. 17 from 00:00 to 02:30.

⁷⁵ Att. 13 at 07:42; Att. 17 at 09:56; Att. 9 at 15:48.

⁷⁶ Att. 15 from 01:12 to 02:00; Att. 16 from 00:00 to 00:40.

⁷⁷ Att. 9 from 19:54 to 21:04.

incident.⁷⁸ While walking to the scene with Officer Bunge, Sgt. Grassi informs OEMC that [REDACTED] and [REDACTED] may be possible offenders and instructs Officer Leon to return to the 7-Eleven for security purposes but does not order anyone's detention.⁷⁹ Sgt. Grassi also instructs Officer Evan Solano to take Officer Bunge to the 7-Eleven for a "show-up".⁸⁰

Officer Leon returns to the 7-Eleven and with the assistance of Officer McInerney detains [REDACTED] and places him in the rear of a marked vehicle.⁸¹ After approximately 1-minute, [REDACTED] was removed from the vehicle for a "show-up" during which Officer Bunge positively identified him as a passenger in the red vehicle.⁸² [REDACTED] was returned to the vehicle and remained seated in the rear of the vehicle in handcuffs for approximately 159-minutes.⁸³

c. Documentary Evidence

Detective Supplemental⁸⁴ and **Crime Scene Processing**⁸⁵ reports detail essentially the same information as the ERIs, the Third-Party Surveillance, BWC footage, 911 calls, and Event Queries. Additionally, the reports document that at least eight citizens heard two gunshots or "pops" around the time of the incident but did not witness any of the incident.⁸⁶ Further, the reports detail that two Underwood 9-millimeter cartridge casings were recovered, one from the roadway and one from the sidewalk in front of 3320 W. Irving Park Road.⁸⁷ Further, Officer Bunge's weapon, a 9-millimeter SIG Saur P365 bearing serial number [REDACTED], was recovered by Lieutenant David Wu.⁸⁸ Officer Bunge's weapon had a capacity of twelve rounds. Upon inspection of the weapon, it was determined one live round was in the weapon and ten live rounds were in the magazine. Additionally, a twelve round capacity spare magazine was recovered as well as nine live loose rounds.⁸⁹ Finally, the reports detail that the Illinois State Police compared the recovered cartridge casings to Officer Bunge's weapon and determined that Officer Bunge's weapon fired both casings.⁹⁰

Evidence Technician Photographs⁹¹ document the bullet damage to [REDACTED] vehicle, specifically the shattered driver's window and bullet hole to the front driver's side wheel fender.⁹² Additionally, the photographs document a projectile and blood on the driver's seat of [REDACTED] vehicle.⁹³ The photographs also document [REDACTED] treated and

⁷⁸ Att. 9 at 21:05.

⁷⁹ Att. 9 at 21:32; Att. 13 at 13:38; Att. 15 at 03:33; Att. 16 at 02:12

⁸⁰ Att. 9 at 24:04.

⁸¹ Att. 13 at 16:07; Att. 14 from 00:00 to 01:36 and 02:37 to 03:15; Att. 15 from 06:15 to 07:34.

⁸² Att. 20 from 04:35 to 05:25.

⁸³ Att. 14 at 03:41; Att. 42 from 01:04 to 2:00:32

⁸⁴ Atts. 4, 93 and 98.

⁸⁵ Att. 94.

⁸⁶ Att. 93, pgs. 5 to 7.

⁸⁷ Att. 93, pg. 17; Att. 94, pgs. 1 and 4.

⁸⁸ Att. 93, pg. 39.

⁸⁹ *Id.*

⁹⁰ Att. 98, pg. 8.

⁹¹ Att. 96.

⁹² *Id.*, pgs. 5, 6 and 10.

⁹³ *Id.*, pgs. 8, 9 and 97 and 98.

bandaged injuries.⁹⁴ Further, the photographs document that [REDACTED] was wearing a brown leather jacket, black shirt, black jeans, and black shoes.⁹⁵ Finally, the photographs document that Officer Bunge was wearing a blue hat, blue hooded sweatshirt, black pants, and black shoes.⁹⁶

[REDACTED] **Medical Records**⁹⁷ detail the Chicago Fire Department treated him for a gunshot wound to his right index and middle finger and transported him to Swedish Hospital.⁹⁸

A list of **Officer Bunge's Department registered firearms**⁹⁹ does not contain his SIG Sauer P365 bearing serial number [REDACTED].

Officer Bunge's Tactical Response Report¹⁰⁰ (TRR) details that it was a rainy night, and the scene was lit with artificial lighting. [REDACTED] actions are detailed as not following verbal direction, fleeing, and presenting an imminent threat of battery with a semi-automatic pistol. Officer Bunge's response is detailed as discharging two rounds from his semi-automatic pistol bearing serial number [REDACTED]. The report details that Officer Bunge's weapon discharge resulted in non-fatal injuries, specifically a broken bone, to [REDACTED]. Finally, Commander Eric Winstrom detailed that the recovered surveillance footage was "inconclusive as to the actions of the persons" in the vehicle Officer Bunge discharged his weapon at.¹⁰¹

I. LEGAL STANDARD

a. Use of Force

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable, necessary, and proportional in light of the totality of the circumstances faced by the officer.¹⁰² Factors to be considered in assessing the reasonableness of force include, but are not limited to, (1) whether the subject was posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; (3) the subject's proximity or access to weapons; (4) the severity of the crime at issue; and (5) whether the subject is actively resisting arrest or attempting to evade arrest by flight.¹⁰³

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

⁹⁴ *Id.*, pgs. 74 to 79.

⁹⁵ *Id.*, pgs. 90 and 91.

⁹⁶ *Id.*, pgs. 92 to 96.

⁹⁷ Att. 67.

⁹⁸ *Id.*, pg. 7.

⁹⁹ Att. 60.

¹⁰⁰ Att. 59.

¹⁰¹ *Id.*, pgs. 3 and 4.

¹⁰² G03-02(III)(B)(1)(effective Feb. 28, 2020 to April 14, 2021).

¹⁰³ *Id.*

reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”¹⁰⁴

b. Use of Deadly Force

The Department’s “highest priority is the sanctity of human life.”¹⁰⁵ 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.”¹⁰⁶ Thus, a Department member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.¹⁰⁷ “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.”¹⁰⁸

Moreover, Department policy expressly prohibits certain uses of deadly force, including firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, unless such force is a last resort and necessary, based on the specific circumstances confronting the sworn member, to protect against an imminent threat to life or to prevent great bodily harm.¹⁰⁹

Additionally, for any firearm-discharge incident, the discharging member will immediately notify OEMC of the firearm discharge and provide all relevant information and request additional resources.¹¹⁰

c. De-escalation.

The Department’s rules and regulations provide: “[w]hile the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances involved.”¹¹¹

¹⁰⁴ G03-02(II)(D).

¹⁰⁵ G03-02 (II)(A).

¹⁰⁶ G03-02(III)(C)(3).

¹⁰⁷ G03-02(III)(C)(3).

¹⁰⁸ G03-02 (III)(C)(2).

¹⁰⁹ G03-02-03 (II)(D)(6).

¹¹⁰ G03-06(V)(A). Additionally, G03-02-03 (IV)(A) instructs officers to comply with the immediate notification requirements of G03-06.

¹¹¹ Rules and Regulations of the Chicago Police Department, Art. I.B.7.

Toward that end, Department members are required to use de-escalation techniques to reduce or prevent the need for use of force. The principles of de-escalation, or force mitigation, include:¹¹²

- 1) Continual Communication¹¹³ - to minimize or avoid confrontations, members are to attempt to use verbal control techniques prior to, during, and after the use of force. They are to attempt to establish and maintain verbal communication in all police-public encounters such as exercising persuasion, advice, and instruction prior to the use of force. When safe and feasible, members are to provide a warning prior to the use of force.
- 2) Tactical Positioning¹¹⁴- When safe and feasible to do so, members are to make advantageous use of positioning, distance, and cover by isolating and containing a subject, creating distance between the member and a potential threat, or utilizing barriers or cover. Members will continuously evaluate the members positioning, subject's actions, and available force options.
- 3) Time as a Tactic¹¹⁵- When safe and reasonable, members are to slow down the pace of the incident to permit the de-escalation of the subject's emotions and allow the subject an opportunity to comply with the verbal direction given. Using time as a tactic will also allow for the arrival of other officers as well as allow the individual the opportunity to voluntarily comply with lawful verbal direction before force is used.

d. Firearm Registration and Qualification.

Department policy dictates that members will register all duty and non-duty firearms with the Department.¹¹⁶ Prior to being approved to carry a Department authorized firearm, officers must pass a qualification and certification requirements for the firearm.¹¹⁷

e. False Statements

Chicago Police Department Rules and Regulations, Rule 14 prohibits officers from "making a false report, written or oral." Pursuant to the Bill of Rights within the officers' Collective Bargaining Agreement, officers may not be charged with a Rule 14 violation unless "(1) the officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation."¹¹⁸ Moreover, in cases where there is video evidence relevant to the matter under investigation, officers may only be charged with a Rule 14 violation if they are either given the opportunity to view the video before giving the statement or given the opportunity to clarify and amend the original statement after viewing the video.¹¹⁹

¹¹² G03-02-01 (III).

¹¹³ G03-02-01 (III)(A).

¹¹⁴ G03-02-01 (III)(B).

¹¹⁵ G03-02-01 (III)(C).

¹¹⁶ U04-02(D)(F).

¹¹⁷ U04-02(D)(2).

¹¹⁸ Agreement Between Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago, July 1, 2012-June 30, 2017, at section 6.1(m).

¹¹⁹ *Id.*

A “material fact” is a fact that is “crucial . . . to the determination of an issue at hand.”¹²⁰ A false statement is made “willfully” if it is done “voluntarily and intentionally.”¹²¹

Moreover, Rules 2 and 3, in combination, serve the principal that sworn officers are held to standard of truthfulness:

Department Rule 2 and 3 require that Chicago police officer provide a complete and accurate accounting of what they observe while on duty. Officers may not offer misleading statements which emphasize certain facts to the exclusion of others. And they are not permitted to pick and choose facts in order to support a pre-determined conclusion. Instead, officers must provide a complete accounting without embellishment, exaggeration, or spin.¹²²

f. Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, CPD policy mandates all law-enforcement-related encounters to be electronically recorded on the officers’ BWC.¹²³ The recording of law-enforcement-related encounters is mandatory.¹²⁴ Law-enforcement-related encounters include, but are not limited to, calls for service, statements made by individuals in the course of an investigation, and high-risk situations.¹²⁵ Officers must activate their BWCs at the beginning of an incident and record the entire incident.¹²⁶ 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.”¹²⁷

g. Investigatory Stop Reports

Department members who complete an investigatory stop are required to complete an Investigatory Stop Report that details “[a]ll of the factors that support” the detention of the subject.¹²⁸ However, if the member completes a detention based on probable cause and there is any other Department report that details the probable cause for the stop, the member is not required to complete an Investigatory Stop Report.¹²⁹

¹²⁰ Black’s Law Dictionary.

¹²¹ *Chicago’s Pizza, Inc. v. Chicago’s Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 868 (1st Dist. 2008)(citing Black’s Law Dictionary).

¹²² *In re Franko et. al.*, 16 PB 2909-2912, Findings and Decisions, July 18, 2019, at pp. 5-6.

¹²³ S03-14 II.A.

¹²⁴ S03-14 III.1.

¹²⁵ S03-14 III.2.

¹²⁶ S03-14 III.2.

¹²⁷ S03-14 III.2.

¹²⁸ S04-13-09 VIII (A)(1), Investigatory Stop System (effective July 10, 2017 to current).

¹²⁹ S04-13-09 VII (B)(1)(a), Investigatory Stop System (effective July 10, 2017 to current).

II. Analysis.

a. Credibility Assessment.

COPA finds Officer Bunge not credible. His explanation of the incident included many false or misleading statements. He claimed to have heard multiple gunshots¹³⁰ prior to him exiting his vehicle; however, neither [REDACTED] nor [REDACTED] reported hearing shots prior to Officer Bunge approaching their vehicle and the anonymous 911 caller only reported two shots total. Officer Bunge indicated to Sgt. Grassi and the investigating detective that he saw a man getting into the driver's seat of the red car, however, video is clear that no one entered or exited the red car in the entire time it was parked. He claimed to have fired once at the vehicle, however, evidence shows that he fired twice.

To the contrary, COPA finds [REDACTED] and [REDACTED] to be credible. Their explanations were consistent with each other, including the reason for stopping; Officer Bunge's actions in exiting his car, yelling, and then shooting; and their actions in escaping and finding the 7-Eleven. Crucially, their explanations were also largely corroborated by video evidence. Nevertheless, there are some portions of their statements that are not supported by the evidence, the largest being that they both misstated Officer Bunge's race.¹³¹

Finally, COPA finds that the other officers who were interviewed were credible as to the facts of the incident. However, as discussed more thoroughly below, the conclusions they drew from those facts were not supported by the evidence.

b. Deadly Force

COPA finds that Allegations 1 and 2 against Officer Bunge, that he discharged his weapons at [REDACTED] and a moving vehicle, are **sustained**.

i. [REDACTED] and [REDACTED] did not pose an imminent threat of death or great bodily harm.

COPA finds that neither [REDACTED] nor [REDACTED] posed an imminent threat of death or great bodily harm at either time Officer Bunge shot at them. As discussed above, Officer Bunge's explanation that he heard gunfire, exited his car, and shot because [REDACTED] "upped" a firearm is not credible. To the contrary, COPA credits the explanation provided by the other two men. Based on that explanation (supported by the video evidence) there was not an imminent threat of death or great bodily harm.

First, their actions were not immediately likely to cause death or great bodily harm. Officer Bunge's explanation that the driver "upped" a firearm is not credible and not supported by the

¹³⁰ As part of the many descriptions of the incident that he provided, only one time did he state that he heard automatic gunfire. On other occasions he described it as just multiple shots.

¹³¹ Both men also stated that they thought the white Jeep was following them. While video evidence shows that Officer Bunge pulled into his driveway and never left, it is possible they saw another white Jeep and were mistaken. Indeed, they acknowledged that they may have been wrong.

evidence. Both men say that [REDACTED] was looking at his phone attempting to enter in an address when Officer Bunge approached. [REDACTED] says he was still doing so when Officer Bunge shot. [REDACTED] says that he did not see the first shot, but that they were reversing when it happened. Video from the nearby residential building shows that Officer Bunge did not shoot until the car was reversing. Whether [REDACTED] was focused on using his phone, reversing, or a combination of the two, his actions did not pose an imminent threat to Officer Bunge and could not be reasonably interpreted as “upping” a firearm.

Second, [REDACTED] did not have the means or instruments to cause death or great bodily harm. Both he and [REDACTED] deny being armed. No evidence of a firearm was found in their vehicle. While COPA acknowledges they could have discarded the firearm prior to arriving at the 7-Eleven, there is no reliable evidence that they were armed in the first place.¹³² Moreover, their car was reversing *away* from Officer Bunge, so it was unreasonable for him to believe that the vehicle was a weapon.

Third, even if [REDACTED] was armed and was “upping” the firearm, he did not have the opportunity and ability to cause death or great bodily harm. [REDACTED] was backing away from Officer Bunge at the time of the first shot and was even further away when Officer Bunge fired the second shot. Due to the weather, the windows were fogged, and visibility was poor. Under these circumstances, neither [REDACTED] nor [REDACTED] have a reasonable opportunity or ability to cause death or great bodily harm to Officer Bunge.

ii. Officer Bunge Unreasonably Discharged his Firearm at a Moving Vehicle.

Officer Bunge unreasonably discharged his firearm at a moving vehicle. Video evidence shows that Officer Bunge fired his first shot as the red car was beginning to reverse, and his second shot as the red car was still reversing. Thus, both shots were at a moving vehicle.

As discussed above, it was not objectively reasonable to believe that [REDACTED] or [REDACTED] posed an imminent threat to Officer Bunge. Further, even if [REDACTED] or [REDACTED] posed an imminent threat to Officer Bunge, Department policy further prohibits the use of deadly force at or into a moving vehicle, unless such force is a last resort and necessary. For the reasons discussed above, there was no imminent threat, and it was not a necessary last resort for Officer Bunge to use deadly force.

For the foregoing reasons, COPA finds by a preponderance of the evidence that Officer Bunge used deadly force without justification and fired at or into a moving vehicle without justification in violation of Department policy and, Rules 2, 3, 6 and 38.

c. Officer Bunge Did not Timely Notify OEMC.

COPA finds that Allegation 3 against Officer Bunge, that he failed to timely report the discharge of his weapon to OEMC and/or the Department, is **sustained**.

¹³² Moreover, due to their fear that the white Jeep was following them, it is unlikely they would have discarded a firearm if they had one.

COPA finds that Officer Bunge did not timely notify OEMC that he discharged his firearm, as required by Department policy. Officer Bunge did not call 911 to report that he had fired his weapon for at least thirteen minutes after the shooting.¹³³ The video evidence shows that after shooting, Officer Bunge took approximately 30 seconds examining his vehicle prior to entering, which he explained to detectives was to determine whether it had been struck by gunfire. Officer Bunge then immediately drove to his driveway across the street. Therefore, Officer Bunge was safely away from the incident within moments, yet waited at least 13 minutes to place the call. In his multiple statements related to the incident, Officer Bunge provided no explanation for the delay or what he did during the interim. COPA is unable to determine the cause for the delay. Therefore, COPA finds by a preponderance of the evidence that Officer Bunge did not timely notify OEMC, in violation of Department policy and Rules 2, 3, and 6.

d. Officer Bunge Improperly Carried His Firearm.

COPA finds that Allegations 4 and 5 against Officer Bunge, that he Bunge failed to register and qualify with his firearm, are **sustained**.

The preponderance of the evidence establishes that Officer Bunge failed to register and qualify with the firearm he used during this incident. Detective reports indicate that Officer Bunge turned over a 9-millimeter SIG Sauer P365 bearing serial number [REDACTED] as the firearm he used in this instance. COPA reviewed Departmental training records which show that Officer Bunge never registered this firearm with the Department, nor do they show that he properly qualified with this firearm. Therefore, COPA finds by a preponderance of the evidence that Officer Bunge's actions violate Department policy and Rules 2, 3, and 6.

e. Officer Bunge Knowingly and Willfully made Materially False Statements.

COPA determined that as part of his 911 call, his statement to Sgt. Grassi, and his statement to responding detectives, Officer Bunge made multiple statements which were contradicted by a preponderance of the evidence. COPA finds by a preponderance of the evidence that two such statements were knowingly and willfully false;¹³⁴ however, the investigation also established that the remainder of the statements were more likely than not made due to misperceptions by Officer Bunge, than as knowing and willful false statements.

i. Hearing Gunfire

Officer Bunge consistently reported that he exited his vehicle and approached the red vehicle because he heard gunfire. He told 911 that the vehicle pulled behind him, "let off a few shots", and he also described it as sounding like automatic fire. He later told the Sergeant that he

¹³³ Thirteen minutes elapsed between the anonymous 911 call reporting two shots fired and Officer Bunge placing his call to 911.

¹³⁴ COPA makes these findings based upon video evidence. The Collective Bargaining Agreement requires that officers are given the opportunity to review video and clarify or amend any allegedly false statements. COPA gave Officer Bunge the opportunity to make a statement to the Agency in which he would have the opportunity to clarify or amend any false statements, however, he declined to do so.

heard gunshots and told detectives that he heard “muffled rapid-fire gunshots that he believed were coming from outside the vehicle.”

The preponderance of the evidence establishes that there were not gunshots prior to him exiting his vehicle. Only two shell casings were found in the area, both matching Officer Bunge’s firearm. Both [REDACTED] and [REDACTED] denied hearing gunshots prior to Officer Bunge approaching them and the anonymous 911 caller reported only hearing two gunshots, likely the two that Officer Bunge fired. Thus, the preponderance of the evidence is that the only shots fired were by Officer Bunge. Moreover, this is clearly a material fact as it is the entire basis for his actions.

However, there is not a preponderance of the evidence that he knowingly and willfully made these false statements. His initial 911 call was clear that he believed there were shots, and he attributed them to the red car. However, his subsequent statements included the caveat that he had heard shots, and his connection to the red car was more speculative.¹³⁵ While COPA found that there were not actually gunshots, there is not evidence that Officer Bunge did not mistakenly believe that he heard gunshots.

ii. Seeing a Man Enter the Red Vehicle

Officer Bunge told Sgt. Grassi he saw a man run into the red car and told detectives that when he exited his own vehicle, he saw a man¹³⁶ enter the red car to take the driver’s position. Video shows that at no point when the red car was parked did anyone enter it, exit it, and the only person who went near it was Officer Bunge. Therefore, the preponderance of the evidence is that these statements are false.

Moreover, the evidence is material. This case hinges on whether Officer Bunge reasonably perceived the two men in the red car as threats. His statements about the man running into the car provided evidence tying the perceived gunshots to the occupants of the red car. Therefore, whether the man entered the car is integral to the determination of whether Officer Bunge acted reasonably.

Finally, the preponderance of the evidence is that he made this statement knowingly and willfully. Video shows that there was not a single person near the car when Officer Bunge approached. It also shows that the door was never opened. There is no reasonable basis to conclude that Officer Bunge merely misperceived someone entering the car. To the contrary, the preponderance of the evidence is that he voluntarily and intentionally provided this false statement.

iii. Firing Only One Shot Before the Red Car Reversed.

Officer Bunge made multiple statements that he fired one shot in the incident. He stated in his 911 call that he returned fire [referring to his perceived belief that shots had been fired] “one shot and they sped away.” He later told Sgt. Grassi that he “fired one shot and he went in reverse.”

¹³⁵ His statement to detectives added the detail that he was listening to a war podcast, which may have led to the confusion.

¹³⁶ He described the man as dressed in red with a flat top.

The detective's report indicates that Officer Bunge fired "shots" plural but places the shots prior to the red car speeding away in reverse.

The preponderance of the evidence establishes that Officer Bunge fired two shots. Officers recovered two shell casings from the scene which were consistent with those in his firearm; and his firearm was missing two rounds. The anonymous 911 caller stated that there were two shots fired, and both victims said there were multiple shots, however, both inflated the number of shots they perceived. Moreover, the evidence is clear that Officer Bunge fired one of these shots long after the red car had reversed and was approximately 100 feet away. Therefore, his statements that he fired one shot and that he shot before the red car reversed are false.

Additionally, the statements were material. Officer Bunge's claim was that he was justified in shooting in self-defense, and the purpose of Sgt. Grassi and the detectives' investigation is to determine if that is true. To make this determination, investigators need to know how many shots Officer Bunge fired and when to determine if the circumstances of those shots merited his use of self-defense. The determination was not just material, but the issue upon which the entire investigation revolved.

Finally, Officer Bunge made this statement knowingly and willfully. COPA concedes that if an officer fires shots back-to-back, they may not perceive that they have fired multiple shots and mistakenly believe that they fired only one. However, the evidence does not show that Officer Bunge fired in a manner that he may conflate the two shots as one. Instead, the video shows that he fired the second shot several seconds after the first¹³⁷, and did so deliberately, taking the time to get in a shooting stance and take a two-handed aim prior to shooting, and after the car had reversed. The preponderance of the evidence also establishes that he could not have mistakenly believed that he fired the second shot prior to the red car reversing. Not only had several seconds elapsed, but video shows that the car was 100 feet away and Officer Bunge had stepped into the very spot where the red car had been parked to fire the second shot.

Therefore, the preponderance of the evidence is that Officer Bunge's multiple statements that he shot one time, prior to the red car reversing, were knowingly and willfully false statements about a material fact.

iv. Seeing [REDACTED] Raised a Firearm.

Finally, Officer Bunge said on his 911 call that it looked like one of the occupants raised a gun. He informed Sgt. Grassi that the man "upped" a pistol. Detective reports indicate he saw the driver raise his arm, holding a pistol, and point it at Officer Bunge. In each of these statements he reported that the raising happened prior to himself shooting any shots.

The preponderance of the evidence is that neither of the two men was armed, as they both credibly denied it and no firearm was ever recovered. Moreover, as discussed above, the evidence is inconsistent with the driver pointing a firearm, since he was putting the car in reverse at the time

¹³⁷ Video does not definitively establish when the first shot was fired, however, both victims place the shot at the moment they began reversing. Video evidence shows that Officer Bunge fired the second shot approximately five seconds after the red car began to reverse.

Officer Bunge indicates he was pointing. Therefore, the preponderance of the evidence is that the statement is false. Additionally, it is material because it is the absolute heart of his self-defense.

However, there is not a preponderance of the evidence that he made this false statement knowingly and willfully, instead it is consistent with a misperception. Indeed, he conceded in his 911 call, that the windows were foggy, and it looked like the man raised a gun. While COPA finds that the man was more likely than not putting the car in reverse, it is plausible that Officer Bunge interpreted this movement, or another simultaneous movement, as raising his arm as if to point. Moreover, both men indicate that [REDACTED] was holding his phone at the time, which the officer may have perceived to be a firearm.¹³⁸

COPA finds by a preponderance of the evidence that Officer Bunge knowingly and willfully made false statements about facts material to the investigation of his shooting, to wit that he saw a man enter the red car and that he shot one shot prior to the red car reversing. Therefore, Officer Bunge violated Rule 14, and Allegation 6 is **Sustained**.

f. Body Worn Cameras

COPA finds that Allegation 1 against Officers Murillo and McInerney, that they failed to timely activate their BWCs, are **sustained**.

Officers Murillo and McInerney both failed to properly activate their body worn cameras. Officer Murillo activated his camera while in the middle of conversing with Officer Bunge. He acknowledged that he should have had the camera on for that conversation, but that he thought he already had activated it. In addition to speaking with Officer Bunge, he had also been looking for the evidence of a crime scene. Officer Murillo should in fact have activated his camera long before he encountered Officer Bunge, when he initially responded to the 7-Eleven and spoke with [REDACTED]

Officer McInerney also activated his camera after he had begun interacting with Officer Bunge and after Officer Bunge had given his statement to Sgt. Grassi.¹³⁹ He also had previously gone to the 7-Eleven parking lot, and although he did not directly interview either victim, he was present for their interviews. Therefore, he was also engaged in law enforcement related activity long before he activated his camera.

For these reasons, COPA finds that Officers Murillo and McInerney failures to timely activate their BWCs violate Department policy and Rule 2, 3, and 6.

¹³⁸ COPA acknowledges that it previously found as part of the imminent threat analysis that it was not objectively reasonable for Officer Bunge to believe that [REDACTED] raised a firearm at him. However, the imminent threat analysis applies an objective standard to how a reasonable officer would perceive the conduct. The test for knowing and willful is a subjective standard based upon what Officer Bunge individually perceived. COPA does not have sufficient evidence to establish that Officer Bunge could not have subjectively perceived that [REDACTED] raised a firearm.

¹³⁹ He did not provide an explanation for why his camera was not activated before this moment.

g. Officers Leon and McInerney Detained [REDACTED]

COPA acknowledges that individual officers are responsible for their own actions, however, in light of department policy which strictly assigns post-shooting investigative responsibility to supervisors and the Street Deputy, it is not unreasonable under these circumstances for the accused officers to detain individuals at the instruction of supervisors and to not unilaterally make a decision to release detained individuals, and instead, await instruction. Accordingly, COPA finds there is clear and convincing evidence to exonerate the officers, and Allegations 1 and 2 against Officer Leon and allegations 2 and 3 against Officer McInerney are **Exonerated**.

Officers Leon and McInerney Failed to Complete an Investigatory Stop Report

COPA finds that Allegation 3 against Officer Leon and Allegation 4 against Officer McInerney, that they failed to complete an ISR, are **sustained**.

Officers Leon and McInerney were required to complete an Investigatory Stop report in this incident. While the detention of [REDACTED] was based on information learned from Officer Bunge, there was insufficient information to establish probable cause. Since [REDACTED] detention was based on reasonable suspicion and not probable cause, Officers Leon and McInerney were required to document the detention in an ISR even if they knew additional reports, such as an arrest or detective supplemental report, would document the basis of the detention. Officers Leon and McInerney's failure violated Department policy and Rules 2, 3, and 6.

III. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Officer Kevin Bunge****i. Complimentary and Disciplinary History**

Officer Bunge has received 47 various awards and has had no disciplinary history in the past 5 years.

ii. Recommended Penalty

Here, the facts of Officer Bunge's actions are indisputable and resulted in his ultimate prosecution. He discharged his weapon twice at [REDACTED] and [REDACTED] without any justification. In fact, all the evidence supports that [REDACTED] and [REDACTED] were totally innocent parties in this incident. Further, Officer Bunge's failures to properly assess the circumstances prior to his weapons discharges and his failures to notify OEMC and/or the Department all raise grave concerns for his continued employment with the Department. Additionally, the procedural failures by Officer Bunge were directly violations of clear Department policies. It is for these reasons combined with his history, that COPA recommends Officer Bunge be **separated** from the Department.

b. Officer Davis Murillo**i. Complimentary and Disciplinary History**

Officer Murillo has received 163 various awards and has had no disciplinary history in the past 5 years.

ii. Recommended Penalty

COPA recommends he receive a **1-day suspension**.

c. Officer Marcos Leon**i. Complimentary and Disciplinary History**

Officer Leon has received 48 various awards and has had no disciplinary history in the past 5 years.

ii. Recommended Penalty:

COPA recommends a **1-day suspension**.

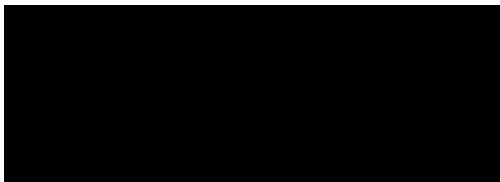
d. Officer Michael McInerney**i. Complimentary and Disciplinary History**

Officer Bunge has received 37 various awards and has had no disciplinary history in the past 5 years.

ii. Recommended Penalty:

COPA recommends a **1-Day suspension**.

Approved:



Andrea Kersten
Chief Administrator

8/31/2023

Date