

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

|                            |                        |
|----------------------------|------------------------|
| Date of Incident:          | December 18, 2020      |
| Time of Incident:          | 11:47 a.m.             |
| Location of Incident:      | 1500 N. Laramie Avenue |
| Date of COPA Notification: | December 18, 2020      |
| Time of COPA Notification: | 2:46 p.m.              |

Officers Dale Frederick #3330<sup>1</sup> and Nikola Saric #18200 were driving southbound on Laramie Avenue from Area 5 at Grand and Central Avenues en route to Chicago Public Safety Headquarters at 3510 S. Michigan. A black pickup truck, also driving southbound, began to accelerate ahead of the officers’ vehicle, turned westbound on Le Moyne at a high rate of speed and struck a black sedan. An unknown black male began discharging a firearm at the pickup truck. The officers stopped their vehicle and announced their office. Officer Frederick discharged his firearm three times at the unknown male, who then ran westbound on Le Moyne and then southbound in the west alley of Laramie. Assisting officers subsequently searched the area without success. The driver of the pickup truck sustained gunshot wounds to the head and was later pronounced dead at Stroger Hospital. The incident was partially captured on Officer Frederick’s body worn camera. COPA presented one allegation to Officer Saric for failing to promptly activate his body worn camera. COPA finds that the allegation against Officer Saric is sustained.

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. After review of all available evidence, COPA finds that the use of deadly force by Officer Frederick was within Department policy.

**II. INVOLVED PARTIES**

|                         |   |
|-------------------------|---|
| Involved Officer #1:    | FREDERICK, Dale; star #3330; employee ID# [REDACTED]; Date of Appointment: May 27, 2015; Police Officer; Unit of Assignment: 650; DOB: [REDACTED], 1988; Male; White.                 |
| Involved Officer #2:    | SARIC, Nikola; star #18200; employee ID# [REDACTED]; Date of Appointment: August 31, 2015; Police Officer; Unit of Assignment: 180 <sup>2</sup> ; DOB: [REDACTED], 1981; Male; White. |
| Involved Individual #1: | UNKNOWN; Male; Black.   |
| Involved Individual #2: | [REDACTED] DOB: [REDACTED], 1993; Male; Black.  |

<sup>1</sup> Officer Frederick resigned from the CPD, effective January 4, 2022 (Att. #212).

<sup>2</sup> Officer Saric is detailed to Unit 650.

### III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department member discharges their firearm. Pursuant to its investigation, COPA determined there was not sufficient evidence to support allegations of improper use of force. COPA did determine that Officer Nikola committed the following violation of Department policy.

| Officer                            | Allegation  | Finding / Recommendation       |
|------------------------------------|---|--------------------------------|
| Police Officer Nikola Saric #18200 | It is alleged that on or about December 18, 2020, at approximately 11:47 a.m., in the vicinity of 1500 N. Laramie Ave, you failed to activate your body-worn camera in a timely manner, in violation of Special Order S03-14. | Sustained / 3-5 Day Suspension |

### IV. APPLICABLE RULES AND LAWS

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#### Rules<sup>3</sup>

1. Rule 6 – Disobedience of an order or directive, whether written or oral.

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#### General Orders<sup>4</sup>

1. G03-02: Use of Force (effective February 29, 2020 – April 14, 2021)
2. G03-02-01: Force Options (effective February 29, 2020 - April 14, 2021)

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#### Special Orders

1. S03-14: Body Worn Cameras (effective April 20, 2018 – present)

### V. INVESTIGATION<sup>5</sup>

#### 1. Interviews

In his **statement to COPA<sup>6</sup>** on January 5, 2021, **Officer Dale Frederick #3330**, stated that on December 18, 2020, he and Officer Nikola Saric were on their way to CPD Headquarters from Area 5 at Grand and Central. The officers headed east on Grand, then south on Laramie. As he was driving, Officer Frederick observed a black pickup truck pull out of a parking spot just north of

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<sup>3</sup> Police Board of Chicago, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 1, 2010) <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

<sup>4</sup> Department general and special orders, also known as directives, “are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police.” Department Directives System, General Order G01-03; *see also* Chicago Police Department Directives System, *available at* <http://directives.chicagopolice.org> (last accessed July 7, 2022).

<sup>5</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>6</sup> Attachments 9 and 24.

the intersection of Laramie and Le Moyne.<sup>7</sup> The truck cut off a vehicle ahead of the police vehicle and headed southbound on Laramie. The truck then turned westbound onto Le Moyne without stopping at the stop sign. An unknown male, who was standing just off the curb behind a parked vehicle, jumped onto the parkway as the truck crashed into the parked vehicle and produced a firearm. Officer Frederick did not see where the male produced the firearm from and was not certain which hand, he was holding it in. The male then discharged his firearm at the passenger side of the truck. Officer Frederick stopped the police vehicle and both officers announced their office and told the male to drop the gun. The male turned to his left with the firearm in his hand to face the officers. Officer Frederick stated that the male's firearm turned in the same direction as the male.<sup>8</sup> Officer Frederick positioned himself in the door jamb of the driver's side and, in fear for his and his partner's safety, discharged his firearm two or three times at the male, who then turned and ran westbound. The officer then stopped discharging his firearm. Officer Frederick stated he did not believe his bullets struck the male.

Officer Frederick reported over the radio that shots had been fired by the police and provided the location. He then approached the truck but could not see inside because the windows were heavily tinted. The driver's foot was still on the accelerator and the tires were burning out until they exploded. Additional units arrived on the scene and the officers attempted to open the doors of the truck, but the doors were locked. Eventually, another officer was able to turn off the truck's engine. Officer Frederick stated he was not involved in taking the driver, now known to be ██████████ out of the vehicle. The officer then sat in a police vehicle and spoke to detectives and supervisors at the scene and later returned to Area 5.

In his **statement to COPA**<sup>9</sup> on January 12, 2021, **Officer Nikola Saric #18200**, stated that on December 18, 2020, he and Officer Frederick were assigned to go to headquarters to pick up a commemorative plaque for a retiring commander. The officers were heading southbound on Laramie when Officer Frederick said, "Hey, what is this guy doing?"<sup>10</sup> Officer Saric then observed a black pickup truck driving erratically southbound on Laramie, two to three cars ahead of the police vehicle. The truck proceeded at a high rate of speed and made a sharp right turn westbound on Le Moyne without stopping at the stop sign. Officer Saric observed a male in the street jump out of the truck's way as it crashed into a parked vehicle. The male then produced a firearm and discharged the firearm into the truck. The officer did not recall where the male produced the firearm from. The male faced westbound, and his back was toward the officers. The male discharged his firearm at the side of the truck.<sup>11</sup> Officer Saric announced his office and yelled out to the male to drop the gun and drew his firearm.

Officer Saric stated that he tried to manipulate his body in the passenger seat to make himself as small as possible in case the male turned his body toward the officers and started shooting at them. He pointed his firearm at the male but did not fire because he was inside the

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<sup>7</sup> Att. #24, Page 9, Lines 18-19.

<sup>8</sup> Att. #24, Page 29, Lines 11-14. Officer Frederick estimated he was about 15-20 feet from them. Att. #24, Page 14.

<sup>9</sup> Attachments 10 and 23.

<sup>10</sup> Att. #23, Page 8, Line 4.

<sup>11</sup> He was roughly positioned at the back of the truck, more towards the passenger side and was shooting at the back or possibly the side window. Att.#23, Page 9. The male was approximately 10 to 15 yards from the officers. Page 20.

vehicle and the pickup truck could potentially be hit.<sup>12</sup> Additionally, he was trying to find cover. The male stopped firing his firearm and proceeded to turn his body to his left towards the officers. Officer Saric stated that he only saw the male's profile and then heard several gunshots next to him. The male ran westbound on Le Moyne and Officer Saric exited the vehicle to pursue him.

The male proceeded southbound in the west alley of Laramie. Officer Saric realized that his body-worn camera was powered off and attempted to turn it on. Officer Saric ran to the alley and heard Officer Frederick report over the radio that shots had been fired by the police at their location. Officer Saric also reported over the radio a description of the male and the direction of flight. Additional officers arrived on the scene and several officers were able to enter the pickup truck and remove the driver. Officer Saric stated that supervisors on the scene separated him and his partner.

In response to the allegation that he failed to promptly activate his body-worn camera, Officer Saric responded that he did not expect to engage in police activity and had completely powered off his body worn camera. He did not attempt to activate the camera while he was still inside the vehicle because he was focused on the male. When he exited the police vehicle, he realized that the body worn camera was completely off, so it took several seconds for the camera to power on and then he double tapped to turn on the camera.

## 2. Digital Evidence

A **Video Recording**<sup>13</sup> from Officer Frederick's body worn camera footage begins as he is driving a police vehicle. At approximately 11:46:18 a.m., Officer Frederick stops the vehicle in the street and draws his firearm with his right hand. Officer Frederick then opens his door, activates his body worn camera and steps out of the vehicle. Officer Frederick yells, "Hey, drop the gun! Drop the gun."<sup>14</sup> as an unknown male in a black jacket<sup>15</sup> is captured briefly on the video standing on the sidewalk with his back to the officer. A black pickup truck has crashed into a black sedan on the cross street to the right of the police vehicle. A shot fired is heard in the background, followed by three successive shots that appear to have been discharged by Officer Frederick. A second officer can be heard announcing his office and issuing verbal commands directing the unknown subject to stop. Officer Frederick places his vehicle in park and reports over the radio that shots have been fired by the police in the vicinity of Laramie and Le Moyne. A second officer, now known to be Officer Nikola Saric, can be seen momentarily running on the sidewalk.

Officer Frederick approaches the black pickup truck, whose back wheels are spinning and producing smoke, and orders the driver to show his hands. Officer Frederick reports over the radio that he cannot see inside the truck because the windows are tinted. When Officer Frederick approaches the passenger side of the truck, numerous bullet holes appear on the front passenger side door and one on the window.<sup>16</sup> Officer Frederick and other officers begin searching in an alley

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<sup>12</sup> Att. #23, Page 19.

<sup>13</sup> The recording begins at approximately 11:44:20 a.m. Other video was also obtained from third parties and POD cameras but did not include any footage of the shooting.

<sup>14</sup> Att. #1, at approximately 11:46:20 a.m.

<sup>15</sup> Att. #1, at approximately 11:46:20 a.m.

<sup>16</sup> Officer Kazarnowicz's body worn camera shows five bullet holes in the passenger door and one in the passenger window. Att. 4 6:42 minutes into the recording.

for the male. Officer Frederick returns to the scene of the crash where the engine of the truck is turned off and the tires have exploded. A small fire is burning behind the back tires. Officer Frederick moves his vehicle. Other officers report that the driver of the pickup was shot in the head and carry him to the parkway and Fire Department personnel appear to tend to him. Officer Frederick is then escorted to another police vehicle and turns off his body worn camera.<sup>17</sup>

A **Video Recording**<sup>18</sup> from Officer Saric's body worn camera begins as the officer is running on a sidewalk with his firearm in his right hand. The officer's left hand appears to tap the body worn camera, but it does not activate the audio. The audio activates at approximately 11:47:22 as he searches for the unknown male in the backyard of a residential building. Additional officers arrive on the scene and walk down an alley with Officer Saric. The officers return to the intersection where the pickup truck had crashed into another vehicle. Officer Saric reports to a sergeant that his partner discharged his firearm and the partner, now known to be Officer Frederick, is escorted to another vehicle. The body worn camera is then terminated.<sup>19</sup>

### 3. Physical Evidence

A **Case Supplementary Report** documents that on December 21, 2020, ██████████ of the Cook County Medical Examiner's Office conducted an autopsy of ██████████ and determined the cause and manner of death to be multiple gunshot wounds/homicide. An external examination revealed one gunshot entry wound to the forehead and one gunshot entry wound to the right eye area. An internal examination found one lodged medium caliber projectile.<sup>20</sup>

An **Illinois State Police Laboratory Report**,<sup>21</sup> dated February 9, 2021, indicates that three fired cartridge cases<sup>22</sup> recovered from the scene were determined to have been fired by Officer Frederick's firearm. The report further indicates that additional fired cartridge cases recovered from the scene were either eliminated as having been fired from the officer's firearm or were inconclusive.<sup>23</sup> Finally, one lead fragment<sup>24</sup> recovered from ██████████ was unsuitable for examination.<sup>25</sup>

**Evidence Technician Photos**<sup>26</sup> appear to show 6 bullet holes on the pickup truck's passenger side door and frame and one bullet hole in the passenger side window.<sup>27</sup>

### 4. Documentary Evidence

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<sup>17</sup> Att. #1, at approximately 11:59:56 a.m.

<sup>18</sup> The recording begins at approximately 11:46:40 a.m.

<sup>19</sup> Att. #2, at approximately 11:58:18 a.m.

<sup>20</sup> Att. #203, Page 4.

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

<sup>22</sup> Inventoried under #'s ██████████ (recovered from the street), ██████████, and ██████████ ██████████ (both recovered from the drivers' side wiper cowl) (Att. #11, Pages 2-3).

<sup>23</sup> Att. #30, Page 3.

<sup>24</sup> Inventoried under # ██████████ (Att. #8).

<sup>25</sup> Att. #30, Page 3. These cartridge cases were recovered from the parkway and street. (Att. #11, Pages 2-3).

<sup>26</sup> Att. #33 - #200.

<sup>27</sup> Att. #63.

A **Case Supplementary Report** documents that Involved Individual #2, now known to be [REDACTED] was driving a black Dodge Ram pickup truck when he accelerated, disregarded a stop sign at the intersection of Laramie and Le Moyne and turned westbound on Le Moyne. Involved Individual #1, an unknown black male, immediately moved from the street to the parkway at 5200 W. Le Moyne. [REDACTED] then crashed the pickup truck into a parked vehicle and Involved Individual #1 discharged a 9 mm semi-automatic handgun numerous times at [REDACTED] subsequently killing him. On-duty CPD officers from the Community Safety Team (Beat 7662C) witnessed this incident and Involved Officer #1, now known to be Officer Dale Frederick #3330, discharged his firearm three times at the unknown black male. The unknown black male fled on foot and successfully eluded the officers.<sup>28</sup>

A **ShotSpotter Report** documents that on December 18, 2020, at approximately 11:46 a.m., eleven (11) rounds by multiple shooters were detected in the vicinity of 1456 N. Laramie Avenue.<sup>29</sup> One gunshot is heard then seconds later, ten gunshots are heard, some of which are overlapping.

Officer Frederick's **Tactical Response Report** indicates that the officer discharged his firearm three times at the unknown subject after the subject failed to follow verbal direction, posed an imminent threat of battery with a semi-auto pistol, and used force likely to cause death or great bodily harm. In addition, the officer reported that he did not fire at a vehicle.<sup>30</sup>

Officer Frederick's **Weapon Qualification History** documents that the officer qualified with his prescribed weapon on May 20, 2020.<sup>31</sup>

A **Bureau of Internal Affairs (BIA) Synoptic Report** indicates that BIA personnel conducted an alcohol breath test of Officer Frederick. The result of the alcohol breath test was negative. BIA personnel also collected a urine sample from the officer; a laboratory report concluded that the specimen was negative for narcotics.<sup>32</sup>

## VI. LEGAL STANDARD

### 1. 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

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<sup>28</sup> Att. #201, Page 7, "Manner/Motive" section.

<sup>29</sup> Att. #22.

<sup>30</sup> Att. #18.

<sup>31</sup> Att. #221.

<sup>32</sup> Att. #28

4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.<sup>33</sup> For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense.<sup>34</sup> Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true."<sup>35</sup>

## 2. Use of Force

The main issue in evaluating police use of force is whether the amount of force the officer used was (1) objectively reasonable, (2) necessary, and (3) proportional under the totality of the circumstances to ensure the safety of the officer or third person.<sup>36</sup> "Objectively reasonable" force is based on the "totality of the circumstances faced by the member on the scene."<sup>37</sup> Factors to consider include but are not limited to (a) "whether the subject is posing an imminent threat" (b) "the risk of harm, level of threat, or resistance presented by the subject" and (c) "the subject's proximity or access to weapons."<sup>38</sup> "Necessary" force is "only the amount of force required under the circumstances to serve a lawful purpose."<sup>39</sup> "Proportional" force is proportional to the "threat, actions, and level of resistance offered by a subject."<sup>40</sup> Members must continually assess situations to determine if any force is necessary and if force should be modified when circumstances change.<sup>41</sup>

The "foremost regard" in police-public encounters is "the preservation of human life and the safety of all persons...."<sup>42</sup> Consistent with this priority, officers must "use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on

<sup>33</sup> See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

<sup>34</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>35</sup> *Id.* at ¶ 28.

<sup>36</sup> See Use of Force General Order G03-02 III.B. (effective February 29, 2020) & Force Options General Order G03-02-01 II.C. (effective February 29, 2020).

<sup>37</sup> Use of Force order G03-02 III.B.1.

<sup>38</sup> Use of Force order G03-02 III.B.1.(a)-(c).

<sup>39</sup> Use of Force order G03-02 III.B.2.

<sup>40</sup> Use of Force order G03-02 III.B.3. "This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it. When or if the subject offers less resistance, however, the member will decrease the amount or type of force accordingly."

<sup>41</sup> See Force Options order G03-02-01 II.F.

<sup>42</sup> See Force Options order G03-02-01 II.A.

the totality of the circumstances.”<sup>43</sup> De-escalation techniques, or principles of force mitigation, include (A) continual communication (B) tactical positioning and (C) time as a tactic.<sup>44</sup> Tactical positioning includes “creating distance between the member and a potential threat, or utilizing barriers or cover.”<sup>45</sup> The Department expects members to resolve confrontations without resorting to force.<sup>46</sup>

While recognizing officers 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” assessing uses of force is “from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”<sup>47</sup>

### 3. Use of Deadly Force

The Department’s “highest priority is the sanctity of human life.”<sup>48</sup> Consistent with this priority, the “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....”<sup>49</sup>

Assessing if there is an imminent threat is an objectively reasonable standard, not the subjective belief of an officer.<sup>50</sup> A threat is imminent when: (a) the person’s actions are “immediately likely to cause death or great bodily harm” to another unless action is taken and the person has (b) the “means or instruments” and (c) the “opportunity and ability” to cause death or great bodily harm.<sup>51</sup>

An officer must determine the person is an “assailant” whose “actions constitute an imminent threat” before using deadly force.<sup>52</sup> While Department policy clearly prohibits the use of deadly force unless there is an imminent threat, it highlights that even if a person is fleeing or may evade arrest, an imminent threat is required before using deadly force.<sup>53</sup> When discharging a firearm, the member shall “take precautions to identify the appropriate target” and “to minimize the risk that people other than the target will be struck.”<sup>54</sup> Lastly, officers must identify themselves as police officers prior to using deadly force when feasible.<sup>55</sup>

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<sup>43</sup> See Force Options order G03-02-01 II.B. & Firearm Discharge Incidents Order G03-02-03 II.B. (effective February 29, 2020) & Use of Force order III.B.4 De-escalation techniques include: a. providing a warning and exercising persuasion and advice b. stabilizing the situation through the use of time, distance, or positioning c. requesting additional units or specialized units or equipment.

<sup>44</sup> See Force Options order G03-02-01 III.A.-C.

<sup>45</sup> Force Options order G03-02-01 III.B.

<sup>46</sup> See Force Options order G03-02-01 II.D.

<sup>47</sup> Use of Force order II.D.

<sup>48</sup> Use of Force order G03-02.II.A. & Force Options order G03-02-01 II.A. & Firearm Discharge Incidents Order G03-02-03 II.A.

<sup>49</sup> Use of Force order G03-02 III.C.3. & Firearm Discharge Incidents Order G03-02-03 II.C.

<sup>50</sup> See Use of Force order G03-02 III.C.2.

<sup>51</sup> Use of Force order G03-02 III.C.2.

<sup>52</sup> Force Options order G03-02-01 IV.C.2 & Force Options order G03-02-01 IV.C. (An “assailant” is “a subject who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury.”).

<sup>53</sup> See Use of Force order G03-02 III.C.3.b.&4.a.

<sup>54</sup> Firearm Discharge Incidents Order G03-02-03 III.

<sup>55</sup> See Use of Force order G03-02 III.C.5.



#### 4. Body worn Camera

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters to be electronically recorded on the officers' body worn cameras.<sup>56</sup> Law-enforcement-related encounters include, but are not limited to, foot and vehicle pursuits, traffic stops, investigatory stops, arrests, use of force incidents, high risk situations, calls for service, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.<sup>57</sup>

The recording of law-enforcement-related encounters is mandatory.<sup>58</sup> Officers must activate their body worn cameras at the beginning of an incident and record the entire incident for all law-enforcement-related activities.<sup>59</sup> If there are circumstances preventing the activation of the body worn camera at the beginning of an incident, the officer "will activate the body worn camera as soon as practical."<sup>60</sup>

### VII. LEGAL ANALYSIS

#### A. Officer Frederick's use of deadly force was within policy

##### 1. When Officer Frederick discharged his firearm at this individual, he was facing an imminent threat

COPA finds that Officer Frederick's use of deadly force was within policy because the evidence is sufficient that it was objectively reasonable for Officer Frederick to believe the officers were facing an imminent threat in light of the totality of the circumstances and was the last resort. Just after Mr. ██████████ truck crashed, Officers Frederick and Saric observed an individual discharge a firearm several times at the truck. Officer Frederick stopped the police vehicle and ordered the individual to drop his gun, while Officer Saric announced that they were police. The individual stopped shooting at ██████████ but immediately turned toward the officers with the firearm still in his hand that was also moving in the direction of the officers.

At that point, Officer Frederick discharged his firearm at the individual. Officer Frederick fired three shots and the individual began to flee the scene. The officers then yelled at the individual to freeze. Officer Frederick said he feared for his and his partner's safety when he discharged his firearm. COPA finds Officer Frederick's account of the events to be credible in terms of his truthfulness and ability to perceive the event at the time and accurately recall it. It is consistent with the available body worn camera, Officer Saric's description of events, and the forensic evidence.

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<sup>56</sup> Special Order S03-14.II.A (Eff. April 30, 2018)

<sup>57</sup> Special Order S03-14.III.A.2 (Eff. April 30, 2018).

<sup>58</sup> Special Order S03-14.III.A.1 (Eff. April 30, 2018).

<sup>59</sup> Special Order S03-14.III.A.2 (Eff. April 30, 2018).

<sup>60</sup> Special Order S03-14.III.A.2 (Eff. April 30, 2018).

Although Officer Frederick activated his body-worn camera in a timely manner, the video recording does not completely capture the officer-involved shooting; as the officer is behind his driver's side door frame, in a position that partially blocks the camera's view. However, the captured images from the video recording and other evidence corroborate the officers' statements. First, the body worn camera recording briefly depicts the truck having crashed into the parked vehicle and the individual standing on the parkway or the sidewalk and facing away from the officers. Although the individual is not captured on video after that point, this evidence comports with both officers' statements that the individual had discharged his firearm in the direction of [REDACTED] vehicle and was facing away from the officers. Moreover, forensic evidence revealed that the cartridge cases in the vicinity of [REDACTED] vehicle originated from a firearm other than Officer Frederick's firearm or was inconclusive. This was unlike the three cartridge cases that were found closer to the driver's side of the police vehicle. Further reinforcing the officers' statements, body worn camera footage and evidence technician photos support Mr. [REDACTED] was being shot at from the front or side, not from Officer Frederick's direction; multiple bullet holes were in the side passenger door and frame of the truck and there was an apparent bullet hole in the windshield. Per the autopsy, Mr. [REDACTED] suffered gunshot wounds to his face – on his forehead and right eye area.

While there is not any direct evidence that shows the individual facing the officers with a gun in his hand, there is no evidence that disputes this account. First, both officers say the individual turned towards them just after shooting, while being ordered to drop the gun, with a gun in his hand. There is no indication the officers were coached or colluded in describing this incident. Second, there is substantial evidence an individual was shooting at Mr. [REDACTED] but no gun was recovered, so it is reasonable to believe the individual had the gun after the officers yelled to drop it and fled with it. Third, as stated above, other evidence corroborates the officers' depictions of before and after Officer Frederick discharged his firearm.

When Officer Frederick discharged his firearm as the individual was turning just after shooting at Mr. [REDACTED] he was an imminent threat to the officers. The officers had just learned that he had the means or instruments and opportunity and ability to cause death or great bodily harm when they witnessed him firing upon Mr. [REDACTED]. As he turned towards the officers and had not dropped his firearm, the evidence is sufficient that an objectively reasonable person would believe this action would be immediately likely to cause death or great bodily harm. Further at that time, the individual was an "assailant" whose actions constituted an imminent threat of death or great bodily harm. Additionally, by firing only three shots and stopping when the individual turned and fled, the evidence is sufficient to determine this force was necessary and proportional under the totality of the circumstances to the individual's actions.

## **2. Officer Frederick discharged his firearm as a last resort**

COPA finds that the evidence is sufficient Officer Frederick's use of deadly force was a last resort under the totality of the circumstances. While officers are required to use force mitigation to prevent the need to use force, here there is sufficient evidence to support that reasonable alternatives were exhausted, and any de-escalation further techniques would be ineffective. First, the officers saw this crash and shooting as they were driving on an errand. They were not responding to a call or alert where they could use tactical positioning or time as a tactic.

They stopped their vehicle in the middle of the street. Second, both officers were trying to seek cover. Officer Saric was inside the police vehicle with no other coverage option from the individual shooting (and was concerned about shooting through the window). Officer Frederick stepped out of the vehicle standing behind the door frame. Both were still exposed if the individual fired at them.

Both officers drew their firearms and performed continual communication by yelling to drop the gun. Then Officer Frederick fires three shots. Further, there is evidence that Officer Frederick continually assessed the situation and determined that deadly force was no longer necessary when he stopped shooting when the individual fled. At that point, yelling to freeze is heard. While Officer Frederick had drawn his firearm and activated his body worn camera at the same time, he still had to return into the driver's seat after he discharged his firearm to place the vehicle in park. This is further evidence that this deadly force was a last resort. Based on the totality of the circumstances, the evidence is sufficient that Officer Frederick's firearm discharge was a last resort when the officers faced an imminent threat.

#### **B. Officer Saric failed to timely active his body worn camera**

Per Department policy this law-enforcement-related encounter should have been electronically recorded on the officers' body worn cameras, as it was a high-risk situation and a foot pursuit. Officer Saric was forthcoming when he said he had powered off his body worn camera because he did not expect to engage in police activity. But when he became engaged in an unplanned law-enforcement-related encounter and he needed to activate the body worn camera, it took longer to activate since it was off and not already in buffering mode. His body worn camera did not activate until after the shooting, during the foot pursuit. Consequently, Officer Saric's failure to maintain his body worn camera in buffering zone deprived COPA of footage that could have provided additional evidence regarding the shooting, since the officer was closer to the subject than his partner. Based on the totality of the circumstances, there is sufficient evidence that Officer Saric failed to properly activate his body worn camera to sustain this allegation.

For these reasons, COPA finds that the **Allegation** that **Officer Saric** failed to timely activate his body-worn camera is **SUSTAINED**.

### **VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

#### **1. Officer Nikola Saric #18200**

##### **i. Complimentary and Disciplinary History**

Officer Saric's complimentary history includes one (1) 2019 Crime Reduction Award, one (1) Annual Bureau Award of Recognition, four (4) Department Commendations, thirty-nine (39) Honorable Mentions, and one (1) Unit Meritorious Award. Officer Saric does not have any recent disciplinary history.

##### **ii. Recommended Penalty**

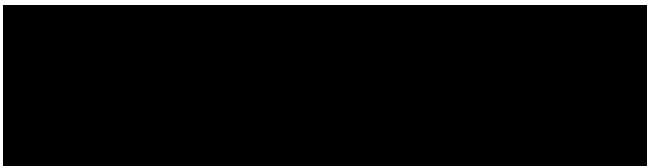
COPA has found that Officer Saric failed to timely activate his body worn camera, in violation of Special Order S03-14. This undermined the Department’s and the City’s interest in recording police operations to ensure violations are not hidden from scrutiny behind lapses of unrecorded time. It also may have deprived Officer Frederick from more evidence to support his use of deadly force. Officer Saric’s actions were also contrary to the public’s interest in transparency and police accountability. As a result, COPA recommends Officer Saric receive a **3-day suspension** for this violation.

**IX. CONCLUSION**

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

| <b>Officer</b>                     | <b>Allegation</b>   | <b>Finding / Recommendation</b> |
|------------------------------------|---|---------------------------------|
| Police Officer Nikola Saric #18200 | It is alleged that on or about December 18, 2020, at approximately 11:47 a.m., in the vicinity of 1500 N. Laramie Ave, you failed to activate your body worn camera in a timely manner, in violation of Special Order S03-14. | Sustained / 3 Day Suspension    |

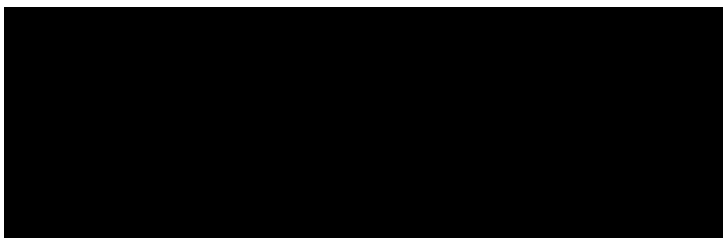
Approved:



Angela Hearts-Glass  
Deputy Chief Investigator

1-31-2023

Date



Andrea Kersten  
Chief Administrator

1-31-2023

Date