

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 9, 2021
Time of Incident:	9:45 am
Location of Incident:	109 South Kilpatrick Avenue
Date of COPA Notification:	July 9, 2021
Time of COPA Notification:	10:02 am

On July 9, 2021, members of the Great Lakes Regional Fugitive Task Force (GLRFTF) were assigned to locate and apprehend [REDACTED] who had active arrest warrants for sexual assault and escape. The GLRFTF members included U.S. Marshal Justin McCloud and five Cook County Sheriff’s Investigators (CCSIs). At approximately 9:40 am, the GLRFTF located [REDACTED] near a black Jeep parked in the vicinity of Kilpatrick Avenue and Monroe Street. They observed [REDACTED] with a firearm and requested assistance from the Chicago Police Department (CPD). At approximately 9:46 am, CPD members including Officer Joseph Napoleon, Officer Cameron Mays, and Officer Nicholas Esquivel arrived on scene. The GLRFTF related that [REDACTED] was inside the Jeep, waving around what appeared to be a firearm. The GLRFTF and CPD officers repeatedly yelled for [REDACTED] to drop the gun and show his hands, but he did not comply.

As Officer Napoleon approached the Jeep with a protective shield, he reportedly observed [REDACTED] point the gun in his direction. Officer Napoleon discharged his weapon one time, shattering the Jeep’s rear windshield. He did not inform anyone he fired the shot, leading the GLRFTF and other CPD officers to believe [REDACTED] had shot at them.¹ In response, U.S. Marshal McCloud and Officers Napoleon, Mays, and Esquivel each discharged their weapons, firing approximately 71 times at [REDACTED]

Officers then approached the Jeep and removed [REDACTED] from the rear seat, along with his firearm. The officers immediately began to render medical aid to [REDACTED] but he was shot multiple times and pronounced deceased at 10:22 am.

II. INVOLVED PARTIES

Involved Officer #1:	Joseph Napoleon, star #7818, employee ID # [REDACTED], Date of Appointment: August 28, 2017, PO, Unit 011, DOB: [REDACTED], 1990, Male, White
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¹ In fact, seconds after Officer Napoleon fired, he indicated to Officer Mays that it was [REDACTED] who fired the shot. Officer Napoleon told COPA he did not realize he fired the first shot until he reviewed his body worn camera (BWC) video on August 16, 2021.

Involved Officer #2: Cameron Mays, star #17851, employee ID # [REDACTED],
 Date of Appointment: July 27, 2018, PO, Unit 011,
 DOB: [REDACTED], 1990, Male, Black

Involved Officer #3: Nicholas Esquivel, star #18016, employee ID # [REDACTED],
 Date of Appointment: February 19, 2019, PO, Unit 015/214,
 DOB: [REDACTED], 1996, Male, White Hispanic

Involved Individual #1: [REDACTED] DOB: [REDACTED] 1987, Male, Black

III. ALLEGATIONS

Pursuant to section 2-78-120(d) of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has the duty to investigate incidents, including those in which no allegation of misconduct is made, where a person dies as a result of police actions, such as during attempts to apprehend a suspect. As a result of its investigation, COPA made the following allegations and findings:

Officer	Allegation	Finding
Officer Napoleon	It is alleged that on or about July 9, 2021, at approximately 9:45 am in the vicinity of 109 South Kilpatrick Avenue, you: <ol style="list-style-type: none"> <li data-bbox="391 1031 1198 1108">1. Discharged your firearm at or in the direction of [REDACTED] in violation of G03-02, without justification. <li data-bbox="391 1136 1198 1213">2. Failed to timely and/or accurately notify OEMC that you discharged your firearm, in violation of G03-06. <li data-bbox="391 1241 1198 1346">3. Were inattentive to duty by inaccurately identifying [REDACTED] as the source of the first gunshot during the incident. 	Not Sustained Sustained Sustained
Officer Mays	It is alleged that on or about July 9, 2021, at approximately 9:45 am in the vicinity of 109 South Kilpatrick Avenue, you: <ol style="list-style-type: none"> <li data-bbox="391 1472 1198 1549">1. Discharged your firearm at or in the direction of [REDACTED] in violation of G03-02, without justification. <li data-bbox="391 1598 1198 1682">2. Failed to timely and/or accurately notify OEMC that you discharged your firearm, in violation of G03-06. 	Not Sustained Sustained
Officer Esquivel	It is alleged that on or about July 9, 2021, at approximately 9:45 am in the vicinity of 109 South Kilpatrick Avenue, you: <ol style="list-style-type: none"> <li data-bbox="391 1801 1198 1885">1. Discharged your firearm at or in the direction of [REDACTED] in violation of G03-02, without justification. 	Not Sustained

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|---|-----------|
| 2. Failed to timely and/or accurately notify OEMC that you discharged your firearm, in violation of G03-06. | Sustained |
| 3. Failed to timely activate your Body Worn Camera in violation of S03-14. | Sustained |

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
3. Rule 5: Failure to perform any duty.
4. Rule 6: Disobedience of an order or directive, whether written or oral.
5. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
6. Rule 10: Inattention to duty.
7. Rule 11: Incompetency or inefficiency in the performance of duty.

General Orders²

1. G03-02: De-Escalation, Response to Resistance, and Use of Force (effective April 15, 2021)
2. G03-02-01: Response to Resistance and Force Options (effective April 15, 2021)
3. G03-02-02: Incidents Requiring the Completion of a Tactical Response Report (effective April 15, 2021)
4. G03-02-03: Firearm Discharge Incidents- Authorized Use and Post-Discharge Administrative Procedures (effective April 15, 2021)
5. G03-06: Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021)

Special Orders

² 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/#directive> (last accessed Aug. 11, 2022).

1. S03-14 Body Worn Cameras (effective April 30, 2018)

State Laws

1. 720 ILCS 5/7-5 (1986)

V. INVESTIGATION³

a. Digital Evidence⁴

COPA obtained and reviewed **in-car cameras (ICC)**,⁵ **Cook County Sheriff (CCS) body worn cameras (BWC)**,⁶ **CPD BWCs**,⁷ **911 calls**,⁸ and **radio transmissions**.⁹ Below is a summary of the relevant video and audio.

On July 9, 2021, at approximately 9:44 am, the videos capture the GLRFTF establishing a perimeter around a black Jeep Cherokee (Jeep) parked on the street at approximately 109 South Kilpatrick Avenue. The GLRFTF positions two vehicles south of the Jeep's location and two vehicles north of the Jeep's location. They also request that CPD send more cars to assist with a man with a gun inside the Jeep.¹⁰ The GLRFTF orders the man, now known as ██████████ to exit the Jeep multiple times, but he does not comply. The GLRFTF communicates ██████████ position in the vehicle and that he is pointing a gun.¹¹

At approximately 9:45 am, the first CPD officers arrive on scene and begin to take positions around the Jeep. Beat 7657E reports, over the radio, that Cook County is assessing the situation, and the Jeep is stopped, blocked in, and not going anywhere.¹² At approximately 9:46 am, Officers Napoleon and Mays arrive on scene. As Officer Napoleon approaches U.S. Marshal McCloud's vehicle, which is parked behind the Jeep, he yells to CCSI John Webb that ██████████ is moving inside the Jeep and pointing a gun toward him.¹³ Officer Napoleon then reports the same information over the radio, telling everyone to take cover.¹⁴ At this point, CCSI Webb, who is

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

⁴ The times cited for the digital evidence are the amount of time into the video.

⁵ Atts. 53 - 58. During this incident, the view from the involved officers' BWC were obstructed by protective shields, vehicles, or other officers.

⁶ Atts. 6 - 12.

⁷ Atts. 13 - 52, 141 - 157.

⁸ Atts. 62 - 69.

⁹ Atts. 61, 70, 72.

¹⁰ Att. 70 at 43:47. The GLRFTF requests CPD's assistance over Zone 10 while simultaneously reporting the same over the Cook County Sheriff's Radio. *See* Att. 61 at 0:18.

¹¹ Att. 10 at 0:54 - 2:00.

¹² Att. 70 at 44:47 - 45:34. The radio transmission is captured on Officer Napoleon's and Officer Mays' BWCs as they are driving to the location. *See* Attachments 50, 51 at 2:04 - 2:22.

¹³ Att. 51 at 2:42 - 2:46. At this time, Officer Napoleon is standing behind U.S. Marshal McCloud's vehicle, which is parked just north of the Jeep.

¹⁴ Att. 51 at 2:52 - 2:58.

standing behind a protective shield near the rear driver's side of the Jeep, yells to Officer Napoleon, "He's got a gun, he is pointing it at everybody. I don't know if it is real or not."¹⁵

Officer Napoleon relocates to the other side of U.S. Marshal McCloud's vehicle and yells to other officers that [REDACTED] is moving, and they should watch their crossfire. CCSI Webb again orders [REDACTED] to stop moving and exit the vehicle,¹⁶ while U.S. Marshal McCloud asks officers to assist him in approaching the Jeep. The videos show a shadow moving back and forth inside the Jeep, but the rear windshield is too darkly tinted to capture [REDACTED] or his actions.¹⁷

U.S. Marshal McCloud calls CCSI Webb back to his vehicle as he provides a protective shield to Officer Napoleon. The Marshal explains he has a plan to gain a visual on [REDACTED] and he confirms the officers understand: Officer Napoleon and CCSI Webb are to stand side-by-side, holding protective shields, with U.S. Marshal McCloud immediately behind them. Together, they will approach the Jeep and U.S. Marshal McCloud will break the Jeep's rear windshield.¹⁸

As the officers begin their approach,¹⁹ Officer Napoleon yells, "Hey, he's aiming, he's aiming. He's aiming the gun, dude."²⁰ CCSI Webb also yells that [REDACTED] is aiming his firearm,²¹ and both Officer Napoleon and CCSI Webb order [REDACTED] to drop the gun. At approximately 9:48:32 am,²² Officer Napoleon discharges his firearm one time. As the videos capture the sound of the gunshot, the Jeep's rear windshield shatters.²³ Officer Napoleon immediately announces, "Shots." Officer Mays asks, "Was that him?" Officer Napoleon responds, "Yeah."²⁴ Officer Mays attempts to radio there is a 10-1 and shots fired at police; however, his transmission is not recorded.²⁵

Officer Flynn repositions and yells, "Drop the gun. Drop the gun. Is he hit? Is he hit?"²⁶ CCSI Webb, who is holding a protective shield with U.S. Marshal McCloud standing behind him, moves to the rear of the Jeep. Multiple officers yell for [REDACTED] to drop the gun and show his hands. Inside the Jeep, [REDACTED] moves from the driver's side to the passenger's side, and he appears to be holding a firearm.²⁷ (See Figure 1.) At approximately 9:48:47 am, U.S. Marshal McCloud discharges his firearm toward the Jeep approximately eleven times.

¹⁵ Att. 10 at 2:17 - 2:20.

¹⁶ Att. 10 at 2:54 - 3:09.

¹⁷ Att. 57 at 9:54 - 10:35.

¹⁸ Att. 51 at 4:12 - 4:29; Att. 10 at 3:37 - 3:51.

¹⁹ Officer Nicholas Esquivel also arrives at the scene and walks up behind Officer Flynn, who is located behind the Jeep, between U.S. Marshal McCloud's vehicle and CCSI Webb's vehicle. Att. 20.

²⁰ Att. 51 at 4:31 - 4:35.

²¹ Att. 51 at 4:35.

²² Note: For purposes of consistency, COPA relied on Officer Mays' BWC (Att. 50) video for the timestamps of the officers' firearm discharges.

²³ Att. 57 at 11:08 - 11:20; Att. 51 at 4:36 - 4:39; Att. 50 at 4:39 - 4:41.

²⁴ Att. 51 at 4:39 - 4:41; Att. 50 at 4:40 - 4:43. Officer Napoleon told COPA he did not recall this exchange with Officer Mays. See Att. 123, pgs. 49 - 52.

²⁵ Atts. 70, 72. Other officers also report shots fired. Att. 70 at 47:52.

²⁶ Att. 24 at 5:33 - 5:40.

²⁷ Att. 57 at 11:27 - 11:29.



Figure 1: Screenshot from Bt. 1132's ICC approximately three seconds before U.S. Marshal McCloud discharges his firearm, with the yellow circle highlighting what could possibly be a firearm inside the Jeep.

Officers continue to provide [REDACTED] with consistent verbal commands, yelling numerous times for [REDACTED] to show his hands.²⁸ Officer Mays inquires about [REDACTED] location, asking if he is in the front driver's seat of the Jeep. Officer Napoleon responds [REDACTED] is in the back.²⁹ At approximately 9:49:04 am, U.S. Marshal McCloud and Officers Napoleon, Mays, and Esquivel each discharge their weapons numerous times, firing at least 40 shots at [REDACTED].³⁰ Sergeant (Sgt.) Michaelene Johnson radios there is a 10-1 and shots fired at police, and she requests SWAT and shields as she approaches the scene.³¹ U.S. Marshal McCloud reloads his weapon while other officers continue to fire.³² Officer Napoleon also reloads his firearm,³³ as Officer Esquivel yells, "He's still moving."³⁴

Officer Napoleon, who is holding the protective shield with Officer Mays and U.S. Marshal McCloud standing behind him, begins to approach the Jeep. At approximately 9:49:24 am, Officer Napoleon yells, "He's moving," then discharges his firearm four times.³⁵ Officer Napoleon, with Officer Mays behind him, slowly approaches the rear of the Jeep. He again yells that [REDACTED] is moving, and at approximately 9:49:34 am, he discharges his firearm three additional times.³⁶

²⁸ Atts. 50, 51 at 4:54 - 5:09.

²⁹ Att. 50 at 5:08 - 5:10; Att. 57 at 11:30.

³⁰ Att. 20 at 2:21 - 2:30.

³¹ Att. 28 at 5:42 - 6:04.

³² Att. 57 at 11:50 - 11:53.

³³ Att. 57 at 11:55 - 12:03; Att. 50 at 5:20 - 5:27.

³⁴ Att. 20 at 2:35; Att. 51 at 5:10 - 5:27; Att. 57 at 11:47 - 12:04.

³⁵ Att. 51 at 5:27 - 5:32; Att. 57 at 12:07 - 12:09.

³⁶ Att. 51 at 5:33 - 5:41.

Someone yells, “Stop, stop, stop,” as Officer Napoleon orders ██████ to stop moving.³⁷ Officer Esquivel checks his weapon and performs a tactical reload.³⁸ Officer Napoleon continues to order ██████ to stop moving, multiple times.³⁹ Eventually, Officer Napoleon yells, “He’s not moving, careful.”⁴⁰ A few seconds later, at approximately 9:49:51 am, Officer Mays discharges his firearm four times.⁴¹ As CCSI Webb and Officer Flynn assess the situation and prepare to approach the Jeep, Officer Napoleon, with Officer Mays behind him, walks in front of several officers who have their guns pointed at the Jeep.⁴² Sgt. Johnson orders Officer Napoleon to pull back.⁴³ CCSI Webb approaches the Jeep and announces that ██████ is down. At approximately 9:51 am, CCSI Webb yells that ██████ has a gun in his hand, and he reaches through the shattered rear passenger’s window of the Jeep and retrieves the weapon.⁴⁴



Figure 2: Screenshot from CCSI Webb’s BWC as he recovers ██████ firearm, with no magazine, from the Jeep’s rear seat.

Officers request an ambulance, reporting ██████ is shot, no officers are injured, and no further CPD personnel are needed. Officers remove ██████ from the Jeep and immediately render aid until the ambulance arrives. They subsequently search the Jeep but do not find a magazine for ██████ firearm.⁴⁵

³⁷ Att. 50 at 5:41 - 5:44.

³⁸ Att. 20 at 3:01 - 3:13.

³⁹ Att. 50 at 5:42 - 5:43.

⁴⁰ Att. 51 at 5:52 - 5:54.

⁴¹ Atts. 50, 51 at 5:57 - 5:59; Att. 57 at 12:34 - 12:36.

⁴² Att. 10 at 5:22 - 5:58.

⁴³ Sgt. Johnson orders Officer Mays to pull Officer Napoleon back, but ultimately, she has to physically push him back and tell him to holster his weapon. A few seconds later, Officer Napoleon questions Sgt. Johnson’s order to retreat, and he unholsters his weapon, causing Sgt. Johnson to order officers to remove Officer Napoleon from the scene. Att. 28 at 7:06 - 8:20.

⁴⁴ Att. 10 at 6:14 - 7:00.

⁴⁵ Att. 143 at 4:50 - 8:00.

At approximately 9:55 am, Lieutenant (Lt.) Samuel Dari asks Officer Napoleon if he fired his weapon. Officer Napoleon responds, “First, yeah.”⁴⁶ Officer Mays also tells Lt. Dari he discharged his firearm. Neither officer, however, reports their firearm discharge to OEMC. Officer Esquivel tells his partner he discharged his weapon, but he also fails to notify OEMC.

b. Interviews

i. GLRFTF Members

COPA interviewed **GLRFTF members CCSI Director John Webb, CCSI Vince Norton, and CCSI Richard Messina** on September 2, 2021.⁴⁷ The CCSIs related that in December 2020, a Cook County judge issued an arrest warrant for ██████████ for multiple counts of aggravated criminal sexual assault and violating electronic monitoring.⁴⁸ The GLRFTF, comprised of U.S. Marshal McCloud⁴⁹ and multiple CCSIs, was subsequently assigned to locate and apprehend ██████████⁵⁰ On July 7, 2021, the GLRFTF learned ██████████ carried a weapon and did not want to go back to jail.⁵¹

On July 9, 2021, the GLRFTF learned ██████████ was in possession of a black Jeep Cherokee (Jeep) in the vicinity of Kilpatrick Avenue and Monroe Street.⁵² At approximately 9:40 am, the GLRFTF relocated to and set up surveillance of a black Jeep in the area of Kilpatrick Avenue and Monroe Street. Eventually, CCSI John Webb observed a black male, whom he believed was ██████████ exit a different black Jeep at approximately 100 S. Kilpatrick Avenue. As CCSI Webb watched the man, he noted the man’s behavior was abnormal, including repeatedly entering and exiting the Jeep and walking to and from a nearby alley while on the phone. CCSI Webb cautioned the GLRFTF that the man was “acting really weird” and may be searching for or have a firearm.⁵³

After confirming ██████████ identity, the GLRFTF surrounded the Jeep. Initially, the GLRFTF believed ██████████ would attempt to flee in the Jeep. However, CCSI Messina observed ██████████ move from the front seat to the rear seat, along with the side profile of a firearm. CCSI Messina yelled, “gun, gun, gun.”⁵⁴ The GLRFTF yelled for ██████████ to drop the gun and exit the Jeep, but ██████████ did not comply.⁵⁵ CCSIs Messina and Norton retreated to take cover behind a tree, and eventually, they moved behind a police vehicle to avoid crossfire. CCSI Webb retrieved

⁴⁶ Att. 51 at 11:54 - 12:02; Att. 50 at 11:54 - 12:02. Officer Napoleon told COPA he did not know why he used the word “first” when responding to Lt. Dari’s question. *See* Att. 123, pgs. 83 - 85.

⁴⁷ Atts. 125, 126, 129, 130, 133, 135.

⁴⁸ *See* Atts. 160, 161.

⁴⁹ COPA was provided an unprotected Word Document purported to be a written statement by U.S. Marshal McCloud that he did not sign. Att. 100.

⁵⁰ Atts. 125, 126, 129, 130, 133, 135, 160, 161.

⁵¹ Att. 130, pg. 9, lines 6 - 8. Additionally, it was noted ██████████ indicated he would engage in a shootout with police. Atts. 100, 135, pg. 19, lines 3 - 6.

⁵² Atts. 100, 125 - 127, 129 - 131, 133, 135, 136.

⁵³ Att. 135, pg. 20 lines 18 - 20.

⁵⁴ Att. 130, pg. 14 line 8. CCSI Messina stated that, due to the shade from the nearby tree, he had difficulty seeing inside the Jeep but knew there was a person’s silhouette and a firearm inside. Att. 130, pg. 17, lines 8 - 22.

⁵⁵ CCSIs believed they heard ██████████ yell something, but they were unable to identify what they heard. Atts. 125, 126, 129, 130, 133, 135. In his interview with the Cook County State’s Attorney, CCSI Messina reported he believed he heard ██████████ yell, “no, no, no.” Att. 131, pg. 2.

his protective shield and joined U.S. Marshal McCloud on the east sidewalk near the Jeep's driver's side. CCSI Moriarty, who was on the west sidewalk, requested additional CPD officers over CPD radio.⁵⁶ ██████████ continued to move around inside the Jeep and pointed his firearm toward officers in all directions.⁵⁷

After CPD officers arrived, CCSI Webb told them ██████████ was in the rear seat with a firearm that may or may not be real. CCSI Webb explained he was not sure whether the firearm was real for two reasons: the firearm looked big and boxy, and ██████████ movements did not make sense. ██████████ was moving around in the back seat, switching between a one-handed and two-handed grip on the firearm, and pointing the firearm at officers, but he did not fire the weapon.⁵⁸ At this point, due to the dark tint on the Jeep's windows, officers did not have a clear view of ██████████ or whether anyone else was inside the Jeep.⁵⁹ CCSI Webb moved to provide coverage as U.S. Marshal McCloud, Officer Napoleon, and Officer Mays⁶⁰ prepared to approach the Jeep and break the rear windshield to gain a better view inside the Jeep.

As the officers approached the Jeep, CCSI Webb heard one gunshot and the Jeep's rear windshield shattered.⁶¹ None of the GLRFTF members knew who fired the gunshot.⁶² At the time, CCSI Webb thought ██████████ fired the gunshot because he was pointing his firearm at the officers, but CCSI Webb did not see a muzzle flash.⁶³ CCSI Webb had a clear view inside the Jeep after the rear windshield was broken, and he saw ██████████ duck down. CCSI Webb and U.S. Marshal McCloud continued to approach the rear of the Jeep. ██████████ peered up from behind the rear seat and pointed his firearm at the officers. U.S. Marshal McCloud and multiple CPD officers then fired their weapons at ██████████ until he disappeared from view.⁶⁴

CCSI Webb moved to take cover on the passenger's side of his vehicle and did not fire his weapon.⁶⁵ At this time, his view was partially obstructed by the Jeep's frame and the dark-tinted passenger's side window. He saw ██████████ head moving but he could not tell whether ██████████ pointed his firearm at the officers again. However, U.S. Marshal McCloud indicated he saw ██████████ point the firearm at him, CPD officers, and CCSI Webb.⁶⁶ U.S. Marshal McCloud fired at ██████████ until he dropped down in the Jeep and disappeared from view. As U.S. Marshal

⁵⁶ CCSI Moriarty reported there was a man with a gun inside a Jeep at the location of 109 S. Kilpatrick. Att. 70.

⁵⁷ Atts. 133, 135, 136.

⁵⁸ Att. 135, pg. 33, lines 8 - 14. CCSI Webb stated he narrated the situation, in real time, for his BWC because the camera's view was blocked by his protective shield, and he knew this was not going to be a good situation. Att. 135, pg. 44, lines 10 - 16.

⁵⁹ Att. 135, pg. 58, lines 18 - 24; *see also* Atts. 100, 125, 126, 129, 130, 133.

⁶⁰ The GLRFTF did not know any of the CPD officers that responded, but COPA identified the CPD officers through digital evidence.

⁶¹ Atts. 133, 135

⁶² Atts. 100, 125, 126, 129, 130, 133, 135. Due to their positioning, CCSIs Norton and Messina did not have a visual of ██████████ or the other officers at the time of any of the gunshots. Atts. 125, 126, 129, 130.

⁶³ Att. 133, 135. CCSI Webb told COPA he had spoken to CPD detectives, the Cook County State's Attorney, and watched all of the videos released on COPA's transparency website multiple times, but he still did not know who fired the first gunshot. Att. 133, 135.

⁶⁴ Att. 100, pg. 3. According to his written statement, U.S. Marshal McCloud fired five to six times. *Id.*

⁶⁵ Atts. 133, 135. CCSI Webb could not explain why he did not fire his weapon but stated he would have been justified to fire at ██████████ because ██████████ possessed a weapon and pointed the weapon toward officers. Atts. 135, pg. 73. He added that he believed ██████████ wanted to commit "suicide by cop." Att. 135, pg. 91, lines 6 - 10.

⁶⁶ Att. 100, pg. 3.

McCloud reloaded his firearm, he yelled for ██████████ to show his hands. ██████████ responded by pointing the firearm at U.S. Marshal McCloud through the shattered rear window. U.S. Marshal McCloud and CPD officers fired at ██████████ until he again disappeared from view.

When officers did not see movement from ██████████ they cautiously approached the Jeep and observed ██████████ lying on his stomach on the rear seat with the firearm in his hand. CCSI Webb retrieved the firearm and observed there was no magazine inside the firearm⁶⁷ and it was not in “slide lock.”⁶⁸ Officers removed ██████████ from the Jeep and immediately began to render medical aid.

ii. CPD Member Interviews

In statements to COPA on August 18, 2021 and May 26, 2022, Officer Joseph Napoleon⁶⁹ stated his TRR was not accurate regarding who fired the first gunshot, as the report should reflect that he fired first. Officer Napoleon explained that he completed his TRR without having the opportunity to review his BWC video, and he included information to the best of his recollection. At the time, he believed ██████████ fired the initial gunshot. Officer Napoleon did not review his BWC video until August 16, 2021, in preparation for his COPA interview. Upon reviewing the video, he determined that his memory of the incident was inaccurate in that he, and not ██████████ fired the first shot.⁷⁰

On the date of the incident, Officer Napoleon was in full uniform working with his regular partner, Officer Mays. Officer Napoleon heard a radio transmission from an outside agency requesting additional units at 109 S. Kilpatrick Avenue to assist with a man with a gun. Officers Napoleon and Mays proceeded to the location of incident, and when they arrived Officer Napoleon saw numerous police officers from CPD, the Cook County Sheriff’s Office, and the U.S. Marshals surrounding a Jeep with their guns drawn and in the ready position. Officer Napoleon drew his firearm and began to approach the Jeep. When he was approximately two car lengths away, he saw ██████████ in the back seat of the Jeep, pointing a gun.⁷¹ Officer Napoleon alerted his partner to take cover while he gave ██████████ verbal directions to drop his gun. Officer Napoleon also radioed OEMC and reported that ██████████ was pointing a gun.

Officer Napoleon took cover behind an unmarked police vehicle, now known to belong to U.S. Marshal McCloud, which was parked behind the Jeep. U.S. Marshal McCloud handed Officer Napoleon a shield and explained they were going to approach the back of the Jeep while using the shields as cover. Their plan was to get close enough to the Jeep to shatter the rear windshield to gain a better view of ██████████ inside the Jeep. Officer Napoleon held the shield in his left hand and his firearm in his right hand. As they approached the Jeep, Officer Napoleon saw ██████████

⁶⁷ Att. 135, pg. 74, lines 16 - 17.

⁶⁸ CCSI Webb explained that “slide lock” occurs when a handgun’s slide is pulled back, visually signifying the magazine is empty and there are no more bullets in the firearm. CCSI Webb noted some firearm models are different and he was not familiar with ██████████ firearm. Att. 135, pg. 77, lines 4 - 11.

⁶⁹ Atts. 119, 123, 186, and 188.

⁷⁰ Officers Mays and Esquivel also reported they completed their TRRs to the best of their recollection, without reviewing their BWC videos. When the officers watched the videos in preparation for their COPA statements, Officer Mays realized that Officer Napoleon fired the first shot, not ██████████. Officer Esquivel came to the conclusion that he could not determine who fired the first shot.

⁷¹ Officer Napoleon acknowledged he did not know if anyone else was inside the Jeep.

pointing a gun at them from the back seat. In response, Officer Napoleon discharged his firearm once at ██████ through the Jeep's rear windshield, shattering the glass. He explained,

We approach the vehicle and I have a - - a clear eye - - a clear visual on the vehicle, on the offender. He was moving in the vehicle. I - - from what I recall, I did say a few times, he's moving, he's aiming the firearm, he's aiming a firearm. And then - - and then that's when I discharged.⁷²

At the time, Officer Napoleon mistakenly believed ██████ also shot at the officers.⁷³ Officer Napoleon fired one time, then stopped because ██████ ducked down in the back seat and was out of his view. He intended to radio OEMC to alert dispatch to the shooting, but he was unable to do so safely because he was holding the shield in his left hand and his firearm in his right hand. Officer Napoleon acknowledged he did not yell out to his partner or any other law enforcement officers present that he fired his weapon.

According to Officer Napoleon, he and Officer Mays moved a couple of feet further east, at which point he saw ██████ again pointing a gun in his direction. Officer Napoleon responded by firing an unknown number of times at ██████. He saw more of the rear windshield's glass shatter and believed ██████ had fired at him again, though he acknowledged he knew that other officers were also shooting at ██████. Officer Napoleon ceased firing when ██████ ducked behind the back seat and out of his line of sight.

A moment later ██████ extended his hand over the top of the back seat and waved the gun back and forth in the officers' direction. Officer Napoleon believed ██████ discharged his firearm at this time, and he and other officers responded by returning fire an unknown number of times. ██████ again ducked down behind the back seat, causing Officer Napoleon to stop firing and repeatedly order ██████ to stop moving. Officer Napoleon then heard additional gunshots but did not know who fired. Officer Napoleon did not recall discharging his firearm again during this incident. When this volley of gunshots stopped, Officers Napoleon and Mays moved towards the passenger's side of the Jeep, where Officer Napoleon observed ██████ lying on the back seat. He alerted the other officers that ██████ was not moving, at which point unknown officers removed ██████ from the Jeep and placed him on the ground. A different officer, now identified as CCSI Webb, removed ██████ firearm from the back seat of the Jeep.

Officer Napoleon did not have an independent recollection of any police supervisors on scene, but after reviewing his BWC recording, he acknowledged that Sgt. Johnson was present when ██████ was removed from the Jeep and she told Officer Napoleon to hold his fire. Officer Napoleon explained that he was focused on securing ██████ and the scene for safety reasons. He believed he informed Sgt. Johnson and Lt. Dari that he discharged his firearm, though he did not notify OEMC due to the radio traffic. Officer Napoleon recalled that he attempted to request an ambulance for ██████ over the radio. When he heard a broadcast that an ambulance was on

⁷² Att. 123, pg. 36, lines 1 - 6.

⁷³ Officer Napoleon did not realize there was only one gunshot until he reviewed the BWC footage in preparation for his initial COPA statement. Until that point, Officer Napoleon believed both he and ██████ fired the initial round(s) that shattered the Jeep's rear windshield.

its way, he focused on making sure there were no other vehicles blocking the ambulance's access to the scene, and ultimately to [REDACTED]

When Chicago Fire Department (CFD) paramedics arrived at the scene, they checked Officer Napoleon's vitals because he began to feel light-headed. Officers Napoleon and Mays were subsequently transported to Northwestern Hospital in the same ambulance, though Officer Napoleon denied they discussed the incident. He did not recall any supervisor instructing him to separate from Officer Mays and did not recall what, if anything, he told the street deputy about who fired the first shot. Additionally, Officer Napoleon did not recall reloading his firearm, but his BWC recording determined he did so at the location of incident.

In a **statement to COPA on August 18, 2021, Officer Cameron Mays**⁷⁴ stated that on the date of the incident, he was working with his regular partner, Officer Napoleon. They were traveling in a marked police vehicle when Officer Mays heard an unknown Cook County sheriff broadcast over the police radio a request for additional cars at 109 S. Kilpatrick. The request indicated that the sheriffs were watching a man, now identified as [REDACTED] who had a gun inside a Jeep. When Officers Mays and Napoleon arrived approximately two minutes later, numerous other officers from CPD, the Cook County Sheriff's Office, and the U.S. Marshals were already on scene with their firearms drawn. Officer Mays added, "When we exit the vehicle, our vehicle, I hear Cook County and U.S. Marshal Officers yelling at the - - at the person inside the vehicle to drop the gun and show hands."⁷⁵ The Jeep's rear windshield was tinted, preventing Officer Mays from being able to see inside the vehicle.

Officers Mays and Napoleon took cover behind a U.S. Marshal vehicle. U.S. Marshal McCloud gave Officer Napoleon a shield and explained they would approach the Jeep while using the shields for protection should [REDACTED] fire his weapon. Officer Mays positioned himself directly behind Officer Napoleon and held onto the back of Officer Napoleon's vest with his left hand while holding his firearm in his right hand. As they approached the Jeep, Officer Napoleon continuously shouted commands to [REDACTED]. Officer Mays stated, "He was giving commands to drop the weapon, show your hands, we're trying to help you."⁷⁶ Officer Mays did not hear [REDACTED] respond to Officer Napoleon's commands, but he heard Officer Napoleon state that [REDACTED] was pointing a gun. Officer Mays explained that they were positioned near the rear of the Jeep, but Officer Napoleon and U.S. Marshal McCloud were in front of him and both were holding shields blocking his view of the Jeep. Officer Mays then heard a single gunshot, which at the time he believed came from [REDACTED] but later determined came from Officer Napoleon. Officer Mays heard the gunshot and saw the Jeep's rear windshield shatter.

Officers Mays and Napoleon moved to the left of the Jeep as U.S. Marshal McCloud moved to the right and further into the street. Officer Mays added, "I remember after the first shot was fired I went over the radio and called a 10-1, shots fired at the police."⁷⁷ He observed U.S. Marshal McCloud repeatedly fire his handgun into the Jeep through the shattered rear windshield as Officer Napoleon ordered [REDACTED] to drop his gun and show his hands. Although Officer Mays could

⁷⁴ Atts. 117, 122.

⁷⁵ Att. 122, pg. 19, lines 20 - 23.

⁷⁶ Att. 122, pg. 24, lines 21 - 22.

⁷⁷ Att. 122, pg. 38, lines 8 - 10.

not see [REDACTED] he heard another officer say that [REDACTED] was in the back seat. Officers Mays and Napoleon took cover behind a tree, at which point Officer Mays looked through a passenger window and saw [REDACTED] in the back seat. [REDACTED] was pointing a gun in the officers' direction. Officers Mays and Napoleon then discharged their firearms at [REDACTED] an unknown number of times. [REDACTED] responded by ducking down and concealing himself in the back seat of the Jeep.

Officer Mays attempted to reassess the situation by moving into the street, near the driver's side of the Jeep, but he was unable to see [REDACTED]. He heard another volley of gunshots but did not know who fired. Officer Mays then saw [REDACTED] extend his arm over the top of the back seat and point a firearm in his direction,⁷⁸ causing the officer to discharge his firearm several additional times at [REDACTED]. Officer Mays ceased firing when [REDACTED] ducked down in the back seat and out of view.

Several officers rushed towards the Jeep and one of them reached into the vehicle, removed [REDACTED] handgun from inside the Jeep, and placed it on the ground. Other officers removed [REDACTED] from the back seat and began to render medical aid to him on the street. Officer Mays recalled that Sgt. Johnson ordered him and Officer Napoleon to back away from the Jeep. Officer Mays saw Lt. Dari on scene and notified the lieutenant that he had discharged his firearm, though he acknowledged he did not notify OEMC via radio. Officer Mays explained that throughout the incident, he went over the air to broadcast the Jeep's license plate number and alert responding officers to take cover and watch for crossfire. He also called out a 10-1 and shots fired at the police. Officer Mays did not notify OEMC that he discharged his firearm because of the stressful nature of the incident and for safety reasons, in that he did not want to tie up the air with unnecessary radio traffic. After speaking with Lt. Dari, Officers Mays and Napoleon were transported to Northwestern Hospital via ambulance.

In a **statement to COPA on August 17, 2021, Officer Nicholas Esquivel⁷⁹** stated that on the date of the incident, he and his regular partner, Officer Lydia Abernethy, were assigned to Unit 716 (the Community Safety Team). The officers were in full uniform and traveling in an unmarked CPD vehicle when Officer Esquivel heard an unknown Cook County sheriff stating over the radio, "We're at 109 South Kilpatrick, we've had a vehicle stopped. He's got a gun in the car, he's not coming out. Can we get some additional units over here?"⁸⁰ Officer Esquivel stated it took approximately two minutes for them to get to the location of incident, and that when they arrived he saw numerous CPD and Cook County police vehicles already on scene. Officer Esquivel heard unknown officers yelling, "Show me your hands, show me your hands, come out of the car!"⁸¹ and, "Drop the gun, drop the gun, come out of the car!"⁸²

Officer Esquivel exited his vehicle and approached an unmarked Chevy Traverse, now known to belong to U.S. Marshal McCloud, which was parked behind a dark-colored Jeep Grand Cherokee. A second unmarked police vehicle was stopped next to the passenger's side of the Jeep.

⁷⁸ Att. 122, pgs. 51 - 53.

⁷⁹ Atts. 115, 121.

⁸⁰ Att. 121, pg. 19, lines 15 - 18.

⁸¹ Att. 121, pg. 22, lines 19 - 20.

⁸² Att. 121, pg. 24, lines 9 - 10.

Initially, Officer Esquivel could not see [REDACTED] because of the Jeep's tinted windows. As he got closer, Officer Esquivel heard several officers saying, "He's pointing, he's pointing the gun, he's pointing, he's moving."⁸³ Officer Esquivel unholstered his firearm and positioned himself behind the U.S. Marshal's vehicle with Officers Napoleon, Mays, and multiple unknown officers. Officer Esquivel saw an unknown officer with a tactical shield but did not recall either Officer Napoleon or Officer Mays with a shield.

Officer Esquivel recalled hearing multiple gunshots as he activated his BWC⁸⁴ and took cover at the rear of the U.S. Marshal's vehicle. After reviewing his BWC recording, however, he acknowledged there was only one gunshot, and he did not know who fired the shot. Officer Esquivel then heard multiple gunshots, which he believed came from [REDACTED] and he saw the Jeep's rear windshield shatter. Officer Esquivel radioed shots fired as he moved to the passenger's side of the U.S. Marshal's vehicle, where he was able to see into the Jeep through the shattered rear windshield. At that point, Officer Esquivel saw [REDACTED] sitting in the back seat pointing a gun in his direction. Officer Esquivel discharged his firearm 15 times in quick succession at [REDACTED] and other officers also fired their weapons. Officer Esquivel believed [REDACTED] shot back at them because he continued to point his firearm in the direction of the officers.

[REDACTED] then ducked down into the back seat of the Jeep and out of Officer Esquivel's view. Officer Esquivel heard another volley of gunshots that sounded as if they came from different firearms. Officer Esquivel again took cover behind the U.S. Marshal's vehicle as other officers repeatedly gave verbal directions to [REDACTED] to drop his firearm and show his hands. From near the rear of the U.S. Marshal's vehicle, Officer Esquivel saw [REDACTED] moving inside the Jeep but could not see his hands. Officer Esquivel added that, at this point, he did not see [REDACTED] pointing a gun at anyone, and he could not tell what [REDACTED] was doing.

Officer Esquivel remained behind the U.S. Marshal's vehicle, where he heard two more volleys of gunshots. He did not know who fired during these volleys. A few moments later several officers pulled [REDACTED] from the Jeep, and CCSI Webb also removed a firearm from the Jeep. Once [REDACTED] was on the ground, officers immediately began to render aid. Officer Esquivel approached Sgt. Nicholas Lipa, who was on scene, and reported that he discharged his firearm during the incident. Officer Esquivel explained that he did not make the notification over the radio because of the large volume of radio traffic due to this incident. Officer Esquivel did not want to clog up or create more radio traffic, so he instead notified Sgt. Lipa in-person. Sgt. Lipa immediately found an ambulance to transport Officer Esquivel to Rush Hospital.

Officer Esquivel denied that he unjustifiably discharged his firearm, and explained that he only discharged his firearm after he saw [REDACTED] pointing a gun and hearing a gunshot, which led him to believe [REDACTED] was shooting at him and the other officers.

In a **statement to COPA on July 16, 2021, Officer Sean Flynn⁸⁵** stated he responded to a radio call requesting additional units at 109 S. Kilpatrick to assist with a person with a gun in a

⁸³ Att. 121, pg. 24, lines 11 - 12.

⁸⁴ Officer Esquivel acknowledged he was late in activating his BWC. He told COPA he should have activated his camera when he exited his police vehicle, not after the first gunshot(s). Att. 121, pg. 62, line 10 – pg. 63, line 8.

⁸⁵ Atts. 98, 99.

black Jeep. Upon arrival, Officer Flynn observed multiple officers surrounding the Jeep. Without talking to the GLRFTF or gathering further information about the situation, Officer Flynn positioned himself behind a tree on the west side of South Kilpatrick Avenue. From there, he observed the faint outline of a person in the rear seat of the Jeep.

To avoid crossfire, Officer Flynn moved behind a police vehicle, when U.S. Marshal McCloud and Officers Napoleon and Mays were preparing to break the Jeep's window. Before the officers approached the Jeep, Officer Flynn moved again to avoid crossfire. As he moved, Officer Flynn heard a long series of gunshots,⁸⁶ but could not see [REDACTED] or who fired the shots. From beside CCSI Webb's vehicle, Officer Flynn observed the top of [REDACTED] head quickly pop up and go back down,⁸⁷ which was followed by more gunfire. Officer Flynn saw Officer Napoleon discharge his weapon an unknown number of times but otherwise did not know who fired. Officer Flynn did not discharge his weapon because of the Jeep's tinted windows, stating, "I could not see - - I could not discern any threat in the car."⁸⁸

Officer Flynn described the scene as chaotic, as he could not see [REDACTED] officers were yelling different commands, Officer Napoleon walked into Officer Flynn's line of fire, and Officer Flynn recalled yelling for people to listen to U.S. Marshal McCloud. Eventually, Officer Flynn and GLRFTF officers approached the Jeep and CCSI Webb removed a firearm from the Jeep. [REDACTED] was not moving and was no longer a threat. Officers removed [REDACTED] from the Jeep, at which point Officer Flynn observed a wound to [REDACTED] head and possible wounds to his right arm. Officer Flynn and other CPD officers rendered medical aid to [REDACTED] until an ambulance arrived.

In a **statement to COPA on August 11, 2021, Sergeant Michaelene Johnson⁸⁹** stated she responded to a call from an outside unit for assistance with an individual stopped with a gun.⁹⁰ After parking near the corner of West Monroe Street and South Kilpatrick Avenue, Sgt. Johnson observed numerous police officers, marked squad cars, and a group of civilians in the area. Sgt. Johnson immediately instructed the civilians to leave because there was a person with a gun who might start shooting. As she walked toward the Jeep, she heard one gunshot followed by multiple additional gunshots. She knew the gunfire was at least twenty feet in front of her, but she did not know who was shooting. Sgt. Johnson ducked down and took cover behind a parked vehicle until the gunfire ended.

When Sgt. Johnson looked to assess the situation, she observed Officer Napoleon holding a protective shield and Officer Mays taking cover behind him. Both officers were still advancing on the Jeep. Sgt. Johnson was concerned Officers Napoleon and Mays were walking into the line of fire, as several officers had their weapons drawn and directed toward the Jeep. Sgt. Johnson told Officer Napoleon to retreat but he ignored her orders. She saw he was shaken and focused, and

⁸⁶ Officer Flynn stated his memory of the incident was different than what he later observed on his BWC. Specifically, Officer Flynn realized from BWC that there was a single gunshot followed by two series of gunshots. Atts. 98-99.

⁸⁷ Officer Flynn saw [REDACTED] through the passenger's side window that was shattered by gunfire.

⁸⁸ Att. 99, pg. 29, lines 14 - 15. Officer Flynn denied ever seeing a firearm inside the Jeep.

⁸⁹ Atts. 105, 120.

⁹⁰ Sgt. Johnson was not aware of specific training on assisting outside law enforcement agencies; however, she indicated that CPD generally acts as security and the outside unit keeps control over the situation. Sgt. Johnson noted CPD may take control if the incident is due to a city or municipal violation.

believing he was experiencing tunnel vision, she left her position of cover to physically intervene and push Officer Napoleon back,⁹¹ allowing other officers to approach the Jeep and assess the situation.

Sgt. Johnson first observed [REDACTED] as officers removed him from the Jeep. He appeared to have been shot, and Sgt. Johnson instructed officers to render aid and secure the scene. At some point, Officers Napoleon and Mays told her they discharged their firearms. Sgt. Johnson did not ask for details but instructed them to secure their weapons and remain separate from each other, per CPD policy. Eventually, she sent the officers to the hospital for a health check. After Sgt. Johnson left the scene, she overheard that Officer Esquivel also discharged his weapon.

iii. Civilian Interviews

During a canvass⁹² of the area on July 10, 2021, COPA spoke with multiple individuals who heard gunshots but did not see who fired them. [REDACTED] initially saw officers approach the Jeep without their weapons drawn, but she did not see anyone inside the Jeep. Later she heard one gunshot followed by additional gunshots, but she did not know who fired the first shot.

CPD and COPA interviewed [REDACTED] and [REDACTED] on July 9, 2021. Both witnesses reported they saw portions of the incident through a window located on the west side of South Kilpatrick Avenue, which overlooked the incident.

Mr. [REDACTED] heard four to five gunshots, looked out the window, and saw officers were firing at a vehicle with someone inside. He moved away from the window to make sure the children in his home were in a safe place, and he heard more gunshots. When Mr. [REDACTED] looked outside again, he saw that [REDACTED] was disarmed, and several police officers were administering CPR. An ambulance arrived within five to ten minutes.

Ms. [REDACTED] stated she heard six to seven gunshots. After securing the children, she looked out the window and observed officers with protective shields cautiously approach the Jeep and retrieve a firearm from inside the vehicle. Based on how the officer reached into the Jeep, Ms. [REDACTED] believed he removed the firearm from the Jeep's seat, and possibly from [REDACTED] hand. Officers then pulled [REDACTED] from the Jeep and administered CPR until CFD arrived at the scene. Ms. [REDACTED] did not hear anything occur before the gunshots, but she was sure there were at least two different guns involved because the shots sounded different.

⁹¹ Officer Napoleon wanted to re-engage but it was not necessary, as other officers already approached the Jeep. Att. 120, pgs. 24 - 26. Sgt. Johnson spoke with Officer Napoleon about his conduct after the incident, but she was not concerned by his behavior and did not initiate any disciplinary action.

⁹² Att. 95.

⁹³ Att. 60.

⁹⁴ Att. 59.

c. Physical Evidence

Crime Scene Processing Reports,⁹⁵ Inventory Reports,⁹⁶ Evidence Technician (ET) Photographs,⁹⁷ and Illinois State Police (ISP) Laboratory Reports⁹⁸ document the recovery of evidence.

A black semi-automatic handgun, Stallard Arms Model #JS-9MM, was recovered from the Jeep in operable condition.⁹⁹ ██████ fingerprint was found on the firearm, near the trigger, and his DNA was also located on the firearm.¹⁰⁰ Additionally, ██████ hands tested positive for gunshot residue particles.¹⁰¹ ██████ firearm did not contain a magazine or any live rounds, and no live rounds or expended shell casings were recovered from inside the Jeep.¹⁰² Additionally, there were no live rounds, expended shell casings, or fired bullets recovered from the scene or ██████ body attributed to this firearm.¹⁰³

U.S. Marshal McCloud's Glock Model 19 Gen 4, 9MM semi-automatic pistol, was found to have twenty (20) live rounds in the magazine and chamber.¹⁰⁴ ETs also recovered one empty magazine belonging to U.S. Marshal McCloud,¹⁰⁵ and ISP determined that fifteen (15) expended shell casings recovered from the scene were fired by his weapon.¹⁰⁶

Officer Napoleon's Glock Model 17 Gen 4, 9MM semi-automatic pistol, was recovered with ten (10) live rounds in the magazine and chamber.¹⁰⁷ ETs also recovered one empty magazine belonging to Officer Napoleon, and ISP determined that twenty-three (23) expended shell casings recovered from the scene were fired by his weapon.¹⁰⁸

Officer Mays' Glock Model 19 Gen 5, 9MM semi-automatic pistol, was recovered with two (2) live rounds in the magazine and chamber.¹⁰⁹ ISP determined that twelve (12) expended shell casings and three (3) fired bullets were fired by Officer Mays' weapon, including two (2) fired bullets recovered from ██████ body.¹¹⁰

Officer Esquivel's Glock Model 17 Gen 5, 9MM semi-automatic pistol, was recovered with eighteen (18) live rounds in the magazine and chamber, along with three (3) live rounds in a

⁹⁵ Atts. 88, 90, 163.

⁹⁶ Atts. 91, 162.

⁹⁷ Atts. 103, 104.

⁹⁸ Atts. 137 - 140, 164, 184.

⁹⁹ CCSI Webb removed this firearm from the Jeep. *See* Att. 10 at 6:46 - 7:00; Att. 184, pg. 5.

¹⁰⁰ Atts. 139, 140.

¹⁰¹ Att. 184. This indicates ██████ either discharged a firearm, touched an item with primer gunshot residue particles, or both his hands were in the area when a firearm was discharged.

¹⁰² Atts. 90, 91, 162.

¹⁰³ Att. 184; *see* Atts. 90, 91, 162, 163.

¹⁰⁴ Att. 91, inventory number 14941357.

¹⁰⁵ Atts. 91, 163, inventory numbers 14941357, 14941341.

¹⁰⁶ Att. 184, pg. 6.

¹⁰⁷ Atts. 91, 163, inventory numbers 14941359,.

¹⁰⁸ Att. 184, pg. 6.

¹⁰⁹ Atts. 91, 163, inventory number 14941361.

¹¹⁰ Att. 184, pg. 7.

second magazine.¹¹¹ ISP determined that fourteen (14) expended shell casings recovered from the scene were fired by this weapon.¹¹²

██████████ **Medical Records**¹¹³ document that when CFD personnel arrived on scene, ██████████ was unresponsive and pulseless. He presented with multiple gunshot wounds to his right temple area, right neck, under his right armpit, and back. Paramedics transported ██████████ to Mt. Sinai Hospital where he was pronounced deceased at 10:22 am.

On July 10, 2021, the Cook County Medical Examiner's Office performed the autopsy of ██████████. The cause of death was multiple gunshot wounds, and the manner of death was classified as homicide. The Medical Examiner identified a total of sixteen gunshot wounds and recovered four fired bullets from ██████████ body.¹¹⁴

a. Documentary Evidence¹¹⁵

The **Tactical Response Reports (TRRs)**¹¹⁶ for Officers Esquivel, Mays, and Napoleon report that ██████████ did not follow verbal direction, posed an imminent threat of battery with a semi-automatic pistol, physically attacked with a weapon, and used force likely to cause death or great bodily harm in that he shot at the officers.

Officer Esquivel responded with member presence, zone of safety, tactical positioning, additional unit members, and discharging his firearm 15 times – striking ██████████ and his vehicle.¹¹⁷

Officer Mays responded with member presence, zone of safety, movement to avoid attack, specialized units, tactical positioning, additional unit members, and discharging his firearm 14 times – striking ██████████ and his vehicle.¹¹⁸

Officer Napoleon responded with member presence, verbal direction, zone of safety, movement to avoid attack, specialized units, tactical positioning, additional unit members, and discharging his firearm 24 times – striking ██████████ and his vehicle.¹¹⁹

¹¹¹ Atts. 91, 163, inventory number 14941365.

¹¹² Att. 184, pg. 6.

¹¹³ Atts. 165, 176.

¹¹⁴ Atts. 96, 101, 158, 183, pg. 18.

¹¹⁵ COPA also obtained and reviewed CPD's case and supplementary reports, which contain information consistent with COPA's investigation. *See* Atts. 1, 2, 158, 159, 174, 177 - 183.

¹¹⁶ Atts. 3 - 5.

¹¹⁷ Att. 3.

¹¹⁸ Att. 4.

¹¹⁹ Att. 5.

VI. LEGAL STANDARD

a. Department Policy Governing The Use of Deadly Force¹²⁰

The Department's stated highest priority is the sanctity of human life. In all aspects of their conduct, the Department expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.¹²¹ Department members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or a third person, stop an attack, make an arrest, control a subject, or prevent escape.¹²² This means Department members may use only the amount of force necessary to serve a lawful purpose.¹²³ The amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.¹²⁴

The primary concern in assessing the use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.¹²⁵ Factors to be considered by the officer may include, but are not limited to: (1) whether the person is posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the person; (3) the person's proximity to or access to weapons; (4) whether de-escalation techniques can be employed or would be effective; and (5) the availability of other resources.¹²⁶

The discharge of a firearm in the direction of a person constitutes the use of deadly force under Department policy.¹²⁷ The use of deadly force is permitted only as a "last resort" when "necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."¹²⁸ A Department member may use deadly force in only two situations: (1) to prevent "death or great bodily harm from an imminent threat posed to the sworn member or to another person"; or (2) 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."¹²⁹

A threat is considered imminent "when it is objectively reasonable to believe that: (a) the person's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (b) the person has the means or instruments to cause death or great bodily harm; **and** (c) the person has the opportunity and ability to cause death or great bodily harm."¹³⁰

¹²⁰ On October 16, 2017, the Department materially modified its Use of Force policy. The Department's current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA's analysis focuses solely on whether Officer Napoleon, Mays and Esquivel complied with General Order 03-02.

¹²¹ General Order G03-02.II.A.

¹²² G03-02.III.B.

¹²³ G03-02.II.C.

¹²⁴ G03-02.III.B.

¹²⁵ G03-02.III.B.1

¹²⁶ G03-02.III.B.1.

¹²⁷ G03-02.IV.A.1.

¹²⁸ G03-02.IV.C.

¹²⁹ G03-02.IV.B; 720 ILCS 5/7-5.

¹³⁰ G03-02.III.C.2 (emphasis added).

Officers are expected to modify the use of force as circumstances change and in ways that are consistent with officer safety, including stopping the use of force when it is no longer necessary.¹³¹

The Department has placed several prohibitions on officers' uses of firearms. Most pertinent to the instant case is a prohibition against firing a weapon when the person lawfully fired at is not clearly visible.¹³² An officer is prohibited from using deadly force in such circumstances unless the officer's discharge is "directed at a specific location and such force is necessary, based on the specific circumstances confronting the sworn member, to prevent death or great bodily harm to the sworn member or to another person."¹³³ In such circumstances, "the use of deadly force is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken precautions to minimize the risk that people other than the target will be struck."¹³⁴

Department policy recognizes that Department members must make "split-second decisions" in circumstances that are "tense, uncertain, and rapidly evolving" about the use of force required in a particular situation.¹³⁵ As such, their decisions must be "judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight."¹³⁶

Department policy further provides that officers involved in a firearm discharge incident "will immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources."¹³⁷

b. Department Policy Requiring The Use of De-escalation Techniques to Avoid or Prevent The Need for Force.

The Department's rules and regulations provide that "[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."¹³⁸ To that end, Department members are required to use de-escalation techniques to reduce or prevent the need for use of force when it is safe and feasible to do so based on the totality of the circumstances.¹³⁹ Officers will continually assess situations and determine:

1. if any use of force is necessary.
2. if the seriousness of the situation requires an immediate response or whether the member can employ the Force Mitigation Principles or other response options.

¹³¹ G03-02.III.C.2.

¹³² G03-02-03.II.D.5.

¹³³ G03-02-03.II.D.5.

¹³⁴ G03-02-03.II.D.5.

¹³⁵ G03-02.II.D.

¹³⁶ G03.02.II.D.1.

¹³⁷ G03-06.V.A.

¹³⁸ Rules and Regulations of the Chicago Police Department, Art. I.B.7.

¹³⁹ G03-02.III.C.

3. the response or force option based on the totality of the circumstances and considering individualized factors...
4. if the level of force employed should be modified based upon the person's actions or other changes in the circumstances. The level of force will be de-escalated immediately as resistance decreases, provided that the member remains in control and as safety permits.¹⁴⁰

De-escalation techniques may include, but are not limited to: providing a warning and exercising persuasion and advice prior to the use of force; using time, distance, or positioning to isolate and contain a person; and requesting backup or specialized units or equipment as necessary and appropriate.¹⁴¹

c. Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters be electronically recorded on an officer's BWC.¹⁴² Law-enforcement-related encounters include, but are not limited to, calls for service, investigatory stops, traffic stops, seizure of evidence, statements made by individuals in the course of an investigation, arrests, use of force incidents, high risk situations, any encounter with the public that becomes adversarial after the initial contact, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene, and any other instances when enforcing the law.¹⁴³ The recording of law-enforcement-related encounters is mandatory.¹⁴⁴ Officers must activate their BWCs at the beginning of an incident and record the entire incident.¹⁴⁵ 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."¹⁴⁶

d. Member Responsibilities to Perform Duties Competently

Rule 10 of the Department's Rules of Conduct prohibits inattention to duty.¹⁴⁷ Rule 11 of the Department's Rules of Conduct prohibits incompetency or inefficiency in the performance of a member's duties.¹⁴⁸ Additionally, the Department's Standards of Conduct provide:

[T]he responsibility for the proper performance of a member's duty, whether he be on or off duty, lies primarily with the member himself. A member carries with him, at all times, the responsibility for the safety of the community. He discharges that responsibility by the faithful and dedicated performance of his assigned duty and an immediate and intelligent response to emergency. Anything less violates the

¹⁴⁰ G03-02-01.II.E.

¹⁴¹ G03-02.III.C.2.

¹⁴² S03-14.II.A.

¹⁴³ S03-14.III.A.2.

¹⁴⁴ S03-14.III.A.1.

¹⁴⁵ S03-14.III.A.2.

¹⁴⁶ S03-14.III.A.2.

¹⁴⁷ Rules and Regulations of the Chicago Police Department, Art. V.

¹⁴⁸ Rules and Regulations of the Chicago Police Department, Art. V.

trust placed in him by the community, and nothing less qualifies as professional conduct.¹⁴⁹

e. Standard of Proof

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.¹⁵⁰ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”¹⁵¹

VII. ANALYSIS AND CONCLUSIONS

a. Allegations against Officer Napoleon

- i. **Allegation #1, that Officer Napoleon discharged his firearm at or in the direction of ██████████ without justification and in violation of G03-02, is NOT SUSTAINED.**

For the reasons set forth below, COPA has determined that there is insufficient evidence to sustain the allegation by a preponderance of the evidence. COPA also lacks clear and convincing evidence that Officer Napoleon’s use of deadly force during the first shot and second, third and

¹⁴⁹ Rules and Regulations of the Chicago Police Department, Art. I.B.18.

¹⁵⁰ 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 is found to be more probably true than not).

¹⁵¹ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

fourth volleys was lawful and proper and should therefore be exonerated. Therefore, COPA concludes that Allegation #1 is Not Sustained.

1. Officer Napoleon's First Shot

Following a review of the evidence, COPA cannot conclude by a preponderance of the evidence that Officer Napoleon violated Department policy when he discharged the first shot at [REDACTED]. Specifically, COPA lacks sufficient evidence to conclude that the use of deadly force by Officer Napoleon was not objectively reasonable considering the totality of the circumstances he faced. Officer Napoleon's first shot at [REDACTED] occurred immediately after he observed [REDACTED] pointing a firearm at him and other officers. The available evidence supports Officer Napoleon's reasonable belief that the use of deadly force may have been necessary. Other officers on scene, including CCSI Director Webb,¹⁵² observed [REDACTED] pointing his gun in their direction immediately before Officer Napoleon fired the first shot at [REDACTED]. Although the evidence shows the windows of the Jeep were darkly tinted, Officer Napoleon likely had a sufficient visual of [REDACTED] to discern that [REDACTED] was pointing his firearm at the officers. The totality of the circumstances therefore indicates that [REDACTED] posed some level of an imminent threat to the officers on scene at the time Officer Napoleon fired.

Although COPA finds by a preponderance of the evidence that Officer Napoleon's first shot did not violate Department policy, COPA cannot conclude by clear and convincing evidence that his first shot was within Department policy. While other officers acknowledged that [REDACTED] pointed his weapon at them prior to Officer Napoleon's first shot, none of the other officers fired at [REDACTED] when Officer Napoleon initially discharged his firearm. Department policy provides that decisions regarding the use of force in a particular situation must "be judged based on the totality of the circumstances known by the member at the time and **from the perspective of a reasonable Department member on the scene, in the same or similar circumstances.**"¹⁵³ The responding officers on scene were in the same or substantially similar circumstances as Officer Napoleon, and yet, none of them fired when he did. Although this does not necessarily mean that Officer Napoleon's decision violated Department policy, it does raise questions regarding the necessity and reasonableness of his use of deadly force. Further undermining the necessity and reasonableness of Officer Napoleon's use of deadly force is CCSI Webb's on-scene questioning of whether [REDACTED] gun was real.¹⁵⁴ Thus, when viewed from the perspective of a reasonable Department member in the same or similar circumstances, the necessity and reasonableness of Officer Napoleon's use of deadly force when firing the first shot is undermined.

In addition, although COPA is aware that Officers Napoleon and Mays did not unilaterally decide to break the Jeep's windshield, but rather were directed to do so by U.S. Marshal McCloud, they actively participated in and helped execute this plan.¹⁵⁵ Their participation placed them and others in danger and was contrary to Department policy regarding the use of de-escalation techniques. The policy requires Department members to use de-escalation techniques to reduce or prevent the need for use of force when it is safe and feasible to do so based on the totality of the

¹⁵² Att. 135, pgs. 42, 54-55, 60.

¹⁵³ G03-02.II.D.1 (emphasis added).

¹⁵⁴ Att. 135 pg. 44.

¹⁵⁵ Att. 122 pgs. 76-77 (Officer Mays stated that although members of GLRFTF came up with the plan, he and Officer Napoleon carried it out "together" with the task force and were all "in control of it.").

circumstances.¹⁵⁶ It further provides, “All Department members are obligated to ensure compliance by themselves and other members with Department regulations, policies, and the law.”¹⁵⁷

Here, the officers’ repeated verbal commands to ██████████ were not effective in de-escalating the situation. Instead of advancing towards ██████████ after the failure of verbal commands, the officers could have slowed the situation down and tried to employ other de-escalation techniques to reduce or prevent the need for the use of force. For instance, it is uncontradicted that ██████████ was boxed in and was “not going anywhere.”¹⁵⁸ Given the relative lack of urgency, the responding officers could have used time as a tactic to take cover, waited for SWAT to arrive,¹⁵⁹ or created something other than what CCSI Webb described as a “hasty tactical plan.”¹⁶⁰ Any of these de-escalation tactics would have complied with Department rules and directives. However, instead of employing further de-escalation techniques after verbal commands failed, Officers Napoleon and Mays engaged in the U.S. Marshal’s plan and placed themselves and others in danger. Consequently, COPA cannot find by clear and convincing evidence that Officer Napoleon’s first shot was lawful and proper.

2. Officer Napoleon’s Use of Deadly Force during the Second, Third and Fourth Volleys

Likewise, COPA cannot conclude by a preponderance of the evidence that Officer Napoleon’s use of deadly force during the second, third and fourth volleys violated Department policy. Specifically, COPA lacks sufficient evidence to conclude that the use of deadly force by Officer Napoleon was not objectively reasonable considering the totality of the circumstances he faced. At this point, the back windshield of the Jeep had been shattered and Officer Napoleon had a better view of ██████████ inside of the Jeep. Officer Napoleon explained he fired his weapon during these volleys because he saw ██████████ pointing the firearm at him and at fellow officers, and he stopped firing each time ██████████ ducked out of his line of sight. Officer Mays, Officer Esquivel, and U.S. Marshal McCloud also confirmed that they discharged their firearms during the second volley in response to ██████████ pointing his firearm at them. Altogether, based on this evidence, COPA cannot conclude that Officer Napoleon’s use of deadly force during the second, third, and fourth volleys violated Department policy.

Although COPA finds by a preponderance of the evidence that Officer Napoleon’s use of deadly force during these volleys did not violate Department policy, COPA cannot conclude by clear and convincing evidence that his actions were within policy. During these volleys, Officer Napoleon fired his weapon approximately 24 times – 16 times during the second volley, four (4) times during the third volley, and three (3) times during the fourth volley.¹⁶¹ The high number of rounds fired by Officer Napoleon calls into question whether his response to ██████████ actions

¹⁵⁶ G03-02.III.C.

¹⁵⁷ G03-02.VI.A.

¹⁵⁸ Att. 70 at 44:47 - 45:34. The radio transmission was captured on Officer Napoleon’s and Officer Mays’ BWCs as they drove to the location. *See* Attachments 50, 51 at 2:04 - 2:22.

¹⁵⁹ Officer Mays reported that SWAT had been called and was en route by the time the shooting stopped. *See* Att. 122 at 76.

¹⁶⁰ Att. 182, pg. 14.

¹⁶¹ Att. 20 at 2:34-2:35; Atts. 90, 91, 162, 163, 184.

was proportional to the threat [REDACTED] posed or necessary to serve a lawful purpose.¹⁶² Officer Napoleon had available cover and [REDACTED] ability to flee was limited, as his Jeep was boxed in by numerous law enforcement members and vehicles.

Moreover, Officer Napoleon was the only officer to fire his weapon during the third and fourth volleys after he observed [REDACTED] moving inside the Jeep. BWC footage captured Officer Napoleon state words to the effect of, “He’s moving!”, then discharge his firearm during the third and fourth volleys. Officer Napoleon did not announce that [REDACTED] was threatening anyone with a weapon, even though he had clearly stated this prior to firing his first shot. Additionally, Officer Mays told COPA he saw [REDACTED] “moving, flailing” in the rear seat of the Jeep and observed “his shoulder come up a couple times.”¹⁶³ Officer Mays’ account suggests that [REDACTED] was simply moving around inside the Jeep and undermines Officer Napoleon’s later claim that [REDACTED] was again pointing the firearm. If [REDACTED] was merely moving inside the Jeep and not pointing his weapon, it calls into question whether Officer Napoleon’s third and fourth volleys were necessary and proportional to the level of threat [REDACTED] posed. According to Department policy, the amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.¹⁶⁴ Here, [REDACTED] may have been moving inside the Jeep due to pain from injuries inflicted by the first shot or the initial volleys of gunfire. If that was the case and [REDACTED] was not threatening anyone with his firearm, Officer Napoleon’s use of deadly force during the third and fourth volleys may have been excessive.

However, without any additional evidence, COPA cannot conclude by a preponderance of the evidence that his use of deadly force was unjustified. Therefore, COPA finds **Allegation #1** against Officer Napoleon is **Not Sustained**.

ii. Allegation #2, that Officer Napoleon failed to timely and/or accurately notify OEMC that he discharged his firearm in violation of G03-06, is SUSTAINED.

Following the discharge of his firearm, Officer Napoleon was required to “immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources.”¹⁶⁵ Here, it is undisputed that Officer Napoleon never notified OEMC of his firearm discharge. Officer Napoleon explained that he did not notify OEMC because he had a shield in his left hand and his firearm in his right hand. However, Officer Napoleon did not notify OEMC even after [REDACTED] was disarmed and Officer Napoleon put down the shield and holstered his weapon. For these reasons, COPA finds that Allegation #2 against Officer Napoleon is **Sustained** as a violation of Rules 5, 6, 3 and 2.

iii. Allegation #3, that Officer Napoleon was inattentive to duty by inaccurately identifying [REDACTED] as the source of the first gunshot during the incident, is SUSTAINED.

¹⁶² G03-02.III.B.

¹⁶³ Att. 122, pg. 47, lines 8-24.

¹⁶⁴ G03-02.III.B.

¹⁶⁵ G03-06.V.A.

Immediately after Officer Napoleon fired the first shot, he inaccurately identified [REDACTED] as the source of the gunshot by responding yes to Officer Mays' question, "Was that him?" Officer Napoleon's response to Officer Mays and his belief that [REDACTED] fired the first shot were objectively unreasonable in light of the totality of the circumstances. It is undisputed that, initially, only one shot was fired and only one shot could be heard. Officer Napoleon never claimed that he did not know he fired his weapon, that he heard more than one shot, or that he saw a muzzle flash from [REDACTED] gun. In fact, the only explanation Officer Napoleon could provide for his belief that [REDACTED] fired the first shot was that he observed [REDACTED] pointing his gun, he heard his own gunshot, and he saw the back windshield shatter. Officer Napoleon admitted that the sound of the shot and the windshield shattering occurred immediately *after* he fired his own weapon. His belief that [REDACTED] fired first was therefore objectively unreasonable and unsupported by the evidence available to him at the time.

Nevertheless, despite all evidence to the contrary, Officer Napoleon informed Officer Mays that [REDACTED] fired the first shot. Not only did Officer Napoleon misidentify [REDACTED] as the source of the first shot, but he also failed to announce to his partner and fellow officers that he fired his weapon. Officer Napoleon's silence is particularly concerning given that approximately 15 seconds passed between the time he fired the first shot and the time U.S. Marshal McCloud fired the first volley of shots. This was more than enough time for Officer Napoleon to inform his partners that he discharged his weapon. Had he done so, he would have effectively corrected the misperception that [REDACTED] fired the first shot. Any reasonable officer in the same or similar circumstances would have questioned whether [REDACTED] fired his weapon, and whether [REDACTED] was able to fire his weapon at all.

Officer Napoleon's inattention to duty in failing to effectively communicate with fellow officers on scene contributed to the escalation of tensions and the firing of approximately 70 rounds at [REDACTED] ultimately resulting in his death. Officer Napoleon did not properly perform his duties and failed to competently and intelligently respond to an emergency situation. For these reasons, COPA finds Allegation #3 against Officer Napoleon is **Sustained** as a violation of Rules 2, 3, 8, 10, and 11.

b. Allegations against Officer Mays and Officer Esquivel

i. Allegation #1, that Officers Mays and Esquivel discharged their firearms at or in the direction of [REDACTED] without justification and in violation of G03-02, is NOT SUSTAINED.

For the reasons discussed below, COPA has determined there is insufficient evidence to sustain Allegation #1 against Officers Mays and Esquivel by a preponderance of the evidence. COPA also lacks clear and convincing evidence that the officers' firearm discharges were within Department policy. As a result, COPA finds Allegation #1 against both officers is Not Sustained.

COPA cannot conclude by a preponderance of the evidence that Officers Mays and Esquivel discharged their firearms at [REDACTED] without justification and in violation of Department policy. Specifically, COPA lacks sufficient evidence to conclude that the use of deadly force by the officers was not objectively reasonable considering the circumstances they faced. Both officers engaged in the second volley of shots and Officer Mays also engaged in the fifth volley.

During the second volley, both officers reported they fired their weapons because they observed ██████ point his firearm in their direction, and they erroneously believed ██████ had already fired at them. The officers stopped firing when ██████ stopped pointing his firearm and the threat had diminished. Officer Mays' and Officer Esquivel's accounts are corroborated by the accounts of other officers on scene, which support the conclusion that ██████ posed an imminent threat of death or great bodily harm. As such, COPA cannot find by a preponderance of the evidence that Allegation #1 against the officers should be sustained.

Although COPA finds by a preponderance of the evidence that Officer Mays' and Officer Esquivel's use of deadly force did not violate Department policy, COPA cannot conclude by clear and convincing evidence that their use of deadly force was within policy. During the second volley, Officer Esquivel fired approximately 15 times and Officer Mays fired approximately 10 times, at the same time that Officer Napoleon and U.S. Marshal McCloud also fired their weapons.¹⁶⁶ In fact, by the second volley, ██████ had already been fired at 12 times. The high number of rounds fired by Officers Esquivel and Mays calls into question whether their response to ██████ actions was proportional to the threat he posed or necessary to serve a lawful purpose.¹⁶⁷ Both officers had available cover and ██████ ability to flee was limited, as his Jeep was boxed in by numerous law enforcement vehicles. The zone of safety set up to contain ██████ served to protect the officers and anyone else in the area. As such, COPA cannot find that this allegation against Officers Esquivel and Mays should be exonerated.

With respect to the fifth volley, fired by Officer Mays, it is unclear what Officer Mays heard or saw before he discharged his weapon. Officer Mays told COPA that he observed ██████ extend his arm over the top of the Jeep's back seat and point the firearm in his direction. Officer Mays then fired four times, until ██████ ducked down in the back seat. The evidence shows that various officers on scene repeatedly told ██████ to stop moving before Officer Mays fired the fifth volley. At one point prior to Officer Mays' fifth volley, the BWC footage captured Officer Napoleon yell that ██████ was not moving, but subsequently, other officers announced, "He's moving!"¹⁶⁸ As discussed above, if ██████ was merely moving inside the Jeep and not threatening the officers with his firearm, the necessity and proportionality of Officer Mays' fifth volley is questionable. However, without any additional evidence, COPA cannot conclude by a preponderance of the evidence that Officer Mays' use of deadly force during the fifth volley violated Department policy.

For all of these reasons, COPA finds that Allegation #1 against Officer Mays and Officer Esquivel is **Not Sustained**.

- ii. **Allegation #2, that Officers Mays and Esquivel failed to timely and/or accurately notify OEMC that they discharged their firearms in violation of G03-06, is SUSTAINED.**

Following the discharge of their firearms, Officers Mays and Esquivel were required to "immediately notify the Office of Emergency Management and Communications (OEMC)

¹⁶⁶ Cumulatively, the four officers fired at least 40 shots at ██████ during the second volley. See Att. 20 at 2:34-2:35.

¹⁶⁷ G03-02.III.B.

¹⁶⁸ Att. 50 at 5:50.

providing all relevant information and requesting additional resources.”¹⁶⁹ Neither officer, however, complied with this Department policy. Officer Mays¹⁷⁰ and Officer Esquivel both acknowledged they failed to notify OEMC of their firearm discharges, explaining that they did not want to tie up the air with unnecessary radio traffic.¹⁷¹ Officer Mays also admitted that it did not “come to [his] mind” to notify OEMC due to the highly stressful nature of the encounter.¹⁷² As such, Allegation #2 against Officer Mays and Officer Esquivel is **Sustained** as a violation of Rules 5, 6, 3 and 2.

iii. Allegation #3, that Officer Esquivel failed to timely activate his BWC in violation of S03-14, is SUSTAINED.

The allegation that Officer Esquivel violated Department policy by failing to timely activate his BWC is **Sustained**. This incident involved multiple law-enforcement-related activities that Department policy identifies as requiring the activation of BWC, including but not limited to calls for service, investigatory stops, seizure of evidence, arrests, use of force incidents, high risk situations, and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.¹⁷³ In this case, Officer Esquivel activated his BWC only after the first gunshot, which was not timely under Department policy.

Officer Esquivel was required to activate his BWC at the beginning of the incident. In this situation, he should have begun recording as soon as he responded to the call to assist the GLRFTF. Moreover, it does not appear there were any circumstances preventing Officer Esquivel from activating his BWC at the beginning of the incident. This was not an on-view incident that took Officer Esquivel by surprise, but rather a direct response to a call for an assist. Consequently, COPA finds by a preponderance of the evidence that Officer Esquivel violated Department policy by failing to timely activate his BWC. For these reasons, **Allegation #3** against Officer Esquivel is **Sustained** as a violation of Rules 5 and 6.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Napoleon

i. Complimentary and Disciplinary History¹⁷⁴

Officer Napoleon has received nine awards, including two life saving awards and six honorable mentions. He has no sustained disciplinary history in the past five years.

¹⁶⁹ G03-06.V.A.

¹⁷⁰ It should be noted that Officer Mays attempted to radio a 10-1 and shots fired at the police, but he did not notify OEMC that shots were fired by the police. *See* Att. 51 at 4:39-4:41; Att. 122, pg. 38, lines 6-10.

¹⁷¹ Att. 122, pgs. 59-61, 85.

¹⁷² Att. 122, pg. 63.

¹⁷³ S03-14.III.A.2.

¹⁷⁴ Att. 190, pgs. 1-4.

ii. Recommended Penalty

COPA has found that Officer Napoleon violated Rules 2, 3, 5, 6, 8, 10, and 11 when he inaccurately identified ██████ as the source of the first gunshot during the incident and failed to notify OEMC of his firearm discharge. Officer Napoleon's failure to communicate that he fired the first shot led the other officers on scene to believe that ██████ had fired at them. This was not only inaccurate; it escalated tensions and undoubtedly contributed to officers firing more than 70 rounds at ██████ causing his death. Officer Napoleon's conduct during this incident constituted gross negligence that created a risk to public safety and the lives of ██████ and the law enforcement members on scene. It was also a flagrant violation of Department policy. For these reasons, combined with Officer Napoleon's minimal complimentary history and lack of disciplinary history, COPA recommends a disciplinary penalty of no less than **180 days suspension, up to and including separation** from the Department.

b. Officer Mays

iii. Complimentary and Disciplinary History¹⁷⁵

Officer Mays has received 21 awards, including one complimentary letter, one Department commendation, and 18 honorable mentions. In June 2021, he received a reprimand following a preventable traffic accident. Officer Mays has no other sustained disciplinary history in the past five years.

iv. Recommended Penalty

COPA has found that Officer Mays failed to timely notify OEMC of his firearm discharge. Officer May's misconduct is mitigated by the fact that he attempted to radio a 10-1 and shots fired, though not shots fired by the police. Given the high-stress nature of the incident, coupled with Officer May's complimentary history and minimal disciplinary history, COPA recommends that Officer Mays receive a **reprimand**.

c. Officer Esquivel

v. Complimentary and Disciplinary History¹⁷⁶

Officer Esquivel has received 18 awards, including one crime reduction award and 15 honorable mentions. In September 2021, he received a SPAR following a preventable traffic accident, though no disciplinary action was imposed. Officer Esquivel has no other sustained disciplinary history in the past five years.

vi. Recommended Penalty

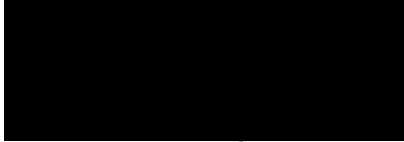
COPA has found that Officer Esquivel failed to timely activate his BWC and failed to notify OEMC of his firearm discharge. Although these failures constituted clear violations of Department policy, Officer Esquivel's misconduct is mitigated by the rapidly evolving and high-stress nature

¹⁷⁵ Att. 190, pgs. 5-8.

¹⁷⁶ Att. 190, pgs. 9-12.

of the incident. It is for these reasons, combined with Officer Esquivel’s complimentary history and lack of disciplinary history, that COPA recommends he receive a 2-day suspension.

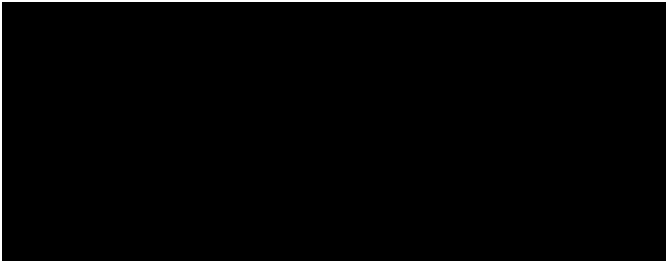
Approved:



11/30/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date



11/30/2022

Andrea Kersten
Chief Administrator

Date