

## SUMMARY REPORT OF INVESTIGATION

## I. EXECUTIVE SUMMARY

Date of Incident:	January 26, 2022
Time of Incident:	8:48 pm
Location of Incident:	255 E. Lower Wacker Drive
Date of COPA Notification:	January 26, 2022
Time of COPA Notification:	9:30 pm

On January 26, 2022, at approximately 8:48 pm, officers assigned to the Chicago Police Department's (CPD) carjacking unit broadcast over the police radio that a license plate reader scanned the license plate<sup>1</sup> of a stolen Honda Accord (the Accord) traveling eastbound on Lower Wacker Drive.<sup>2</sup> Police dispatchers then broadcast the location and direction the Accord was traveling to police units in the area. Beat 162B (Officers Orlando Varelas and John Boegen) and Beat 1863B (Officers Tyler Thomas and Kenneth Sunde)<sup>3</sup> located the Accord, which was stopped at the red light at 255 E. Lower Wacker Drive. The officers maneuvered their respective vehicles and stopped in front of the Accord to conduct a traffic stop.

At that point, the driver of the Accord, ██████████ (██████████) shifted the vehicle into reverse and drove backwards away from the two police vehicles. ██████████ backed the Accord into the front of a Chevy Malibu that was stopped in the same lane behind the Accord. ██████████ then stopped, and the officers approached the Accord with their firearms drawn. As Officer Varelas approached the front passenger door of the Accord, the Accord's front seat passenger, ██████████ (██████████) aimed and fired a handgun through the passenger door's window at Officer Varelas. Officer Varelas immediately fell backwards onto the street and discharged his firearm four times at ██████████. Almost simultaneously, Officer Sunde, who had just exited the front passenger seat of his police vehicle, discharged his firearm eleven times at ██████████ through the front windshield of the Accord.

The officers removed ██████████ and backseat passenger ██████████ (██████████) from the Accord and placed them into custody. ██████████ handgun was removed from inside the Accord and placed on the street near the front passenger-side quarter panel of the vehicle. Officers also located a revolver on the Accord's backseat, and they recovered narcotics from ██████████ pocket.

██████████ sustained multiple gunshot wounds and was transported by ambulance to Northwestern Medical Center. Officers Varelas and Sunde also received medical treatment at local hospitals as a result of this incident.

<sup>1</sup> Illinois License Plate ██████████.

<sup>2</sup> Att. 10.

<sup>3</sup> Neither of the police vehicles occupied by the officers were equipped with an in-car camera.

**II. INVOLVED PARTIES**

Involved Officer #1:	Orlando Varelas; Police Officer; Star#: 19626; Employee #: [REDACTED]; Unit of Assignment: 001; Date of Appointment: June 16, 2017; DOB: [REDACTED], 1987; Male; Hispanic.
Involved Officer #2:	Kenneth Sunde; Police Officer; Star#: 18633; Employee #: [REDACTED]; Unit of Assignment: 018; Date of Appointment: February 20, 2018; DOB: [REDACTED], 1991; Male; White.
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1997; Male; Hispanic.
Involved Individual #2:	[REDACTED] DOB: [REDACTED], 2000; Male; Hispanic.
Involved Individual #3:	[REDACTED] DOB: [REDACTED], 2001; Male; Hispanic.

**III. ALLEGATIONS**

Officer	Allegation	Finding
Officer Orlando Varelas <sup>4</sup>	1) Failed to timely and/or accurately notify the Office of Emergency Management and Communications of all relevant information related to his firearm discharge as required by G03-06.	Sustained
Officer Kenneth Sunde	1) Failed to activate his Body-Worn Camera in a timely manner at the beginning of a law-enforcement related activity in violation of S03-14.	Sustained
	2) Failed to timely and/or accurately notify the Office of Emergency Management and Communications of all relevant information related to his firearm discharge as required by G03-06.	Sustained

**IV. APPLICABLE RULES AND LAWS**

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Rules

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Rule 2 – Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3—Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

<sup>4</sup> On August 12, 2022, Officer Varelas resigned from CPD. See Att. 154.

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Rule 5 – Failure to perform any duty.

Rules 6 – Disobedience or an order or directive, whether written or oral.

Rule 10 – Inattention to duty.

Rule 38 – Unlawful or unnecessary use or display of a weapon.

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#### General Orders

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G03-02, De-Escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 28, 2023)

G03-02-01, Response to Resistance and Force Options (effective April 15, 2021 to June 28, 2023)

G03-06, Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021 to present)

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#### Special Orders

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S03-14, Body Worn Cameras (effective April 30, 2018 to December 28, 2023)

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

### a. Interviews

The Cook County Public Defender's office declined to permit the Civilian Office of Police Accountability (COPA) to interview ██████████ or ██████████<sup>6</sup> During his recorded statement with CPD detectives, ██████████ claimed that he found the Accord in Skokie unoccupied and with the key in the ignition. He denied knowing that his companions were armed.<sup>7</sup> ██████████ also provided a statement to CPD detectives, during which he stated that he believed the Accord was owned by ██████████ girlfriend. ██████████ admitted that the firearm in the backseat belonged to him; however, he denied pointing it at any police officer.<sup>8</sup>

In a statement to COPA on January 29, 2022, ██████████ ██████████ (██████████ stated he was alone, driving his dark-colored Chevy Malibu, when he stopped at a red light at 255 E. Lower Wacker Drive. ██████████ stated that he was stopped behind another vehicle (now known to be the Accord), and that he recalled a white Mercedes Benz<sup>10</sup> was stopped in the lane to the right of him. ██████████ driver's side window was lowered slightly because he was smoking a cigarette. As ██████████ waited at the red light, a police vehicle came from the right of him and pulled in front of

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<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> Atts. 115, 116.

<sup>7</sup> Atts. 21 and 120, pg. 18.

<sup>8</sup> Atts. 22 and 120, pg. 18.

<sup>9</sup> Atts. 35, 36. In an electronically recorded interview (ERI) with CPD Detective Roxanna Hopps on January 26, 2022, ██████████ related essentially the same information that was contained in his statement with COPA. Att. 23.

<sup>10</sup> Now known to be driven by ██████████

the Accord. ██████ recognized it was a police vehicle because of the “M” on the license plate. After the police vehicle stopped in front of the Accord, ██████ saw several police officers exit. ██████ heard at least one of the officers yell at the occupants of the Accord, “Put your hands up. Get down.”<sup>11</sup> The Accord immediately reversed but stopped when it struck the front of ██████ vehicle. ██████ then heard approximately 15 gunshots in quick succession but did not know who was shooting. ██████ ducked down inside his vehicle the moment he heard the gunshots and never saw anyone with a firearm before hearing the gunshots, but he assumed the police officers were shooting.

In a statement to COPA on January 31, 2022, ██████ ██████ stated that on the night of this incident he was driving his white Mercedes Benz SUV. ██████ was alone in his car and traveling toward the red light at 255 E. Lower Wacker Drive, facing east in the farthest right lane. ██████ saw an unmarked police vehicle traveling west on Lower Wacker Drive perform a U-turn and drive east behind him. When ██████ stopped at the red light, the unmarked police vehicle was able to pull in front of him. The unmarked police vehicle’s lights and sirens were activated as it maneuvered in front of a sedan in the center lane, which was stopped at the same red light. ██████ saw a uniformed police officer exit the unmarked police vehicle. ██████ stated that the sedan reversed and struck the Chevy Malibu behind it in the center lane. ██████ then heard at least 10 gunshots and believed they came from the sedan, explaining that he saw glass shoot out from the sedan’s windshield. ██████ did not know who was shooting at the time of the incident. ██████ while ducking down inside his vehicle, looked forward and saw a police officer standing in front of the sedan holding a handgun.

In a statement to COPA on February 21, 2022, ██████ ██████ (██████ stated on the night of this incident she was driving home, alone, in her gray Volkswagen. ██████ was facing east in the lane to the right of the left-turn only lane when she stopped for the red light at 255 E. Lower Wacker Drive. There were no other vehicles in front of her when she stopped at the red light. As ██████ waited for the red light to turn green, she saw two unmarked, dark-colored police SUVs pull up and stop in front of her vehicle. The police SUVs’ emergency lights were activated. ██████ saw several uniformed officers exit the SUVs, and a few moments later she saw at least two of the officers point and fire their guns. ██████ stated that the officers’ attention was focused on something to the right of her position, but she did not know what the officers were shooting at. ██████ immediately ducked down inside her vehicle, where she heard at least five gunshots. She then fled the scene in her vehicle by driving around one of the officers and a parked police vehicle, and she drove straight home.

In a statement to COPA on March 10, 2022, **Officer Varelas**<sup>14</sup> stated that on the night of this incident he was working with Officer Boegen. Officer Varelas explained that he was a passenger in an unmarked police SUV driven by Officer Boegen. While patrolling the downtown area, he monitored a police radio broadcast from CPD’s carjacking unit that a license plate reader had scanned a license plate and identified a previously reported carjacked vehicle (the Accord)

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<sup>11</sup> Att. 36, pg. 10, ln. 15.

<sup>12</sup> Atts. 37, 38. In an ERI with CPD Detective Brian Tedeschi on January 26, 2022, ██████ related essentially the same information that was contained in his statement with COPA. Att. 24.

<sup>13</sup> Atts. 91, 97.

<sup>14</sup> Atts. 101, 103.

that was traveling east on Lower Wacker Drive. Officer Varelas explained that the make and model of the carjacked vehicle was provided. The broadcast also provided the information that the Accord had been carjacked at gunpoint, as well as the plate number and the offenders' descriptions.<sup>15</sup> As Officers Varelas and Boegen traveled west on Lower Wacker Drive, Officer Varelas saw the Accord traveling east on Lower Wacker Drive. Officer Varelas also saw that there were three occupants inside the Accord.

Officer Boegen performed a U-turn and traveled east behind the Accord. The Accord stopped at the red light at the intersection of East Lower Wacker Drive and North Columer Drive. Officer Boegen stopped at the same red light, approximately one and a half car lengths behind the Accord, in the lane on the passenger side of the Accord. Officer Varelas radioed dispatchers that he believed they located the Accord, and he provided their location and confirmed it was the vehicle by running its license plate. Officer Varelas heard over the radio that other police units were headed to their location to assist, but he did not communicate directly with any of the responding officers. Officer Varelas stated that when other police units arrived at their location, Officer Boegen maneuvered their police vehicle forward and stopped directly in front of the Accord. Officer Varelas said this was done to prevent the Accord from fleeing and to indicate to the other responding police units the exact location of the Accord. Officer Varelas added that Officer Boegen activated their vehicle's emergency lights as he maneuvered in front of the Accord.

Once Officer Boegen stopped their police vehicle, Officer Varelas exited, ran around the back, and approached the passenger side of the Accord. Officer Varelas stated that [REDACTED] shifted the Accord into reverse and drove backwards 10 to 15 feet, coming to a stop after striking the front of the vehicle behind it. Officer Varelas repeatedly ordered the three occupants inside the Accord to show their hands as he continued to close the distance between himself and the Accord. As he approached the front passenger door of the Accord, Officer Varelas saw the front seat passenger, [REDACTED] pointing a semi-automatic handgun at him. Without warning, [REDACTED] fired the gun in Officer Varelas's direction. Officer Varelas heard the gunshot, saw the muzzle flash, and saw the glass from the front passenger door's window shatter outwards towards him. Officer Varelas felt pieces of the window's glass strike him on his face and eyes, and in that moment, he believed he had been shot. Officer Varelas fell backwards to the pavement, landing on his left side. Officer Varelas then heard more gunshots that sounded as if they came from [REDACTED] direction. Officer Varelas returned fire, discharging his firearm several times at [REDACTED]

As Officer Varelas stood up, he reported over his police radio, "10-1. 10-1. Shots fired. Shots fired."<sup>16</sup> Officer Varelas stated several officers had converged on the Accord, with Officer Thomas removing [REDACTED] handgun from inside the passenger door. Officer Thomas tossed the gun to the street away from the vehicle as [REDACTED] was pulled from the vehicle. [REDACTED] was taken into custody and officers began to render aid to him. Officer Varelas sat in a police vehicle assigned to other officers until he was taken to Rush Hospital by a Chicago Fire Department (CFD) ambulance.

Regarding the allegation that he failed to timely and/or accurately notify the Office of Emergency Management and Communications (OEMC) of all relevant information related to his firearm discharge, Officer Varelas denied the allegation, and added that he immediately used his

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<sup>15</sup> Att. 103, pg. 11, lns. 16 to 19.

<sup>16</sup> Att. 103, pg. 34, lns. 2 to 3.

police radio to notify dispatchers that he had an emergency by calling out a “10-1” and announcing shots fired.

In a statement to COPA on March 10, 2022, **Officer Sunde**<sup>17</sup> stated that on the night of this incident he was working with Officer Thomas. Officer Sunde was the passenger in the unmarked police SUV driven by Officer Thomas. Officer Sunde related essentially the same information as Officer Varelas regarding the license plate reader locating a vehicle that had been reported stolen in an armed carjacking. Officer Sunde first saw the Accord at 255 E. Lower Wacker Drive, stopped at a red light, facing east. Officer Sunde also saw the police vehicle occupied by Officers Varelas and Boegen, adding that the vehicle’s emergency equipment was activated as it maneuvered in front of the Accord. Officer Sunde stated that Officer Thomas stopped their vehicle in front of the Accord driven by [REDACTED] then drove in reverse, coming to a stop when the Accord struck the car behind it.

Officer Sunde observed Officer Varelas run towards the passenger side of the Accord and saw the Accord’s front seat passenger, [REDACTED] raise a dark-colored handgun and point it at Officer Varelas. As Officer Sunde exited the passenger side of his vehicle, he saw Officer Varelas fall. Officer Sunde believed that [REDACTED] had shot Officer Varelas. Officer Sunde discharged his firearm several times at [REDACTED] through the front windshield of the Accord. Officer Sunde then heard another volley of gunshots, and believing he was being fired at, backed away. Officer Sunde did not know who fired that volley of gunshots, but he explained it sounded as if they came from in front of him. Officer Sunde backed away and performed a tactical reload, loading a full ammunition magazine into his firearm.

Officer Sunde did not hear any more gunshots, so he approached the front of the Accord. [REDACTED] appeared to be slumped over inside the vehicle. Officer Sunde stated that he was positioned closer to the driver’s side of the Accord when [REDACTED] unlocked the doors and exited the vehicle. Another officer handcuffed [REDACTED] immediately, while Officer Thomas helped [REDACTED] onto the street outside of the vehicle. Officer Sunde utilized his radio to request an ambulance for [REDACTED]. Officer Thomas then physically checked Officer Sunde for any gunshot wounds. Officer Sunde stated that his heart rate was still elevated so he sat inside his police vehicle until paramedics could evaluate him. Officer Sunde was subsequently transported by an ambulance to Northwestern Hospital for treatment.

Regarding his body-worn camera (BWC) activation, Officer Sunde stated that he activated it after he discharged his firearm, as he was standing near the driver’s side door of the Accord. Officer Sunde stated that as he arrived on the scene, he saw [REDACTED] pointing a handgun at Officer Varelas. Officer Sunde’s attention was immediately focused on eliminating the threat that [REDACTED] posed, as well as securing the other occupants of the stolen car.

Regarding the allegation that he failed to notify OEMC of all relevant information, Officer Sunde stated that he did not use his radio to notify OEMC because other officers already made the notification that shots had been fired. Officer Sunde added that there was a lot of radio traffic from numerous officers and dispatchers to secure the scene and request an ambulance. Officer Sunde added that he did tell responding sergeants on scene that he had discharged his weapon.

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<sup>17</sup> Atts. 99, 104.

In a statement to COPA on April 14, 2022, **Officer Tyler Thomas**<sup>18</sup> related essentially the same information as his partner, Officer Sunde. Officer Thomas stated that after [REDACTED] drove in reverse and struck the car behind him, Officer Thomas saw [REDACTED] raise a handgun at Officer Varelas. In an attempt to alert Officer Sunde and the other officers of the threat, Officer Thomas yelled, "Gun! Gun! Gun!"<sup>19</sup> Officer Thomas then saw bullets strike the Accord's front windshield. Officer Thomas stated that he was aware that Officer Sunde discharged his firearm.<sup>20</sup> Officer Thomas did not discharge his firearm because by the time he reacted, he no longer saw [REDACTED] holding the handgun and did not believe him to be a threat any longer.

Officer Thomas approached the front passenger door of the Accord and saw [REDACTED] seated in the front passenger seat with his hands in his lap. Officer Thomas reached in through the shattered passenger door window and unlocked the passenger door. When Officer Thomas opened the passenger door, he saw [REDACTED] handgun in the door's pocket. Officer Thomas removed it from the pocket and threw it onto the street away from the vehicle, near another officer to secure it. Officer Thomas then removed [REDACTED] from the vehicle and handcuffed him. Another officer immediately rendered aid to [REDACTED] as Officer Thomas requested an ambulance over the radio.

In a statement to COPA on February 23, 2022, **Officer John Boegen**<sup>21</sup> related essentially the same information as Officers Varelas, Sunde, and Thomas. Officer Boegen stated that he stopped his police vehicle in front of the Accord to prevent it from fleeing. Officer Boegen exited and ordered the occupants to get out of the Accord, but the driver shifted the Accord into reverse and drove backwards, striking the front of the vehicle behind it. The police vehicle driven by Officer Thomas pulled forward until it was a few inches from the front of the Accord. As Officer Boegen maneuvered around Officer Thomas's vehicle, he heard several gunshots. Officer Boegen took cover behind the back of Officer Thomas's vehicle and used his radio to notify dispatchers that shots were fired and request additional assistance. When the gunfire stopped, Officer Boegen approached the driver's side of the Accord with his gun drawn. [REDACTED] and [REDACTED] exited the Accord and were immediately handcuffed by other officers. Officer Boegen then approached Officer Varelas to make sure he was okay. Officer Boegen did not recall if Officer Varelas was bleeding, but he did see some irritation on Officer Varelas's face that he later learned was caused when the shattered glass struck Officer Varelas. Officer Boegen did not witness anyone, including the offenders, discharge a firearm.

COPA's attempts to interview witnesses [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]<sup>22</sup> were unsuccessful.

## b. Digital Evidence

The **OEMC radio transmissions**<sup>23</sup> reflect that dispatchers broadcast that a 2011 grey Accord, previously reported as being hijacked, was traveling on Lower Wacker Drive. A few

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<sup>18</sup> Atts. 111, 112. On June 23, 2022, Officer Thomas resigned from CPD. See Att. 147.

<sup>19</sup> Att. 112, pg. 12, ln. 17.

<sup>20</sup> Att. 112, pg. 15, lns. 14 to 20. Officer Thomas did not witness Officer Varelas discharge his firearm.

<sup>21</sup> Atts. 96, 114.

<sup>22</sup> CMS Notes and Atts. 93-94.

<sup>23</sup> Att. 90.

moments later Beat 162B<sup>24</sup> radioed that they located the Accord as it was stopped facing east at the red light at the intersection of Lower Columbus Drive and Lower Wacker Drive.<sup>25</sup> Seconds later, officers called out a 10-1 and shouted over the radio that shots had been fired.<sup>26</sup> Multiple officers interrupted each other over the radio, followed by an unidentified officer reporting there was a male Hispanic with a gunshot wound who needed an ambulance.<sup>27</sup> Beat 1863B<sup>28</sup> went over the air to let dispatch know that they were on scene with Beat 162B.<sup>29</sup> Shortly thereafter, an officer informed dispatch that shots were fired by the police with an offender struck.<sup>30</sup> Dispatch asked Beat 1810 if there were shots fired at and by the police, to which the responding officer stated he was gathering information and would send it through the PDT.<sup>31</sup>

The video recording from **POD #3709H**,<sup>32</sup> located at 340 Lower Columbus Drive, shows that at 8:48 pm, the Accord was at the red light on the southwest corner of the intersection. The Accord was facing east and was the first vehicle in the center lane waiting for the red light. The unmarked police vehicle driven by Officer Boegen traveled east, passing the Accord on its passenger side, and then cut in front of it and stopped, blocking the Accord from moving forward. As Officer Boegen exited the driver's seat of his vehicle, the Accord drove in reverse. At about the same time, a second unmarked police vehicle driven by Officer Thomas pulled up and stopped near the front driver's side of the Accord. The Accord continued to drive in reverse for several feet until it came to a stop after striking the front of the dark-colored vehicle driven by [REDACTED]. The Accord struck [REDACTED] vehicle with enough force to push it backwards a short distance.

After the Accord struck [REDACTED] vehicle and came to a stop, Officer Varelas approached the passenger side of the Accord. Simultaneously, the front seat passenger, [REDACTED] pointed and discharged a firearm at Officer Varelas. The video captured the muzzle flash from [REDACTED] firearm and the glass from the front passenger window shattering outward.<sup>33</sup> Officer Varelas fell backwards onto the pavement and discharged his firearm in the direction of the Accord's passenger side. Officer Sunde, who had exited the front passenger seat of the police vehicle driven by Officer Thomas and stood behind the opened front passenger door, discharged his firearm several times through the Accord's front windshield. Several uniformed officers then approached the Accord and removed its three occupants ([REDACTED] and [REDACTED] who were taken into custody without further incident.

The recordings from the **Body-Worn Cameras (BWCs)**<sup>34</sup> belonging to Officers Varelas, Sunde, Thomas, and Boegen show that the two police vehicles belonging to the officers stopped in front of the Accord. Officer Varelas exited the front passenger seat and walked around the rear of the police vehicle. Officer Varelas approached the front passenger side of the Accord with his

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<sup>24</sup> Officers Varelas and Boegen.

<sup>25</sup> Att. 90 at 3:13.

<sup>26</sup> Att. 90 at 4:00.

<sup>27</sup> Att. 90 at 4:45.

<sup>28</sup> Officers Thomas and Sunde.

<sup>29</sup> Att. 90 at 6:21.

<sup>30</sup> Att. 90 at 10:01.

<sup>31</sup> Att. 90 at 12:38.

<sup>32</sup> Att. 57.

<sup>33</sup> Att. 57 at 8:48:55.

<sup>34</sup> Atts. 25, 27, 30, 31.



gun drawn while yelling at the occupants to let him see their hands. The Accord drove in reverse for several feet until it came to a stop after striking the vehicle behind it. When Officer Varelas was near the front passenger door, the videos captured a single gunshot, and the Accord's front passenger window immediately shattered outward toward Officer Varelas, who fell backwards to the pavement. From where he landed on the pavement, Officer Varelas discharged his firearm several times in the direction of the front passenger door of the Accord. Immediately after discharging his firearm, Officer Varelas went over the radio and called a "10-1, shots fired."

Simultaneously, Beat 1863B pulled up in front of the Accord. Officer Sunde opened his front passenger door and immediately discharged his firearm several times in the direction of the Accord's front windshield. Officer Sunde then positioned himself behind the rear passenger side of his police vehicle and performed a tactical reload. Officer Sunde approached the driver's door of the Accord and activated his BWC.<sup>35</sup> [REDACTED] and [REDACTED] exited the Accord from the driver's side and were immediately taken into custody. Officer Sunde radioed for an ambulance for [REDACTED] reporting that [REDACTED] sustained gunshot wounds. After briefly speaking to a responding sergeant, Officer Sunde sat in the back of a police vehicle by himself.

Immediately after the gunfire ceased, different officers could be heard calling a 10-1 and reporting that shots were fired. Officer Thomas recovered a semi-automatic handgun from the armrest/inside door handle of the Accord's front passenger door.

### c. Physical Evidence

The **CFD Ambulance Reports**<sup>36</sup> state that Officer Sunde was alert and oriented at the scene. He was not struck by gunfire and did not have any physical injuries, but he complained of palpitations and was transported to Northwestern Hospital for treatment. Officer Varelas presented with a possible eye injury from shattered glass, and he was transported to Rush University Medical Center for treatment.

Paramedics from Ambulance 74 found [REDACTED] sitting on the ground, handcuffed, and in police custody. Officers informed the paramedics that [REDACTED] was the front passenger in a vehicle when he shot through the window at police officers, who then returned fire. Paramedics examined [REDACTED] and observed gunshot wounds to his upper right leg, upper left arm, and the right side of his chest. They also noted a possible graze wound to the top of [REDACTED] head. [REDACTED] was transported by ambulance to Northwestern Hospital for treatment.

**Evidence Technician (ET) Photographs**<sup>37</sup> depict the location of the incident and the vehicles involved. The photographs show the Accord appeared to have sustained damage from the gunfire, including eight bullet holes in its front windshield and four bullet holes in the doors on the passenger side of the vehicle. Photographs also show a silver revolver in plain view on the Accord's backseat, and a black semi-automatic pistol on the pavement outside the front passenger side of the vehicle.

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<sup>35</sup> BWCs pre-record two minutes of silent footage prior to activation. This explains how Officer Sunde's BWC footage captured the shooting, despite his late activation.

<sup>36</sup> Atts. 75 to 77.

<sup>37</sup> Att. 95.

During the **weapons breakdown**<sup>38</sup> at Area Three Police Headquarters, ETs recovered Officer Varelas's firearm<sup>39</sup> and found it to have 11 unfired cartridges in its 15-round capacity magazine and one unfired cartridge in its chamber. Officer Sunde's firearm<sup>40</sup> had 17 unfired cartridges in its 17-round capacity magazine and one unfired cartridge in its chamber. Additionally, six unfired cartridges were found in the magazine that Officer Sunde removed from his firearm during the tactical reload. All ammunition was Winchester 9mm Luger +P.

An **Illinois State Police (ISP) Division of Forensic Services Laboratory Report dated March 9, 2022**,<sup>41</sup> states that there were no latent prints suitable for comparison found on the black semi-automatic pistol reportedly in ██████ possession. Examination of the revolver recovered from the Accord's backseat found an unidentified suitable latent print.

An **ISP Report dated March 22, 2022**,<sup>42</sup> states that four fired casings recovered from the pavement near the Accord were examined and found to have been fired from Officer Varelas's firearm. Two fired bullets recovered from the front passenger door of the Accord were also fired from Officer Varelas's firearm. Additionally, ISP determined that ten of the fired casings recovered from the pavement near the front of the Accord were fired from Officer Sunde's firearm.

The fired casing recovered from the front seat of the Accord was examined and found to have been fired from the semi-automatic pistol reportedly in ██████ possession.

An **ISP Report dated September 13, 2022**,<sup>43</sup> states that the results of the gunshot residue (GSR) test administered to ██████ indicate that he may have discharged a firearm, been in the environment of a discharged firearm, contacted a primer gunshot residue particle-related item with both hands, or received the particles from an environmental source. The results of the GSR test administered to ██████ indicate that he discharged a firearm, contacted a primer gunshot residue particle-related item, or had his left hand in the environment of a discharged firearm. Finally, the report states that the sampled areas of the Accord indicate that it was in the environment of a discharged firearm or came into contact with primer gunshot residue particle-related item.

A **Ballistic Information Alert from the CPD Firearms Laboratory**<sup>44</sup> reported that a high-confidence correlation existed between the ballistic evidence in another CPD investigation<sup>45</sup> and the semi-automatic handgun allegedly fired by ██████ during this incident.

#### d. Documentary Evidence

The related **CPD reports**<sup>46</sup> state that on January 18, 2022, at approximately 6:10 am, ██████ (██████) was in his Accord, stopped at the intersection of 1400 W. Farwell Avenue, when

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<sup>38</sup> Att. 1.

<sup>39</sup> Glock 19, Generation 4, 9mm semi-automatic pistol; Serial # ██████.

<sup>40</sup> Smith & Wesson, 9mm semi-automatic pistol; Serial # ██████.

<sup>41</sup> Att. 130.

<sup>42</sup> Att. 128.

<sup>43</sup> Att. 127.

<sup>44</sup> Att. 108.

<sup>45</sup> RD #JD384364 (Aggravated Vehicle Hijacking).

<sup>46</sup> Atts. 2-15, 110, and 117-123.

a white 4-door sedan blocked his path. Four unidentified black males jumped out of the white sedan, and one of them aimed a black, semi-automatic handgun with an extended clip at ██████████ and demanded his car. ██████████ complied and surrendered his Accord to the men.

A Cook County grand jury subsequently indicted ██████████ and ██████████ on numerous felony counts stemming from this incident. ██████████ indictment included multiple counts of Attempted Murder, while ██████████ included a charge for Aggravated Unlawful Use of a Weapon.<sup>47</sup> ██████████ was charged with Possession of a Stolen Motor Vehicle.<sup>48</sup>

## VI. LEGAL STANDARD

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.<sup>49</sup> For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD 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.”<sup>50</sup>

## VII. CREDIBILITY ASSESSMENT

The credibility of an individual relies primarily on two factors: 1) the individual’s truthfulness; and 2) the reliability of the individual’s account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual’s ability to accurately perceive the event at the time of the incident and then accurately recall the event from

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<sup>47</sup> Atts. 148, 149, 152 and 153.

<sup>48</sup> Atts. 150 and 151.

<sup>49</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>50</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016) (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

memory. “Credibility involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.”<sup>51</sup>

This investigation did not reveal any evidence that caused COPA to doubt the credibility of any of the individuals (sworn or unsworn) who provided statements.<sup>52</sup>

## VIII. ANALYSIS

### a. Officers Varelas’ and Sunde’s use of deadly force complied with CPD policy.

COPA finds by a preponderance of the evidence that Officer Varelas’ and Officer Sunde’s use of deadly force was objectively reasonable, necessary, and proportional to the circumstances they faced. COPA further finds that both officers used deadly force as an option of last resort. COPA thus concludes that Officer Varelas’s and Officer Sunde’s use of deadly force complied with CPD policy.

CPD’s stated highest priority is the sanctity of human life. In all aspects of their conduct, CPD expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.<sup>53</sup> CPD 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.<sup>54</sup> This means CPD members may use only the amount of force necessary to serve a lawful purpose. The amount and type of force and must be proportional to the threat, actions, and level of resistance a person offers.<sup>55</sup>

The use of deadly force is permitted as a “last resort” when “necessary to protect against an imminent threat to life or prevent great bodily harm to the member or another person.”<sup>56</sup> A CPD member may use deadly force “to prevent (1) death or great bodily harm from an imminent threat posed to the sworn member or to another person; (2) 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.”<sup>57</sup>

A threat is considered imminent “when it is objectively reasonable to believe that: (1) the person’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (2) the person has the means or instruments to cause death or great

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<sup>51</sup> *Carbo v. United States*, 314 F.2d 718, 749 (9th Cir. 1963).

<sup>52</sup> In reaching its conclusions, COPA evaluated all available evidence, including Officer Sunde’s and Officer Varelas’ statements to COPA. COPA found both officers generally credible in their statements. Additionally, during separate interviews with CPD detectives, Officer Tyler, Officer Sunde, Officer Varelas, [REDACTED] and [REDACTED] each related essentially the same information that was contained in their interviews with COPA. See Atts. 117-120.

<sup>53</sup> Att. 143, G03-02(II)(A), De-Escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to June 28, 2023) (emphasis added).

<sup>54</sup> Att. 143, G03-02(III)(B).

<sup>55</sup> Att. 143, G03-02(III)(B)(1).

<sup>56</sup> Att. 143, G03-02(IV)(C).

<sup>57</sup> Att. 143, G03-02(IV)(C).

bodily harm; **and** (3) the person has the opportunity and ability to cause death or great bodily harm.”<sup>58</sup> Officers are expected to modify their 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.<sup>59</sup>

In reaching its conclusions, COPA evaluated all available evidence, including the officers’ statements. COPA did not find material discrepancies between the officers’ statements and the video footage of the incident. Based on its review of the evidence, COPA finds that Officer Varelas’ and Officer Sunde’s use of deadly force was objectively reasonable in light of the imminent threat they faced. Officer Varelas reported firing at ██████ after ██████ shot at him first. Officer Sunde fired at ██████ almost simultaneously to Officer Varelas. The video footage and physical evidence confirms the officers’ accounts, and shows that ██████ was an imminent threat. Specifically, ██████ was in possession of a firearm that he aimed and discharged at Officer Varelas.<sup>60</sup> COPA finds that it was objectively reasonable for both officers to believe that ██████ actions were immediately likely to cause death or great bodily harm.<sup>61</sup> The evidence further shows that ██████ had the means or instruments and the opportunity and ability to cause death or great bodily harm. ██████ discharged his firearm at Officer Varelas, showing that his weapon was functional and that he was willing to use it against Officer Varelas. Moreover, ██████ close proximity to Officers Varelas and Sunde, combined with the officers’ lack of sufficient cover, shows ██████ had the opportunity and ability to cause death or great bodily harm to both officers.

The preponderance of the evidence further indicates that Officers Varelas and Sunde used only the amount of force necessary based on the circumstances they faced. Neither Officer Varelas nor Officer Sunde used deadly force prior to ██████ firing at Officer Varelas, and both officers stopped firing once the threat ceased. Additionally, the totality of the circumstances demonstrates that Officer Varelas’ and Officer Sunde’s use of deadly force was proportional. The officers were confronted by an assailant whose actions constituted an imminent threat of death or great bodily harm, and the officers were permitted to respond with deadly force.<sup>62</sup> For these reasons, COPA finds the preponderance of the evidence demonstrates that Officer Varelas’ and Officer Sunde’s use of deadly force complied with CPD policy, in that it was objectively reasonable, necessary, and proportional to the circumstances they faced.

**b. Officers Varelas and Sunde failed to immediately notify OEMC of their firearm discharges.**

COPA finds Allegation #1 against Officer Varelas and Allegation #2 against Officer Sunde, that they failed to notify OEMC that they discharged their weapons in violation of CPD

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<sup>58</sup> Att. 143, G03-02(IV)(B).

<sup>59</sup> Att. 143, G03-02(III)(C)(2).

<sup>60</sup> Att 57.

<sup>61</sup> See Att. 145, G03-02-01(IV)(C), Response to Resistance and Force Options (effective April 15, 2021 to June 28, 2023) (defining an assailant as a person “who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury. Assailants are divided into two categories: (1) a subject whose actions are aggressively offensive with or without weapons and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.”). By his actions, ██████ met the definition of an “assailant” under CPD policy.

<sup>62</sup> Att. 145, G03-02-01(IV)(C)(2).

policy, are sustained. When a CPD member discharges their firearm, the member is required to immediately notify OEMC, providing all relevant information and requesting additional resources.<sup>63</sup>

During his statement to COPA, Officer Varelas stated that he used his police radio to notify dispatchers that he had an emergency by calling out a '10-1' and announcing that shots were fired.<sup>64</sup> While Officer Varelas called in a "10-1," he failed to provide other relevant information. Significantly, while Officer Varelas stated that shots were fired, he did not state who fired the shots. This is relevant because OEMC is required to notify different agencies when officers discharge their firearms, as opposed to when shots are fired by an offender.

During his statement to COPA, Officer Sunde admitted that he did not use his radio to communicate with OEMC. He indicated that other officers had already made the notification of shots fired.<sup>65</sup> However, even if other officers had made the notification, Officer Sunde should have ensured that all relevant information was transmitted to OEMC. It was the duty of both shooting officers to immediately notify OEMC of their firearm discharges, and to provide all relevant information. COPA finds by a preponderance of the evidence that neither officer complied with CPD policy requiring immediate and appropriate notification to OEMC.

When officers discharge their firearms, then fail to inform OEMC of all relevant information, it creates a potential delay in response time, and it alters the investigative plans that agencies employ when managing their response to shooting incidents. Officer Varelas and Officer Sunde failed to act in accordance with the prescribed directive. Therefore, Allegation #1 against Officer Varelas and Allegation #2 against Officer Sunde are **sustained**, in violation of CPD Rules 2, 3, 5, 6, and 10.

**c. Officer Sunde failed to timely activate his BWC.**

COPA finds Allegation #1 against Officer Sunde, that he failed to timely activate his BWC, is sustained. To increase transparency and improve the quality and reliability of investigations, CPD policy requires law-enforcement-related activities to be electronically recorded.<sup>66</sup> Law-enforcement-related activities include, but are not limited to, investigatory stops, traffic stops, 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.<sup>67</sup> The decision to record is mandatory, not discretionary.<sup>68</sup> Officers must activate their cameras at the beginning of an incident and record the entire incident. If there are circumstances preventing the activation of a BWC at the beginning of an incident, the officer must activate it as soon as practical.

The preponderance of the evidence shows that Officer Sunde failed to activate his BWC in a timely manner. During this incident, Officer Sunde did not activate his BWC until after he fired

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<sup>63</sup> Att. 144, G03-06(V), Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021 to present).

<sup>64</sup> Att. 103, pg. 31, lns. 19-21, and pg. 32, lns. 3-4.

<sup>65</sup> Att. 104, pg. 34, lns. 3-9.

<sup>66</sup> Att. 142, S03-14(II)(A), Body Worn Cameras (effective April 30, 2018 to December 28, 2023).

<sup>67</sup> Att. 142, S03-14(III)(A)(2).

<sup>68</sup> Att. 142, S03-14(III)(A)(1).

his weapon. In his statement to COPA, Officer Sunde acknowledged that he had already discharged his weapon and was standing at the driver's side door of the Accord when he activated his camera. Officer Sunde explained that as he arrived on scene, he saw [REDACTED] pointing a handgun at Officer Varelas, and Officer Sunde's focus was on helping his fellow officer, rather than on activating his BWC. However, Officer Sunde's justification does not excuse his failure to activate his BWC at the beginning of the incident, which occurred when he first responded to assist in apprehending the suspects in the carjacked vehicle.

Officer Sunde had the requisite time and opportunity to activate his BWC prior to arriving on scene and observing Officer Varelas at gunpoint. He did not activate his camera while he and his partners attempted to locate the Accord which had been involved in a vehicular hijacking. Officer Sunde also failed to activate his camera once that vehicle had been located. At that time, Officer Sunde was aware of the Accord's location, that it had been stolen at gunpoint, and that the incident may involve an interaction with armed suspects. As such, Officer Sunde should have activated his BWC when he first responded to assist with the carjacked vehicle. His failure to do so violated CPD policy and Rules 2, 3, 5, 6, and 10. For these reasons, COPA finds that Allegation #1 against Officer Sunde is **sustained**.

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

### **a. Officer Kenneth Sunde<sup>69</sup>**

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

Officer Sunde's complimentary history is comprised of 125 awards, the highlights of which include two Top Gun Arrest Awards, two Police Officer of the Month Awards, and one Honorable Mention Ribbon Award. His recent disciplinary history includes a sustained finding for failing to timely activate his BWC in March 2020, resulting in a one-day suspension, and a February 2023 SPAR for non-compliance with CPD's vehicle pursuit requirements, resulting in a reprimand.

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

COPA has found that Officer Sunde violated Rules 2, 3, 5, 6 and 10 when he failed to timely activate his BWC and failed to timely notify OEMC of all relevant information related to his firearm discharge. Officer Sunde did not activate his BWC until after he arrived on scene, exited his vehicle, and discharged his firearm. This undermined CPD's commitment to transparency and limited COPA's ability to evaluate the officers' actions in the moments leading up to the exchange of gunfire. In addition, Officer Sunde's failure to notify OEMC of all relevant information (i.e., that he discharged his firearm) created another hindrance to COPA's ability to timely evaluate this incident. While COPA appreciates that the scene was hectic and Officer Sunde heard other officers making radio transmissions, that did not relieve him of his responsibility to notify OEMC.

In mitigation, COPA has considered Officer Sunde's extensive complimentary history. However, COPA notes that Officer Sunde has a previous sustained finding for failing to timely activate his BWC, which indicates the need for progressive discipline. It is for these reasons that

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<sup>69</sup> Att. 139.

COPA recommends Officer Sunde receive a **3-day suspension and retraining** regarding CPD's BWC policy.

Approved:

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Steffany Hreno  
*Director of Investigations*

1/8/2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
Andrea Kersten  
*Chief Administrator*

1/8/2024

\_\_\_\_\_  
Date