



Brandon Johnson
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Larry B. Snelling
Superintendent of Police

April 10, 2024

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability ("COPA")
1615 W. Chicago Ave., 4th Floor

Re: Complaint Register Number: 2022-0003421
Superintendent's Non-Concurrence with COPA's findings and proposed penalties:
Police Officer Fernando Ruiz #12935
Police Officer Michael Baciu #7528
Police Officer Joel Venegas #17374
Police Officer Jacob Geary #11057
Police Officer Tyler Alexander #17587

Dear Chief Administrator Kersten:

Based on a review of the above-referenced complaint register ("CR"), the Chicago Police Department ("CPD") does not concur with the recommended findings for Police Officer ("P.O.") Fernando Ruiz as related to one sustained finding, identified by COPA as Allegation #3, against P.O. Ruiz. Furthermore, the CPD partially concurs with the recommended findings for P.O. Ruiz, P.O. Michael Baciu, P.O. Joel Venegas, P.O. Jacob Geary, and P.O. Tyler Alexander as related to one sustained finding for failure to timely activate their Body Worn Camera (BWC). In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalties.

ALLEGATIONS - P.O. Fernando RUIZ #12935

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Fernando Ruiz, Star No. 12935, committed misconduct through the following acts or omissions:

1. Failed to timely activate his body worn camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.
2. Discharged his firearm at or in the direction of [REDACTED] without justification in violation of G03-02 and/or G03-02-01 and Rule(s) 2, 5, 6, 8, 9, and 10.
3. Discharged his firearm under circumstances where an individual was not clearly visible in violation of G03-02-03, Section II, D¹-5 and Rule(s) 2, 5, 6, 8, 9, and 10.

ALLEGATIONS - P.O. Michael BACIU #7528

¹ G03-02-03, Section II. E. 5 (COPA incorrectly cites the section of the alleged policy violation as "G03-02-03, Section II. D. 5)

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Michael Baci, Star No. 7528, committed misconduct through the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

ALLEGATIONS - P.O. Joel VENEGAS #17374

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 7, 2020, at approximately 02:21 A.M., at or near East 83rd Street and South Cottage Grove Avenue, Chicago, Illinois 60619, Police Officer Joel Venegas, Star No. 17374, committed the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

ALLEGATIONS - P.O. Jacob GEARY #11057

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 7, 2020, at approximately 02:21 A.M., at or near East 83rd Street and South Cottage Grove Avenue, Chicago, Illinois 60619, Police Officer Jacob Geary, Star No. 11057, committed the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

ALLEGATIONS - P.O. Tyler ALEXANDER #17587

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 7, 2020, at approximately 02:21 A.M., at or near East 83rd Street and South Cottage Grove Avenue, Chicago, Illinois 60619, Police Officer Tyler Alexander, Star No. 17587, committed the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

FACTS:

This case review is to be read in conjunction with all other reports generated under the COPA investigation for CR #2022-0003421. This case review is a summarization of all reported information. All statements are also in summary format and are not to be considered verbatim.

The events which are the subject of Complaint Log #2022-0003421 occurred on 12 August 2022 at approximately 1511 hours and is reported by the CPD under Records Division (RD) number JF354210². The documentary evidence related to this Complaint Log reveals that a 012th District supervisor, Sergeant (SGT.) Brian Chen #1886, was monitoring POD camera 7862W located at 2159 W. Adams Street and observed a gray or silver Mazda vehicle with several unidentified persons at or near the vicinity of [REDACTED] in possession of a rifle, handguns and drum magazines³. SGT. Chen observed the Mazda vehicle leaving the area

² Service Call Event #2222409038
³ Cleared Closed (Arrest and Prosecution) report under JF354210 submitted by Detective Brian H. LUTZOW #21328 on 17 August 2022 at 0722 hours

and a subsequent plate reader hit indicated that the Mazda vehicle was heading westbound on the expressway.⁴

With knowledge of the 2100 block of West Adams Street being occupied by the Touhy Herbert Park faction of the Black Disciples and an active High Threat Level Gang Conflict⁵ between this faction of the Black Disciples and several factions of the Traveling Vice Lords in the 011th and 015th Districts, SGT. Chen notified both the 011th and 015th District Tactical offices with this information due to the potential for violence or retaliation occurring due to this gang conflict. Relevant to the assessment of this incident, SGT. Chen spoke to 011th District Intelligence Officer (D.I.O.) P.O. Eric Kimbrough #11566,⁶ who was advised of the suspect Black Disciples gang members with the rifle, handguns, and drum magazines occupying the silver or gray Mazda vehicle and the additional information that the vehicle was heading westbound toward the 011th District. Additionally, P.O. Kimbrough was notified of the aforementioned events which were bookmarked on POD camera 7862W and monitored in real-time by 011th District personnel.

P.O. Kimbrough independently verified the bookmarked videos and notified 011th District tactical officers of the firearms and potential for violence related to the activities observed occurring at [REDACTED]

011th District tactical officer, P.O. Christopher Enter #13762, informed of the firearm activities observed occurring at [REDACTED], monitored POD 7862W in real-time and observed a male black wearing a white hoodie and dark jeans, later identified as [REDACTED] Comer, in possession of a black semi-automatic firearm in his waistband.

P.O. Enter related he showed the video of Comer to 011th District tactical officers, P.O. Ruiz, P.O. Geary, P.O. Venegas and P.O. Alexander. The 011th District tactical officers decided to investigate, developed a plan, and departed the district station as P.O. Enter remained and continued to monitor the POD to provide the officers with updated information as they neared the incident location ([REDACTED]). As the 011th District tactical officers neared the incident location, P.O. Enter related just prior to the Officers arrival on scene, transferred his firearm from his waistband to his back right pocket and is operating a vehicle (Pontiac Grand Prix) with the driver's side door open.

The firearm discharge incident was captured in its entirety on POD 7862W and P.O. Ruiz's BWC⁷ and lasts approximately three (3) to four (4) seconds from P.O. Ruiz's first discharge to his last.⁸ P.O. Ruiz is observed on POD video⁹ exiting his CPD vehicle from the rear passenger side door and looking into Mr. Comer's vehicle from the open front driver's side door of Mr. Comer's Pontiac. As P.O. Ruiz approaches closer to Mr. [REDACTED] P.O. Ruiz's expression changes, he is observed shouting some verbal direction or warning, which P.O. Ruiz stated was "Stop!"¹⁰ or "Stop reaching!"¹¹

P.O. Ruiz then simultaneously unholsters his firearm with his right hand and pushes against Mr. [REDACTED]'s front driver's side door with his left hand before firing his initial shot and tactically repositioning himself. It should

⁴ Id.

⁵ GC-A4-011-021 and GC-A3-012-013 (High Threat Level Gang Conflict Zones)

⁶ Inactive as of 11 December 2022 (Employee #120367)

⁷ Attachment #2 - Side-by-side edited video featuring POD 7862W and RUIZ BWC

⁸ Id. from 00:05 to 00:09

⁹ Attachment #5 - 2159 W Adams Street - 7682W.mp4

¹⁰ Statement of P.O. Fernando RUIZ at page 11 and 19 (02 September 2022)

¹¹ Id.

be noted that contrary to COPA's contention that P.O. Ruiz closed the door to Mr. ██████'s Pontiac¹², the video evidence reveals that the door remained open after P.O. Ruiz pushed against it and that P.O. Ruiz appears to tactically reposition himself at an angle where he could see Mr. ██████ through the opening as he fired the remaining ten (10) shots in succession¹³.

Mr. ██████ crawled out of the vehicle, sustaining several gunshot wounds, from the front passenger side door following the firearm discharges by P.O. Ruiz and a loaded firearm (Glock 19, 9mm semi-automatic handgun¹⁴) was discovered on the front passenger seat of the Pontiac¹⁵.

██████████ was placed into custody and held for investigation in the 011th District/Area 4 Detective Division at 3151 W. Harrison Street under Central Booking (CB) number 30168277. Following a review of the facts and documentary evidence related to this incident, a probable cause determination was approved by the Cook County State's Attorney's Office (CCSAO) and ██████ was formally charged for the crimes of Aggravated Assault-Peace Officer (720 ILCS 5/12-2-B-4-1); Armed Habitual Criminal (720 ILCS 5/24-1.7-A) and Unlawful Use of Weapon/Felon (720 ILCS 5/24-1.1-A).

The COPA investigation concluded with a determination that P.O. Ruiz's use of deadly force violated Department policy; that P.O. Ruiz discharged his weapon at an individual that was not clearly visible in violation of G03-02-03; and that P.O. Ruiz failed to activate his BWC in a timely manner. COPA recommended a penalty of SEPARATION from the Chicago Police Department (CPD) on 26 January 2024.¹⁶ COPA included an additional finding that P.O. Baci, P.O. Venegas, P.O. Geary, and P.O. Alexander failed to activate their BWC's in a timely manner and recommended up to a ten (10) day suspension for each officer.

ANALYSIS

Allegation(s) #1 - P.O. Fernando RUIZ #12935

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near ████████████████████, Chicago, Illinois 60612, P.O. Fernando Ruiz, Star No. 12935, committed misconduct through the following acts or omissions:

1. Failed to timely activate his body worn camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

The Department agrees with COPA's finding of sustained. During his COPA interview, P.O. Ruiz explained that he activated his BWC "as soon as [he] finished shooting"¹⁷ and did not activate his BWC prior to arriving on the scene because he "didn't know [██████████ Comer] was going to be there."¹⁸

Although P.O. Ruiz provided a valid and reasonable explanation as to why he could not activate his BWC during the midst of this officer-involved shooting incident, there were no circumstances preventing P.O. Ruiz

¹² COPA Final Summary Report Log #2022-0003421 at page 3

¹³ Attachment #2 - Side-by-side edited video featuring POD 7862W and RUIZ BWC from 00:05 to 00:09

¹⁴ Inventory #15151961

¹⁵ Cleared Closed (Arrest and Prosecution) report under JF354210 submitted by Detective Brian H. LUTZOW #21328 on 17 August 2022 at 0722 hours

¹⁶ COPA Final Summary Report Log #2022-3421 (26 January 2024)

¹⁷ Statement of P.O. Fernando RUIZ at page 20 (02 September 2022)

¹⁸ Id.

from activating his BWC as he was en route to the incident location at the beginning of this incident.

P.O. Ruiz failed to activate his BWC to event mode at the beginning of this incident as required under S03-14. Therefore, the evidence is legally sufficient to support COPA's findings with regard to allegation #1 against P.O. Ruiz and a recommended penalty of a one (1) day suspension.

Allegation(s) #2 - P.O. Fernando RUIZ #12935

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Fernando Ruiz, Star No. 12935, committed misconduct through the following acts or omissions:

2. Discharged his firearm at or in the direction of [REDACTED] without justification in violation of G03-02 and/or G03-02-01 and Rule(s) 2, 5, 6, 8, 9, and 10.

The Department agrees with COPA's finding of Not Sustained. COPA found that the preponderance of the evidence does not support a finding that P.O. Ruiz discharged his firearm at Mr. Comer without justification.¹⁹ Due to the lack of sufficient evidence to either prove or disprove the allegation, COPA appropriately found allegation #2 is Not Sustained.

Allegation(s) #3 - P.O. Fernando RUIZ #12935

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Fernando Ruiz, Star No. 12935, committed misconduct through the following acts or omissions:

3. Discharged his firearm under circumstances where an individual was not clearly visible in violation of G03-02-03, Section II, D²⁰-5 and Rule(s) 2, 5, 6, 8, 9, and 10.

The Department does not agree with COPA's finding of sustained. The standard for an officer's use of force is codified in the Criminal Code of 1961. Under 720 ILCS 5/7-5(a), "an arresting officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest."²¹ The officer is "justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest."²²

Our courts have developed a well settled and exclusive framework for assessing whether the force used by a peace officer in making a seizure was reasonable. Reasonableness depends on the information the officer possesses prior to and at the immediate time of the shooting; the "knowledge, facts and circumstances known to the officer at the time he exercised his split-second judgment as to whether the use of deadly force was warranted."²³ Courts examine the use of force "from the perspective of a reasonable officer on the scene," based

¹⁹ COPA Final Summary Report Log #2022-0003421 at page 5

²⁰ G03-02-03, Section II. E. 5 (COPA incorrectly cites the section of the alleged policy violation as "G03-02-03, Section II. D. 5)

²¹ 720 ILCS 5/7-5(a)

²² Id.

²³ Sherrod v. Berry, 856 F.2d 802 (7th Cir.1988)

on the totality of the circumstances. In cases where excessive force by law enforcement is alleged to have occurred during an arrest, the question is whether the officer's use of force are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.²⁴ Relevant circumstances include the "severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."²⁵ When an officer uses deadly force, such force is reasonable only if "the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others."²⁶

Most relevant to the evaluation and assessment of a Department member's use of force is the recognition that "Department members are often forced to make split-second decisions, under circumstances that are tense, uncertain, and rapidly evolving."²⁷ Consistent with the "objective reasonableness" standard applied by the courts to determine whether an officer's use of force is "excessive", the CPD set forth Department policy regarding a sworn member's "de-escalation, response to resistance, and use of force" under General Order G03-02, De-escalation, Response to Resistance, and Use of Force.²⁸ The CPD assesses uses of force based on the totality of the circumstances, including "all the facts known by the member at the time or that would be known to a reasonable Department member in the same situation; 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."²⁹ "Totality of the circumstances may include the conduct of the Department member and the person leading up to the use of deadly force."³⁰

In relevant part, the directive authorizes sworn members to use force that is "objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, bring a person or situation safely under control, or prevent escape."³¹ The directive defines the "objectively reasonable, necessary, and proportional" standards as the following:

Objectively reasonable.³² The main issue in evaluating every use of force is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on the scene. Reasonableness is not capable of precise definition or mechanical application. Factors to be considered by the member may include, but are not limited to:

- a. whether the person is posing an imminent threat to the member or others.
- b. the risk of harm, level of threat or resistance presented by the person.
- c. the person's proximity or access to weapons.
- d. whether de-escalation techniques can be employed or would be effective.
- e. the availability of other resources.

Necessary.³³ Department members will use the minimum amount of force needed to provide for the safety

²⁴ *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L.Ed.2d 443 (1989)

²⁵ *Id.* at 396

²⁶ *Id.*

²⁷ General Order G03-02, De-escalation, Response to Resistance, and Use of Force, Section E.

²⁸ General Order G03-02, De-escalation, Response to Resistance, and Use of Force

²⁹ General Order G03-02, De-escalation, Response to Resistance, and Use of Force, Section E.

³⁰ 720 ILCS 5/7-5(h)(3) and G03-02, Section II. E. (Note)

³¹ General Order G03-02, Section III. B.

³² General Order G03-02, Section III. B.1.

³³ General Order G03-02, Section III. B.2.

of any person or Department member, stop an attack, make an arrest, bring a person or situation safely under control, or prevent escape. Department members will continually assess the necessity of the use of force and whether alternatives may be employed, including the use of de-escalation techniques, other response options, and the availability of other resources.

Proportional.³⁴ Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a person. This may include using greater force or a different type of force than that used by the person. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it. When or if the person offers less resistance, however, the member will decrease the amount or type of force accordingly.

Specifically, as it relates to Allegation #3 against P.O. Ruiz, COPA directly references General Order G03-02-03, Section II. E-5³⁵ to determine that P.O. Ruiz "violated Department policy by discharging his weapon at an individual that was not clearly visible."³⁶ While General Order G03-02-03, Section II, paragraph (E) does list a series of prohibitions on the use of firearms by Department members including when a "person lawfully fired at is not clearly visible"³⁷, this section and paragraph also contains specific exceptions to this prohibition which are never taken into consideration by COPA in its assessment of P.O. Ruiz's use of force. In relevant part, G03-02-03, Section II. E-5 states the following:

"Firing into buildings, through doors, windows, or other openings, or in any other circumstance when the person lawfully fired at is not clearly visible, unless 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. 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."³⁸

Based on this section of General Order G03-02-03, COPA determined that P.O. Ruiz violated Department policy by discharging his weapon at an individual that was not clearly visible.³⁹ COPA argues that it was not "objectively reasonable"⁴⁰ for P.O. Ruiz to "continue to fire when he could no longer see"⁴¹ Mr. ██████ and "had no reason to believe that [Mr. ██████] posed an imminent threat at that time"⁴² due to the fact that the windows to Mr. ██████ vehicle were tinted. Additionally, COPA found that P.O. Ruiz failed to employ de-escalation and force mitigation tactics following his initial firearm discharge and after losing sight of Mr. ██████ behind the tinted windows of his vehicle.⁴³

First, there is no factual dispute as to whether Mr. ██████ was armed with a firearm as P.O. Ruiz and the other officers involved in this incident approached the side of his vehicle. In fact, COPA determined that the

³⁴ General Order G03-02, Section III. B.3.

³⁵ G03-02-03, Section II. E. 5 (COPA incorrectly cites the section of the alleged policy violation as "G03-02-03, Section II. D. 5)

³⁶ COPA Final Summary Report Log #2022-0003421 at page 6

³⁷ General Order G03-02-03, Section II. E-5 at page 2 of 7

³⁸ General Order G03-02-03, Section II. E-5 at page 2 of 7

³⁹ COPA Final Summary Report Log #2022-0003421 at page 6

⁴⁰ Id. at page 7

⁴¹ Id.

⁴² Id.

⁴³ Id.

preponderance of the evidence does not support a finding that P.O. Ruiz discharged his firearm at Mr. [REDACTED] without justification⁴⁴ and therefore concedes that when P.O. Ruiz initially discharges his firearm at Mr. [REDACTED] his actions were objectively reasonable, necessary, and proportional, under the totality of the circumstances. COPA independently verified and does not dispute the fact that P.O. Ruiz and the other officers involved in this incident were aware that several unidentified persons - suspect members of the Black Disciples street gang - at or near the vicinity of [REDACTED] were in possession of a rifle, handguns and drum magazines⁴⁵ and that these weapons were being transported to a vehicle heading in the direction of rival gang territories in the 011th District. COPA also concedes that P.O. Ruiz and the other sworn members related to this incident observed Mr. [REDACTED] in possession of a firearm on POD 7862W prior to relocating to [REDACTED] and does not dispute the fact that P.O. Ruiz was made aware by P.O. Enter (who was monitoring POD 7862W in real-time) that Mr. [REDACTED] transferred his firearm from his waistband to his back right pocket⁴⁶ just prior to the officers' approaching Mr. [REDACTED] vehicle.

The firearm discharge incident was captured in its entirety on POD 7862W and P.O. Ruiz's BWC⁴⁷ and lasts approximately three (3) to four (4) seconds from P.O. Ruiz's first discharge to his last.⁴⁸ COPA offers no facts or evidence to refute, rebut, or challenge P.O. Ruiz's statement that he had a clear view, through the open front driver's side door, of Mr. [REDACTED] reaching into his back pocket,⁴⁹ holding the "butt of the firearm" in his left hand,⁵⁰ and raising the firearm⁵¹ in a manner that P.O. Ruiz reasonably believed that Mr. [REDACTED] would use the weapon against him or the other officers on scene. In fact, the available video evidence supports P.O. Ruiz's factual statements. P.O. Ruiz is observed on POD video⁵² exiting his CPD vehicle from the rear passenger side door and looking into Mr. [REDACTED] vehicle, from the open front driver's side door of Mr. [REDACTED] Pontiac. As P.O. Ruiz approaches closer to Mr. Comer, P.O. Ruiz's expression changes, he is observed shouting some verbal direction or warning, which was later described by P.O. Ruiz as "Stop!"⁵³ or "Stop reaching!"⁵⁴ Indeed, P.O. Baciu⁵⁵, P.O. Geary⁵⁶, and P.O. Alexander⁵⁷ all confirm hearing P.O. Ruiz giving Mr. [REDACTED] verbal directions or warnings prior to discharging his firearm.

P.O. Ruiz then simultaneously unholsters his firearm with his right hand and pushes against Mr. [REDACTED] front driver's side door with his left hand before firing his initial shot and tactically repositioning himself. It should be noted that contrary to COPA's contention that P.O. Ruiz closed the door to Mr. [REDACTED] Pontiac⁵⁸, the video

⁴⁴ Id. at page 6

⁴⁵ Cleared Closed (Arrest and Prosecution) report under JF354210 submitted by Detective Brian H. LUTZOW #21328 on 17 August 2022 at 0722 hours

⁴⁶ Statement of P.O. Fernando RUIZ at page 10 (02 September 2022)

⁴⁷ Attachment #2 - Side-by-side edited video featuring POD 7862W and RUIZ BWC

⁴⁸ Id. from 00:05 to 00:09

⁴⁹ Statement of P.O. Fernando RUIZ at page 11 (02 September 2022)

⁵⁰ Id.

⁵¹ Id. at page 16

⁵² Attachment #5 - 2159 W Adams Street - 7682W.mp4

⁵³ Statement of P.O. Fernando RUIZ at page 11 and 19 (02 September 2022)

⁵⁴ Id.

⁵⁵ Statement of P.O. Michael BACIU at page 17 and 18, "Yeah, he [P.O. RUIZ] yelled something while his firearm is drawn, and then after that I hear multiple shots." (28 September 2022)

⁵⁶ Statement of P.O. Jacob GEARY at page 17, "That's when I turn back to put the car in park, and actually, as I'm putting the car in park is when I hear Officer RUIZ yell something to the effect of, like, "Don't stop." Stop reaching," I believe it was, and that's when I hear the gunfire." (08 September 2022)

⁵⁷ Statement of P.O. Tyler ALEXANDER at page 9 and 10, "Then I see RUIZ get out. He is saying something to the occupant of the vehicle. I don't know exactly what he was saying, but I can -- he's saying something." (12 September 2022)

⁵⁸ COPA Final Summary Report Log #2022-0003421 at page 3

evidence reveals that the door remained open after P.O. Ruiz pushed against it and that P.O. Ruiz tactically repositioned himself at an angle where he could see Mr. Comer through the opening as he fired the remaining ten (10) shots in succession⁵⁹. It was only after P.O. Ruiz had already fired two to three additional shots that the door to the Pontiac was closed, presumably by Mr. [REDACTED] since he was the only person occupying the vehicle. It is significant to the assessment of this use of force incident that as Mr. [REDACTED] crawled out of the vehicle from the front passenger side door, a loaded firearm (Glock 19, 9mm semi-automatic handgun⁶⁰) was discovered on the front passenger seat of the Pontiac⁶¹.

COPA's assessment of P.O. Ruiz's use of force in this incident completely disregards common sense and the understanding, long established and acknowledged by our courts, that the risk inherent in all police encounters is "heightened exponentially when the person who has been stopped -- a person whose propensities are unknown -- is armed with a weapon that could unexpectedly and fatally be used against the officer in a matter of seconds".⁶² COPA not only fails to recognize that vehicle stops alone are inherently dangerous for police officers, but COPA also fails to recognize that the lawful pursuit of persons who are armed, whether legally or illegally, pose yet a greater safety risk to police officers. Our courts have deliberately linked "armed" and "dangerous,"⁶³ in recognition of the fact that the risk of danger is created simply because a person is armed with a firearm. Rather, COPA appears to argue illogically that when a person closes their car door and conceals themselves behind the tinted windows of their vehicle - while armed - any risk of danger to police officers posed by the firearm is eliminated. Here, the fact that Mr. [REDACTED] closed his door and stealthily concealed himself behind the tinted windows of his vehicle, while armed with a firearm, increased the level of danger and the risk to P.O. Ruiz and the other officers on scene.

Second, COPA relies heavily on the CPD policy which prohibits firing a weapon when the person lawfully fired at is not clearly visible, but ignores the exceptions and circumstances related to this prohibition contained in the very same section and paragraph of the policy.⁶⁴ In this case, all of the exceptions and circumstances apply in favor of P.O. Ruiz.

The exceptions and circumstances that apply in this case, prohibits firing a weapon at a person who is "not clearly visible"⁶⁵ "unless 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. 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."⁶⁶

Here, P.O. Ruiz directed his fire at Mr. [REDACTED] and a specific location - the front driver's seat of his vehicle - and COPA concedes that P.O. Ruiz's initial use of force was objectively reasonable, necessary, and proportional under the totality of the circumstances to prevent death or great bodily harm to P.O. Ruiz who did not have the

⁵⁹ Attachment #2 - Side-by-side edited video featuring POD 7862W and RUIZ BWC from 00:05 to 00:09

⁶⁰ Inventory #15151961

⁶¹ Cleared Closed (Arrest and Prosecution) report under JF354210 submitted by Detective Brian H. LUTZOW #21328 on 17 August 2022 at 0722 hours

⁶² Terry v. Ohio, 392 U.S. 1, 23 (1968)

⁶³ Id. at 28

⁶⁴ G03-02-03, Section II. E. 5 (COPA incorrectly cites the section of the alleged policy violation as "G03-02-03, Section II. D. 5)

⁶⁵ Id.

⁶⁶ Id.

benefit of cover or shielding⁶⁷. COPA offers no facts or evidence to suggest that the danger to P.O. Ruiz or the other officers on scene decreased after P.O. Ruiz fired his first shot. To the contrary, the facts and evidence suggest that the level of danger increased as an armed Mr. █████ closed his door and stealthily concealed himself behind the tinted windows of his vehicle. Consistent with the exceptions and circumstances listed in the CPD policy, it is clear that P.O. Ruiz identified the appropriate target, Mr. █████ prior to discharging his firearm and took precautions to minimize the risk to other people by ensuring that Mr. █████ was the lone occupant of the vehicle prior to discharging his firearm.

Lastly, I note that there is no factual dispute as to whether Mr. █████ was armed with a firearm and holding the butt of the firearm in his left hand and raising it as P.O. Ruiz, who was donned in full regulation CPD uniform, approached his vehicle. There is also no factual dispute that P.O. Ruiz provided Mr. █████ with verbal direction and warnings prior to discharging his firearm. While CPD members are required to use de-escalation techniques to prevent or reduce the need to use force, doing so in this case would have placed P.O. Ruiz in immediate risk of harm.

As noted above, COPA make no legal arguments in opposition to the above conclusions, but instead present a series of speculative arguments suggesting that: (1) Mr. █████ was no longer a threat because P.O. RUIZ could no longer see inside of Mr. █████ vehicle; (2) suggesting that P.O. Ruiz, while in the line of fire with no cover or shielding, had the benefit of using time as a tactic under the totality of the circumstances; and (3) ignores the exceptions and circumstances contained in the CPD policy that permits and favors P.O. Ruiz's use of force in this case.

The facts and documentary evidence overwhelmingly support the conclusion that P.O. Ruiz's use of force was "objectively reasonable, necessary, and proportional" and such force was a "last resort" based on the "totality of the circumstances" in the midst of a tense, uncertain, and rapidly evolving situation to protect himself against an imminent threat to his life.

Therefore, for the reasons above, the evidence is not legally sufficient to support COPA's findings with regard to allegation(s) #3 against P.O. Ruiz.

ALLEGATION #1 - P.O. Michael BACIU #7528 (Accused #2)

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near █████, Chicago, Illinois 60612, P.O. Michael Baci, Star No. 7528, committed misconduct through the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

The Department agrees with COPA's finding of sustained. It should be noted that COPA failed to read P.O. Baci the allegation(s) against him during his COPA interview on 28 September 2022 at 1027 hours, and did not provide P.O. Baci an opportunity to admit, deny, or not answer the allegation(s) against him. During his COPA interview, P.O. Baci confirmed his BWC was "functional"⁶⁸ when asked, but no other questions related to the activation of his BWC was asked during this interview.

⁶⁷ COPA Final Summary Report, COPA determined that the preponderance of the evidence does not support a finding that P.O. RUIZ discharged his weapon at Mr. █████ without justification, at page 5 and 6

⁶⁸ Statement of P.O. Michael BACIU at page 5 (28 September 2022)

Despite this failure to read P.O. Baciuc the allegation(s) against him and the failure to provide P.O. Baciuc an opportunity to respond to the allegation(s), a review of P.O. Baciuc's BWC confirms that P.O. Baciuc failed to activate his BWC to event mode at the beginning of this incident, while en route to the incident location, as required under S03-14.

Therefore, the evidence is legally sufficient to support COPA's findings with regard to allegation #1 against P.O. Baciuc and a recommended penalty of a one (1) day suspension.

ALLEGATION #1 - P.O. Joel VENEGAS #17374 (Accused #3)

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Joel Venegas, Star No. 17374, committed misconduct through the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

The Department agrees with COPA's finding of sustained. During his COPA interview, P.O. Venegas stated he typically activates his BWC while "exiting the vehicle, which is what [he] thought was correct."⁶⁹ There were no circumstances preventing P.O. Venegas from activating his BWC to event mode at the beginning of this incident, while en route to the incident location, as required under S03-14.

Therefore, the evidence is legally sufficient to support COPA's findings with regard to allegation #1 against P.O. Venegas and a recommended penalty of a one (1) day suspension.

ALLEGATION #1 - P.O. Jacob GEARY #11057 (Accused #4)

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12, 2022, at approximately 03:12 P.M., at or near [REDACTED] Chicago, Illinois 60612, P.O. Jacob Geary, Star No. 11057, committed misconduct through the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

The Department agrees with COPA's finding of sustained. During his COPA interview, P.O. Geary stated he typically waits to activate his BWC until he performs a "police action" or police function"⁷⁰ There were no circumstances preventing P.O. Geary from activating his BWC to event mode at the beginning of this incident, while en route to the incident location, as required under S03-14.

Therefore, the evidence is legally sufficient to support COPA's findings with regard to allegation #1 against P.O. Geary and a recommended penalty of a one (1) day suspension.

ALLEGATION #1 - P.O. Tyler ALEXANDER #17587 (Accused #5)

It is alleged by COPA, by and through Chief Administrator Andrea Kersten, that on or about August 12,

⁶⁹ Statement of P.O. Joel VENEGAS at page 21 (08 September 2022)

⁷⁰ Statement of P.O. Jacob GEARY at page 28 (08 September 2022)

2022, at approximately 03:12 P.M., at or near [REDACTED], Chicago, Illinois 60612, P.O. Tyler Alexander, Star No. 17587, committed misconduct through the following acts or omissions:

1. Failed to timely activate your Body-Worn Camera in violation of S03-14 and Rule(s) 2, 5, 6, and 10.

The Department agrees with COPA's finding of sustained. During his COPA interview, P.O. Alexander stated he activated his BWC as soon as [he] knew that we were taking police action".⁷¹ P.O. Alexander explained that he activated his BWC "when the first shots rang out".⁷² There were no circumstances preventing P.O. Alexander from activating his BWC to event mode at the beginning of this incident, while en route to the incident location, as required under S03-14.

Therefore, the evidence is legally sufficient to support COPA's findings with regard to allegation #1 against P.O. Alexander and a recommended penalty of a one (1) day suspension.

CONCLUSION

COPA sustained three (2) allegations against Accused #1, P.O. Fernando Ruiz, and one (1) allegation each against Accused #2, P.O. Michael Baciu, Accused #3, P.O. Joel Venegas, Accused #4, Jacob Geary, and Accused #5, Tyler Alexander. At the conclusion of COPA's investigation, COPA determined that P.O. Ruiz discharged his firearm in violation of Department policy; and that P.O. Ruiz, P.O. Baciu, P.O. Venegas, P.O. Geary, and P.O. Alexander failed to timely activate their Body Worn Cameras (BWC). The finding in Allegation #3 against P.O. Ruiz is not legally sufficient and do not support a determination by a preponderance of the evidence that P.O. Ruiz violated Department policy when he discharged his weapon at an individual that was not clearly visible.

In determining the appropriate level of discipline, the CPD should consider the nature and seriousness of the offense, the sworn member's performance record (including complimentary and disciplinary history), the employee's length of continuous service, other mitigating circumstances, and other relevant factors. Cause for separation means some substantial shortcoming that in some way renders the sworn member's continued service in the position detrimental to the reputation of the CPD, the public peace, and the service of law.

The findings in Allegation #1 against P.O. Ruiz and Allegation(s) #1 against P.O. Baciu, P.O. Venegas, P.O. Geary, and P.O. Alexander are legally sufficient and support a determination by a preponderance of the evidence that the officers failed to timely activate their BWC's in violation of Special Order S03-14 and a recommended penalty of a one (1) day suspension for each officer is appropriate.

The CPD has a strong public interest in enforcing the law, holding its own members accountable, and establishing a fair and constitutional disciplinary system. It is clear based on the statements made by the officers that they activated their BWC based on their misinterpretation and misunderstanding of Special Order S03-14, Body Worn Cameras; and additional training should be considered along with any recommended penalty related to the officers' late BWC activation.

The CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii). If COPA and the CPD find themselves at an impasse on the resolution of this matter, the CPD asks that COPA include all attachments from the log investigation to the member of the Police Board selected to conduct the review.

⁷¹ Statement of P.O. Tyler ALEXANDER at page 25 (12 September 2022)

⁷² Id.

Allegation #3 against P.O. Ruiz is not legally sufficient, and therefore, should be EXONERATED.

Sincerely,



Larry B. Snelling
Superintendent of Police
Chicago Police Department